

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 31 March 2022 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
Councillor Maria Linforth-Hall
Councillor Margy Newens

OFFICER SUPPORT: Debra Allday, legal officer
Charlotte Precious, legal officer
Andrew Heron, licensing officer
David Franklin, licensing responsible authority officer
Justin Miller, trading standards officer
P.C. Ian Clements, Metropolitan Police Service
P.C. Maria O'Mahoney, Metropolitan Police Service
P.C. Ross Kennedy, Metropolitan Police Service

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: CAROLINA BAR AND GRILL, FIRST FLOOR, ARCH 145, EAGLE YARD, HAMPTON STREET, LONDON SE1 6SP

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

The applicants and their agent addressed the sub-committee. Members had questions for the applicants and their agent.

The Metropolitan Police Service officer addressed the sub-committee. Members had no questions for the police officer.

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

The other persons objecting to the application addressed the sub-committee. Members had questions for the other persons objecting.

The meeting adjourned at 11.56am for a comfort break. The meeting reconvened at 12.01pm

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

The meeting adjourned at 12.06pm for the sub-committee to consider its decision.

The meeting reconvened at 1.17pm and the chair advised everyone of the decision.

RESOLVED:

That the application made by Mr Santos Mario De La Paz Perez for a premises licence to be granted under s.17 of the Licensing Act 2003 in respect of the premises known as Carolina Bar and Grill, First Floor, Arch 145, Eagle Yard, Hampton Street, London SE1 6SP be granted as follows:

1. The sale by retail of alcohol (on sales only):
 - a. Sunday to Thursday: 10:00 to 23:30
 - b. Friday and Saturday: 10:00 to 00:30
2. The sale by retail of alcohol non-standard timings (on sales):
 - a. Christmas Eve: 10:00 to 00:30
 - b. New Year's Eve: 10:00 to 05:00
3. The provision of late night refreshment (indoors):
 - a. Sunday to Thursday: 23:00 to 23:30
 - b. Friday to Saturday: 23:00 to 00:30
4. Late night refreshment non-standard timings (indoors):
 - a. Christmas Eve: 23:00 to 00:30
 - b. New Year's Eve: 23:00 to 05:00
5. The provision of regulated entertainment in the form of recorded music and films (indoors):
 - a. Sunday to Thursday: 23:00 to 23:30
 - b. Friday and Saturday: 23:00 to 00:30
6. Regulated entertainment non-standard timings (indoors):
 - a. Christmas Eve: 23:00 to 00:30
 - b. New Year's Eve: 23:00 to 05:30
7. Opening hours:
 - a. Sunday to Thursday: 10:00 to 00:00
 - b. Friday and Saturday: 10:00 to 01:00
8. Opening hours non-standard timings:
 - a. Christmas Eve: 10:00 to 01:00
 - b. New Year's Eve: 10:00 to 06:00

Conditions

The operation of the premises under the licence shall be subject to relevant mandatory conditions, conditions derived from the operation schedule highlighted in Section M of the application form, conditions agreed during the conciliation process and the following additional conditions as agreed by the licensing sub-committee:

1. That this licence will not take effect until an acceptable written dispersal policy has been submitted to the licensing department.
2. That the written dispersal policy shall be kept at the premises with the licence and made available for inspection by authorised council officers or the police. All relevant staff shall be trained in the implementation of the dispersal policy.
3. That SIA registered staff will be employed from 21:00 on any days the premises is open past midnight.
4. That a personal licence holder will be present on the premises from 21:00 on any days the premises is open past midnight.
5. That the accommodation limit for the premises shall not exceed 60 persons (including children but excluding staff).
6. That alcohol shall not be sold or supplied on the premises otherwise than to those seated, by table service and ancillary to a meal.
7. That no alcoholic drinks will be permitted outside of the premises.
8. That a clearly visible sign will be displayed to say that no alcoholic drinks are permitted outside of the premises.
9. That no more than 5 people will be permitted outside to smoke at any one time.
10. That staff will direct people to move away from the area upon leaving the premises.
11. That a telephone number to an English speaking member of staff shall be prominently displayed and made available to residents.
12. That external waste handling, collections, deliveries and the cleaning of external areas shall only occur between the hours of 08.00 and 20.00 hours.
13. That the front windows and door will remain closed after 22:00, other than for egress or ingress.

Reasons

On 4 February 2022 Mr Santos Mario De La Paz Perez applied for a premises licence in respect of the premises known as Carolina Bar and Grill, First Floor, Arch 145, Eagle Yard, Hampton Street, London SE1 6SP.

The applicants and their representative submitted further representations late at night on 30 March 2022, the day before the hearing. As they were received less

than 24 hours before the hearing, they were too late to be circulated.

The applicants stated they intend to operate as a Dominican restaurant. They advised that they are a food led business rather than a bar and were happy for conditions to be imposed reflecting this. The accommodation limit specified in the application is in compliance with the occupancy guidelines according to the relevant building regulations. They have 10 tables and customers are seated six people per table.

The applicants have had a number of temporary events notices (TENs), gradually increasing their capacity to 60 people in order to improve their experience of practice management. Security staff are present when the premises is open past midnight and the premises intend to continue that practice going forward. Security staff will also patrol the car park that is the subject of much nuisance to local residents.

The premises expressed their keenness to engage with their neighbours and to prevent noise disturbance, they also stated they would not be hosting externally promoted DJ events. The applicants confirmed they were aware of the policy in respect of single-use plastics in the Southwark's statement of licensing policy 2021-2026 (SOLP).

The representative for the Metropolitan Police Service raised concerns in respect of the volume of licensed premises in the area and the cumulative impact of noise, nuisance and disorder emanating from these premises. Most of these problems arise when patrons are dispersing from premises.

The representative for the licensing authority agreed that dispersal from the premises is the main issue and the premises' dispersal policy is not adequate to address this concern.

The sub-committee noted that trading standards withdrew their representations after conditions were conciliated with the applicants.

Seven residents living within close proximity of the premises submitted representations in advance of the hearing, the sub-committee took all of these into consideration. Two of the residents were in attendance at the hearing and raised concerns in respect of crime, disorder and nuisance from those leaving premises within the arches and remaining in the local area. It was also noted that when the TENs were in operation, music could be heard emanating from the premises and several people were noisily leaving to smoke, taking their drinks with them.

The sub-committee recognised the changing nature of the arches and number of licensed premises opening in the area. This has occurred in numerous locations within Southwark. The sub-committee has found that in other areas of the borough, trader and resident groups have opened dialogue between the residents and premises. These groups have given residents a forum to air their concerns regarding licensed premises and for the premises to respond.

The representative for the Metropolitan Police Service confirmed such a trader and resident group exists for this area and agreed they would assist the premises in engaging with this group to facilitate community cohesion. The premises also confirmed they were keen to participate. A condition requiring the premises to display a telephone number to an English speaking member of staff would also assist in resolving issues that arise.

The sub-committee considered that conditions limiting the sale of alcohol to table-service, to those seated and ancillary to a meal would prevent the premises operating as a wet-led establishment. The times for which alcohol can be served has also been amended so that sales will finish at the same time as food. Along with SIA staff and a comprehensive dispersal policy that has been approved by the licensing authority, this would assist in ensuring the premises does not contribute to the nuisance and disorder in the local area.

A condition preventing customers from taking alcoholic drinks outside, limiting the number of people permitted to smoke at any one time and requiring the premises to keep their front windows and doors closed after a certain time would assist in preventing the noise nuisance experienced by local residents.

The sub-committee noted the hours applied for were within those suggested by Southwark's SOLP for a restaurant and considered the comprehensive conditions imposed by the sub-committee will address concerns and further the four licensing objectives. It is on this basis that the application was granted. 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.

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 desires to contend:

- a) That the licence ought not to have been granted; or
- b) That, on granting the licence, the licensing authority ought not 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.

6. LICENSING ACT 2003: COSTLESS, 23-25 CAMBERWELL ROAD, LONDON SE5 0EZ

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

The legal representative for the premises requested time to read over information submitted by trading standards.

The meeting adjourned at 1.37pm and reconvened at 1.48pm.

The legal representative for the premises advised that they would be happy for the trading standards officer to verbally refer to the document.

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

The legal representative for the premises also had questions for the trading standards officer, which the chair allowed.

The Metropolitan Police Service officer (and two other police officers as witnesses), supporting the review, addressed the sub-committee. Members had questions for the police officer and their witnesses.

The legal representative for the premises also had questions for the police officer and their witnesses, which the chair allowed.

The licensing responsible authority officer, supporting the review addressed the sub-committee. Members had questions for the licensing responsible authority officer.

The legal representative for the premises also had questions for the licensing responsible authority officer, which the chair allowed.

The legal representative for the premises requested an adjournment to take instructions from their client.

The meeting adjourned at 2.59pm and reconvened at 3.08pm.

The legal representative for the premises advised that they were unable to reconnect with their client.

The meeting adjourned at 3.18pm for the sub-committee to consider whether to

proceed without the premises licence holder.

The meeting reconvened at 3.28pm and the chair advised that the meeting would proceed without the premises licence holder being present. The legal representative for the premises was in agreement with this.

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

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

The meeting adjourned at 4.35pm for the sub-committee to consider its decision.

The meeting reconvened at 5.02pm and the chair advised everyone of the decision.

RESOLVED:

That the council's licensing sub-committee, having considered an application made under Section 51 of the Licensing Act 2003 submitted by trading standards for the review of the premises licence issued in respect of Costless, 23-25 Camberwell Road, London SE5 0EZ having had regard to all relevant representations has decided to revoke the premises licence.

Reasons

This was a review application brought by trading standards under Section 51 of the Licensing Act 2003 of the premises known as Costless, 23-25 Camberwell Road, London SE5 0EZ. The application was brought under all of the licensing objectives: the prevention of crime and disorder, the promotion of public safety, the prevention of nuisance and the protection of children from harm.

The licensing sub-committee heard from an officer from trading standards, the applicant to the review who advised that in January 2022 complaints were being received by the Metropolitan Police Service about alcohol being consumer in the street that was leading to noise and anti-social behaviour. The premises were supplying alcohol that had fuelled this behaviour. In addition, the premises had also not paid the licensing fees and at that time the licence was suspended.

The premises was visited by police from the night time economy team and trading standards on 27 January 2022. Prior to the visit, the premises the trading standards officer made a test purchase of a can of Carlsberg Special Brew. This was an unlicensed sale of alcohol. It was explained to the staff at the premises that an unlicensed sale of alcohol had been made as the licensing fee had not been paid.

It was noted that a large quantity of alcohol was on the premises. Invoices for some of these products were requested by the trading standards officer under the

provisions of the Food Safety & Hygiene (England) Regulations 2013, which require traceable invoices for all food. These invoices were produced a week later.

It was also noted that the bottled caps for some of the specialist beers such as Guinness Foreign Export Stout (7.5% ABV), Guinness Foreign Export Stout 7.5% ABV, Gulder Lager (6% ABV), Star Lager (6% ABV) and Trophy Lager (6% ABV) littered outside the shop and in surrounding streets.

When looking for invoices for those products trading standards found a book behind the counter that was for daily cash purchases of goods delivered to the shop such as bread and eggs etc. At the back was six weeks' worth of hours worked by staff. Staff appeared to work 12 hour shifts and up to 80 hours per week. Staff in the shop on 27 January 2022 were on student visas and showed their UKBA cards which provided they could work no more than 20 hours per week. It is unknown how it is possible to work these kinds and hours and study as well.

Had the business been licensed on the day of the visit (27 January 2022) the premises would have been in breach of conditions 100, 101, 326, 336 and 342. None of those in the shop held personal licences. Although a refusals register behind the counter was relatively up to date, the staff on the premises did not appear to know what a PASS (Proof of Age Standards Scheme) approved card was and no staff training records were present on the premises. No A3 warning poster warning concerning sales of cigarettes to under 18s was displayed contrary to Section 4 Children and Young Persons (Protection from Tobacco) Act 1991.

Staff at the premises informed officers did not know who the premises license holder of the designated premises supervisor (DPS) were on the existing unpaid current license. Both the trading standards officer and the police made it abundantly clear both in writing and verbally that alcohol was to not be sold until the license fee had been paid; the license had been transferred to whomever was running the business and the premises had a designated premises supervisor.

On 29 January 2022 a licensing officer attended the premises and made positive test purchase of a draft Guinness Beer.

On 1 February 2022 the council's licensing unit confirmed that the fee had been received for the premises licence.

On 3 February 2022 the police advised trading standards that contact with the DPS had been made and who confirmed that they had not worked at the premises for the previous two years. Staff were provided with Notice number 0705 outlining the illegal sales of alcohol on 27 (sale of alcohol without a premises license) and 28 January 2022 (sale without a DPS). Officers found breaches of conditions 100, 101, 288, 289, 326, 336 and 342.

On 25 March 2022 a further compliance inspection was carried out by trading standards, licensing and police from the night time economy team. Condition 289

was found to be breached, in that the CCTV installed had only retained 24 days of recording rather than the required 31 days due to a power cut at the premises and a summary licence should be on display, which was corrected immediately. All other conditions the premises was found to be compliant with.

Trading standards also informed the sub-committee that that there had been previous issues at the premises that in January 2016 when a man was arrested for illegally working and a fixed penalty notice was issued to the shop manager by UK Border Agency (UKBA). Trading standards also seized a quantity of Wray and Nephew over proof white rum (63%alc) and Alomo Bitters (40%) as smuggled product that was non duty paid, in breach of Section 144 of the Licensing Act 2003. Traceable invoices for these were also requested but never produced in breach of Regulation 19 Food Safety and Hygiene (England) Regulations 2013. There were also breaches of licence conditions 101, 326 334, 336, 340 and 342. Attempts were made to contact the premises business about these matters but all met with silence.

Trading standards also informed the sub-committee of historical breaches of the licence. A visit to the premises in or around February 2016 by trading standards as part of an underage sales campaign, a member of staff failed a test purchase. A warning letter sent to the premises license holder and he then DPS.

In March 2019, trading standards visited the premises and noted a number of polish lagers without English. The premises was formally requested to provide traceable invoices, none were forthcoming. It was also noted that no personal license holder was on the premises and were advised that they could not sell alcohol one was present.

In May 2019 trading standards, licensing and the police attended the premises and found Karpackie on sale at £1.59 per can. The minimum price for Karpackie was £1.36 (i.e. duty plus VAT), meaning it had been manufactured in Poland, shipped to the UK; stored and wholesaled for 23 pence. Nine cases of Karpackie were in the premises store room. Again, traceable invoices were requested. Only five invoices were received for the Karpackie when there were nine cases in the store room plus more on the shelves.

Trading standards concerns related to the past and present management of the premises, having no premises license holder or designated premises supervisor in place a considerable time, for some time. UKBA previously issuing a fixed penalty notice for employing a person not permitted to work on the premises and having smuggled alcohol at the premises.

They also raised concerns of the employment of potentially vulnerable students to run the business, working excessive hours possibly for wage rates that did not meet with national minimum pay rates. There had been a blatant disregard to the Licensing Act 2003 resulting to the irresponsible use of alcohol in the surrounding streets leading to anti-social behaviour and public nuisance. Trading standards requested that the licence be revoked.

The Metropolitan Police Service had two witnesses: PC O'Mahoney and PC Kennedy.

The licensing sub-committee heard from the Metropolitan Police Service whose representation related to all four of the licensing objectives. The officer stated that the area which the premises were situated had been an area of interest with complaints of anti- social behaviour and noise complaint from local residents as a result of patrons from the local licensed premises, including street drinkers, congregating outside in the streets, playing loud music, smoking, urinating and drinking alcohol.

PC O'Mahoney confirmed that a meeting had been arranged by the police for all the local licensed premises in or around December 2021 and Costless was notably absent from this meeting.

When police attended the premises on 27 January 2022 staff present at the premises were either unable or unwilling to inform officers the details of with either the DPS, licence holder or owner of the shop. This was contrary to Section 136 (1) Carrying on or attempting to carry on a licensable activity on or from any premises otherwise in accordance with an authorisation or knowingly allowing a licensable activity to be carried on; Section 137(1) Exposing alcohol for retail without authorisation and Section 138(1) Keeping alcohol on a premises for an unauthorised sale.

Staff, including the manager were informed that with no licence in place they must not sell any alcohol until a premises licence was back in place. Despite being informed not to sell any alcohol, PC Kennedy witnessed a middle aged IC1 female placing two bottles of red wine on the counter to buy them. She was served and paid for the wine with a credit/debit card and then left the store.

PC O'Mahoney who was a witness for the Metropolitan Police confirmed that on 29 January 2022, a street drinker from Boyson Road came into the premises, shouted at one of the members of staff "*Family, family*" before asking the staff then to look after his rucksack he left on the counter, before going outside to join the other street drinkers. When staff were asked why the male had left his rucksack with them, the officer was informed that he always left his rucksack with them as "*He is a regular*".

The member of staff stated that there were now training records for alcohol sales and would have to ring his manager. The member of staff was unable to give an answer and appeared very confused when asked of the training he had received for alcohol sales. When the member of staff was on the phone to his manager, another member of staff served two males alcohol, both of whom appeared to be under 18 years of age.

The member of staff was challenged about the sale by another police officer as to

why ID was not requested. When asked about "Challenge 25" the member of staff appeared confused.

The member of staff who was talking to PC O'Mahoney put his phone on loud speaker to a male who claimed to be the manager and who stated he was able to operate the CCTV remotely.

When CCTV was requested for 27 January 2022, when the officer previous visited the premises (at the time when the premises licence fees had not paid, nor personal licence holder or DPS were at the premises) the manager on the phone became irate and refused to operate the CCTV. He shouted that he would not supply the CCTV unless police provided a USB stick and write down the dates. The manager refused and simply showed the requested CCTV footage. When requested, the manager stated he did not have training records for staff or a refusal register.

PC O'Mahoney attended the premises on 29 January 2020 and spoke to a male employee who stated that he was charge. This member of staff stated that he had a personal licence, but did not have it in his person. He then checked his mobile phone for a copy of his personal licence. Because he was unable to produce a copy of it, the officer concluded that he did not have a personal licence. The same member of staff also did not have any form of ID on him. The other members of staff also did not have personal licences but did have Residence Permit Student Visas allowing him to work 20 hours a week. In view of this, a Section 19 Closure Notice was served for failure to have a personal licence holder at the premises and that on witnessing staff selling alcohol to four males.

On 2 February 2022 the DPS on the premises licence contacted PC Kennedy and advised him that he was not the DPS for the premises and had not been the DPS there for approximately two years.

On 3 February 2022 officers, including PCs Kennedy, O'Mahoney and trading standards attended the premises. An A4 sign was on the door stating they were not selling any alcohol. A number of IC4 male staff were asked if they held personal licences. They did not.

Officers' asked to view the CCTV from the previous weekend, but no one present was able to operate the CCTV system. There was no staff training records were available at the premises.

A significant amount of bottles and cans of alcohol were behind the counter and along the wall on shelves and in large fridges. Two shelving units had been moved and placed at one end of an aisle to partially block it off, a customer could simply walk to the far end of that aisle and walk into this alcohol aisle an alternative way. The large fridges contained just alcohol products and were turned on, lit up and the insulated blinds to the fridges were not pulled down, suggesting that they were open.

Despite not selling alcohol, officers were informed that the fridges were turned on as the plug socket was behind the fridges could not be accessed and the insulated blinds were not pulled down to cover up the alcohol because the insulated blinds were broken. A member of staff insisted that the premises was not selling alcohol.

PC Kennedy informed the staff that a small the small sign erected on the door and one end of the alcohol aisle being blocked (but the other end open) was inadequate and that more prominent signs, the removal or cover up of alcohol and the complete block off the alcohol aisle was inadequate. The staff present stated that there was no DPS for the premises which meant no alcohol could be sold until they have one in place even if a personal licence holder was present. During the time the officers were at the premises customers were seen coming in to the premises looking to buy alcohol and being told they could not buy any.

The licensing sub-committee heard from licensing as a responsible authority whose representation was based on Southwark's statement of licensing policy 2021- 2026 and related to the licensing objectives for the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm.

The officer's representation detailed that during a joint inspection on 27 March 2019 officers from licensing, trading standards and the police identified seven breaches of premises licence conditions: 101; 326, 327, 334, 336, 340, 342. The 2022 visits by trading standards, licensing and the police identified most of the same breaches/and more of the premises licence. Despite having a suspended licence, the premises continued to operate after staff at the premises were warned regarding offences and informed not to sell provide alcohol until all matters regarding the suspension had been rectified.

The legal representative for the premises requested a brief adjournment of the meeting in order to take instructions from the premises licence holder. When the meeting resumed, the premises licence holder's legal representative informed the sub-committee that connection with his client had been lost. Attempts had been made to re-establish the connection, but this was not possible. His client mentioned that he had a funeral and prayers that afternoon and presumably, that was where he was.

When asked why the legal representative had not requested a variation of the order of business so the item could be considered first, the sub-committee were informed that he had only just been informed. He stated that had already received full instructions, prior to the request for a short adjournment, so he would be able to speak on his client's behalf. In the circumstances, the sub-committee agreed to proceed in the premises licence absence.

The premises licence holder's representative advised the licensing sub-committee that the review application had been brought by trading standards, yet no trading standards offences had been identified. There had been no warning letters and no counterfeit/smuggled alcohol was identified.

The premises licence holder's representative also informed for the sub-committee that its role was not to establish innocence or guilt and that the Home Office Revised Guidance issued under Section 182 of the Licensing Act 2003 (2018) was clear on this point.

The premises holder had recently moved and as a result, he had not received the invoice for the licence fees. The non-payment of the premises licence fees was administrative only, and not a matter for a review application. The premises licence holder's representative was unable to advise the committee of the date that his client had moved, or the address. The only matters that trading standards had raised were historic. Since 2019 there were no other licensing matters arising that were of any concern to trading standards. The level of the trading standards evidence demonstrated that there was no undermining of the licensing objectives.

Concerning the evidence presented by the Metropolitan Police Service, nothing had been presented either in the agenda papers or at the sub-committee meeting concerning the area that the premises was located being in an area of special interest and/or the details of anti-social behaviour. The police had also not provided any CADs, criminal analysis or any causal link regarding the complaints of anti-social behaviour and the premises. The allegations of selling to street drinkers were exactly that, allegations. CCTV had not been viewed to establish the allegation; the alleged complaints were generic whereas the Section 182 guidance requires specifics being required.

There had also been no graduated approach taken with the premises as required. The premises were entitled to be given all of the facts and evidence and given the opportunity to rectify any alleged breach. There had been no other matters that undermined the crime and disorder licensing objective made by the Metropolitan Police Service.

Regarding the lack of presence of the premises licence holder and/or DPS at the premises when responsible authorities visited and/or carried out inspections, this was purely due to the individuals' working patterns. Responsible authorities had simply not attended the premises on the occasions that they were there. There was always a DPS and the now previous DPS, as a matter of law, remained the DPS until they relinquished the role and/or another DPS appointed.

The allegations concerning the lack of any personal licence holder on the premises was not a matter for the licensing sub-committee and should be put before the Magistrates' Court by way of prosecution. In any event, there were now four personal licence holders and five had received training and awaiting premises their personal licences. Local authorities had delayed in issuing these personal licences and the premises should not be penalised for this.

In conclusion, all historic complaints should be disregarded as irrelevant and no one had sold alcohol without a licence. The issues relating to remit of the staff with student visas, this was a matter for UK Boarder Agency/Immigration. UK Boarder Agency/Immigration were a responsible authority for the purposes of the Licensing

Act 2003 and they had not submitted a representation.

The representative for the premises licence then questioned the members of the sub-committee's impartiality and their failure to challenge the responsible authorities.

The premises licence holder was therefore under a duty to notify the council of his change in address and failure to do so without reasonable excuse under Section 33(6) of the Act.

Similarly, the premises licence holder was under a duty to inform the council of the change in DPS given that the then DPS had not done so.

Section 33 (1) and (2) Licensing Act 2003 provides:

- “(1) The holder of a premises licence must, as soon as is reasonably practicable, notify the relevant licensing authority of any change in -
- (a) his name or address,
 - (b) unless the designated premises supervisor has already notified the authority under subsection (4), the name or address of that supervisor”.

The premises licence holder was therefore under a duty to notify the council of his change of address and pursuant to Section 33(6) Licensing Act 2003. There had been a failure to notify the council without a reasonable excuse

Contrary to the premises licence holder's submissions, findings with regard to alleged offences are not restricted to prosecutions in the Magistrates' Court Section 86(2) Licensing Act 2003 provides:

“Proceedings for an offence **may** be instituted -

- (a) except in the case of an offence under section 147A by a licensing authority,
- (b) by the Director of Public Prosecutions, or
- (c) in the case of an offence under section 146 , 147 or 147A (sale of alcohol to children), by a local weights and measures authority (within the meaning of section 69 of the Weights and Measures Act 1985 (c. 72)”.

The insertion of the word “may” indicates that the local authority has a discretion to prosecute alleged offences and is not under a duty to do so.

Further, paragraph 11.25 of the Home Office Revised Guidance, issued under Section 182 of the Licensing Act 2003 (2018) reads: “Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings”. No prohibition on a sub-committee making finding of facts where criminal proceedings have not been instigated.

The premises licence holder's legal representative also made reference to responsible authorities having a "stepped approach" in licensing breaches. This licensing sub-committee noted that all the responsible authorities, in both their verbal and written evidence, had attempted to engage with the premises. All of the red warnings were not heeded and improvements were not made and the stepped approach did not result in compliance.

Reference was made by all of the responsible authorities of Southwark's night time economy team. The night time economy team is a Southwark partnership joint enforcement initiative involving a programme of regular compliance visits on Friday and Saturday nights within the borough and:

"...includes representatives from the council's Licensing and Regulatory Services teams (which could be from the Southwark ASB unit, environmental protection, trading standards, health and safety or the food health and safety team). In addition, representatives from UK Border Force, the London Fire Brigade and the Security Industry Authority (SIA) have joined them on various nights...The task team uses a risk based approach, concentrating on complaints and problem premises, one-off events and crime and disorder flashpoints and times, such as dispersal...The regular, targeted compliance visits have had a positive impact on alcohol related and public nuisance complaints due to there being a regular presence of the NET, enabling the council to work smarter with reduced resources. This creates pro-active engagement with business operators working in the night-time economy. This has brought about a more cohesive approach to solving problems related to licensed premises, which in turn supports licensees regarding compliance and helps reduce any negative impact that licensed premises have upon local residents". (page 22-23, Approaches to Managing the Night-Time Economy, Local Government Association) (July 2019)).

The trading standards officer that submitted this review application is the licensing lead for trading standards and authorised to conduct investigations under the Licensing Act 2003. The legal representative for the premises is put to strict proof concerning his suggestion of trading standards acting either beyond the remit their remit and/or unlawfully.

The sub-committee also considered the historic matters as part of the stepped approach. It was accepted by the premises that a fixed penalty notice had been issued by Immigration/UK Border Forces in respect of the employment of an illegal worker. The legal representative for the premises licence holder

The options available to this sub-committee are:

i. **Take no action**

The licensing sub-committee have found a significant number of breaches have taken place and the taking no action is not an option.

ii. **Modify the conditions of the licence by altering, omitting or adding any conditions**

The premises has been in breach of its licence conditions on a number of occasions. The sub-committee were not satisfied that the addition of further conditions would be complied with given that the premises were unable to comply with the conditions that already exists on its licence.

iii. **Exclude a licensable activity**

The only activity that could be excluded from the licence would be the sale of alcohol. This would be tantamount to a revocation of the licence.

iv. **Remove the designated premises supervisor**

The licensing sub-committee did consider removing the DPS. The sub-committee was surprised to learn that no objection was submitted by the police as this decision is a matter for the police. The DPS was appointed on 7 February 2022, yet appeared to be employed at the premises for some time prior to this, when a significant number of breaches took place. The sub-committee concluded that he would be likely remain in the employment of the premises licence holder. In view of this, it was felt that there would be no change in the overall management of the premises.

v. **Suspend the licence**

With the specifics of this case, a suspension of the licence was considered punitive only and this sub-committee took the view that this was not an appropriate course of action given the circumstances.

vi. **Revoke the licence**

Paragraph 11.10 of the Section 182 guidance provides “Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this cooperation.

Under Southwark’s statement of licensing policy 2021- 2026 the premises is located in a residential area and the appropriate closing time for an off-licence in this area is recommended as appropriate within this area is 23:00 hours daily.

A significant number of licence breaches have taken place at this premises over a considerable period of time. The breaches in 2019 replicate those in 2022.

Paragraph 4.6.4 of the Section 182 guidance provides:

“.....the management committee will collectively be responsible for ensuring compliance with licence conditions and the law (and may remain liable to prosecution for one of the offences in the 2003 Act) although there would not necessarily be any individual member always present at the premises”.

There have been issues at the premises since 2016. The premises licence holder was given opportunity to rectify those issues at this time and again in 2019, but was either unable or unwilling failed to do. The same issues and licence breaches remain after six year issues remain, having been given ample opportunity to rectify these recurring issues.

The licensing sub-committee found that breaches of licence took place on the following dates:

27 March 2019:

- 100 That no supply of alcohol may be made under the premises licence
- (a) At a time when there is no designated premises supervisor in respect of the premises licence; or
 - (b) At a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- 326 That all appropriate staff shall be trained in the age identification scheme required at the premises and records of training shall be kept and made available for inspection by authorised officers of the council.
- 327 That signs shall be displayed informing customers and staff that sales of alcohol will not be made to under 18s and that age identification will be required.
- 334 That an age identification scheme shall be establish and maintained. The scheme shall require the production of evidence of age (comprising any PASS accredited card or passport or driving licence) from any person appearing to staff engaged in selling or supplying alcohol to be under the age of 18 and who is attempting to buy alcohol.
- 336 That a personal licence holder shall be on the premises at all times that intoxicating liquor is supplied.
- 340 That a refusal book shall be introduced and details of all refusals recorded. This book shall be reviewed monthly by the designated premises supervisor and any actions taken recorded and signed by the DPS.

342 That all staff concerned with the sale or supply of intoxicating liquor will attend a recognised training scheme and that a record will be kept of the names of staff and dates attended.

A warning letter was sent on 27 March 2019.

May 2019:

- Non-traceable invoices/non-duty paid Karpackie
- Illegal worker employed at the premises.

27 January 2022:

100 That no supply of alcohol may be made under the premises licence

- (a) At a time when there is no designated premises supervisor in respect of the premises licence; or
- (b) At a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

101 That every supply of alcohol under the premises licence must be made, or authorised by a person who holds a personal licence.

326 That all appropriate staff shall be trained in the age identification scheme required at the premises and records of training shall be kept and made available for inspection by authorised officers of the council.

336 That a personal licence holder shall be on the premises at all times that intoxicating liquor is supplied.

342 That all staff concerned with the sale or supply of intoxicating liquor will attend a recognised training scheme and that a record will be kept of the names of staff and dates attended.

Section 136(1) Carrying on or attempting to carry on a licensable activity on or from any premises otherwise in accordance with an authorisation or knowingly allowing a licensable activity to be carried on.

Section 137(1) Exposing alcohol for retail without authorisation. Section 138 (l) Keeping alcohol on a premises for an unauthorised sale. Staff, including the manager were informed that with no licence in place they cannot sell any alcohol until a premises licence is back in place.

A verbal warning was given on 27 January 2022 and a written warning of offences provided 3 February 2022.

28 January 2022

- 100 That no supply of alcohol may be made under the premises licence
- (a) At a time when there is no designated premises supervisor in respect of the premises licence; or
 - (b) At a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- 101 That every supply of alcohol under the premises licence must be made, or authorised by a person who holds a personal licence.
- 288 That the CCTV system installed upon the premises shall be maintained in good working condition and operable at all times.
- 289 That recordings taken by the CCTV system installed upon the premises shall be kept and made available for inspection by authorised officers for a period of thirty one (31) days.
- 326 That all appropriate staff shall be trained in the age identification scheme required at the premises and records of training shall be kept and made available for inspection by authorised officers of the council.
- 336 That a personal licence holder shall be on the premises at all times that intoxicating liquor is supplied.
- 342 That all staff concerned with the sale or supply of intoxicating liquor will attend a recognised training scheme and that a record will be kept of the names of staff and dates attended.

A verbal warning was given on 28 February 2022 and written warning of offences provided 3 February 2022.

29 January 2022:

- 101 That every supply of alcohol under the premises licence must be made, or authorised by a person who holds a personal licence.
- 288 That the CCTV system installed upon the premises shall be maintained in good working condition and operable at all times.
- 289 That recordings taken by the CCTV system installed upon the premises shall be kept and made available for inspection by authorised officers for a period of thirty one (31) days.
- 336 That a personal licence holder shall be on the premises at all times that intoxicating liquor is supplied.

Section 136(1) Carrying on or attempting to carry .on a licensable activity on or from any premises otherwise in accordance with an authorisation or knowingly allowing a licensable activity to be carried on.

3 February 2022:

101 That every supply of alcohol under the premises licence must be made, or authorised by a person who holds a personal licence.

288 That the CCTV system installed upon the premises shall be maintained in good working condition and operable at all times.

289 That recordings taken by the CCTV system installed upon the premises shall be kept and made available for inspection by authorised officers for a period of thirty one (31) days.

336 A personal licence holder shall be on the premises at all times that intoxicating liquor is supplied.

Offences:

Section 135(4) Failure without reasonable excuse to produce licence.

Section 136(1) Carrying on or attempting to carry .on a licensable activity on or from any premises otherwise in accordance with an authorisation or knowingly allowing a licensable activity to be carried on.

Section 137(1) Exposing alcohol for unauthorised sale.

Section 138(1) Keeping alcohol on premises for unauthorised sale etc.

The licensing sub-committee was directed to *East Lindsey District Council v Abu Hanif (t/a Zara's Restaurant)* [2016] EWHC 1265 (Admin), which the legal representative will be more than aware of where the High Court upheld a licensing sub-committee's decision to revoke a premises licence, where the licensee had employed an illegal worker. This reaffirmed the principle that responsible authorities need not wait for the licensing objectives to actually be undermined before objecting to a licence being granted.

Costless is a premises open and selling alcohol 24 hours a day. Such a premises license requires qualified staff and strong management in place. Due to the operating history of the premises, this sub-committee has no confidence that the premises licence holder would operate the premises in line with any licence to supply alcohol. This licensing sub-committee that in all the circumstances, there is no alternative 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.

The meeting ended at 5.05pm.

CHAIR:

DATED: