

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Tuesday 19 July 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 Margy Newens (in the chair)
Councillor Sandra Rhule
Councillor Jane Salmon (reserve)

OTHER MEMBERS PRESENT: Councillor Sabina Emmanuel (observing)
Councillor Andy Simmons (observing)

OFFICER SUPPORT: Debra Allday, legal officer
Wesley McArthur, licensing officer
Andrew Weir, constitutional officer

1. ELECTION OF THE CHAIR

The clerk opened the meeting.

Councillor Jane Salmon nominated Councillor Margy Newens to chair the meeting. This was seconded by Councillor Sandra Rhule.

2. 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 apologies for absence from Councillor Ian Wingfield. Councillor Jane Salmon was in attendance as the reserve member.

3. CONFIRMATION OF VOTING MEMBERS

The voting members were confirmed verbally, one at a time.

4. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT

There were no late and urgent items of business.

5. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

6. LICENSING ACT 2003: ELIM HOUSE COMMUNITY ASSOCIATION, 86 BELLENDEN ROAD, PECKHAM, LONDON SE15 4RQ

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

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

It was noted that the responsible authorities had conciliated with the applicant.

The licensing sub-committee heard from other persons (local residents) objecting to the application. Members had questions for the other persons objecting.

The licensing sub-committee also noted the written representations of other persons objecting to the application, who were not in attendance.

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

The meeting adjourned at 11.43am for the sub-committee to consider its decision.

The meeting reconvened at 12.20pm and the chair advised everyone of the decision.

RESOLVED:

That the application made by Elim House Community Association Southwark to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known as Elim House Community Association, 86 Bellenden Road, Peckham, London SE15 4RQ be refused.

Reasons

This was an application for a premises licence made by Elim House Community Association Southwark in respect of the premises known as Elim House Community Association, 86 Bellenden Road, Peckham, London SE15 4RQ.

The licensing sub-committee heard from the applicant and the applicant's representative who advised that the premises licence would be for social evenings that would attract an older demographic.

When asked, the applicant's representative informed the sub-committee that the premises could not operate solely under temporary event notices (TENs). Under the TENs regime, 20 TENs could be submitted which were insufficient to make the operation financially viable. The applicant's representative stated that it was proposed to utilise the premises licence approximately two nights a week (on days not disclosed to the committee) and hold the occasional celebratory events throughout the year (examples that were given included Black History Month and wakes).

The applicant's representative stated that the issues raised by residents were due to the Bradfield Domino Association who ran late night domino events, with their patrons leaving the centre late after competitions. The Bradfield Domino Association now, no longer had use of the Centre, and they had been informed of this.

The licensing sub-committee heard from other persons one, five, six and nine, who stated that they supported the daytime facilities of a centre for elderly people and they were keen to find a middle ground to support it further. However, the issues the local residents complained of dated back to 2014.

The residents had met with the applicant in March 2022 to discuss several of the issues. An agreement had been reached, but the applicant had failed to implement that agreement. For example, the applicant had put security in place during the late night events, which worked for a while, but they were dropped. The applicant had also given his telephone number to residents so they could raise any matters with him directly. However those residents found that the applicant had blocked their numbers. This was not denied by the applicant. Although well meaning, it was felt that the applicant was not able to manage the events. Until such time the Applicant could manage the centre effectively, the residents urged the sub-committee not to grant a licence.

The local residents were regularly disturbed by noise. On occasions, speakers had been placed outside blaring music and large numbers of people congregated around the centre after the wakes and other parties. The application only dealt with the licensing of the centre itself and did not address the issues being experienced as a result of the centre outside of the application curtilage.

In addition to people congregating, they allowed alcohol to be drunk on the street. If the premises had a maximum accommodation limit of 180, with a closing of 23:00, it would mean 180 people could be dispersing in a quiet residential area when people were trying to sleep. The noise disturbance the residents currently experienced would increase. When residents had tackled the issue with the centre's patrons, they were met with aggression.

Elim House only had a parking facility for three vehicles. The photographs in the agenda papers demonstrated that the parking issues were severe. It was suggested by residents that the centre attracted people who lived a considerable distance away. The premises were located on Bellenden Road which is a narrow, one-way street. The manner in which patrons parked their vehicles was extreme.

Patrons would often park on the pavements, sometimes double parked, which meant not only residents having parking problems, but also, the emergency services would have difficulty accessing the road. The sub-committee noted that on occasions the emergency services and also other road users were required to mount the pavement in order to pass such parking. Residents and the applicant had contacted Southwark's parking team but were told that they would not have officers enforce late at night due to fear.

The licensing sub-committee also noted the written representations from seven other persons who were not present at the meeting.

The licensing sub-committee also noted that the responsible authorities from the council's environmental protection team (EPT), trading standards and licensing as a responsible authority had withdrawn their representations, having conciliated additional conditions.

The licensing sub-committee carefully considered the application. It acknowledged a need for a licensed premises specifically for the older persons demographic, but the need was outweighed by the negative impact on local residents.

The applicant was aware of the problems and matters causing concern to local residents, but the sub-committee felt that they had not gone far enough to address them. In particular, it was noted that although the representation from EPT, which included conditions obliging the applicant to install ventilation and sound insulation, had been conciliated prior to the hearing, the applicant seemed unaware of the obligations they had taken on. The applicant's representative contended that these conciliated terms related to a different license application.

Whilst the Bradfield Domino Association no longer uses the centre, it was not until the applicant became aware of the former's separate premises licence application, that sought hours until 02:00, thus, putting their own application at risk, that he chose no longer allow them to use the centre.

The sub-committee felt that the applicant could have evicted the domino association when they became aware of the residents being regularly disturbed,

but failed to do so. Similarly, the applicant was aware of the acute parking issues, but failed to address these adequately, or at all.

During the discussion part of the meeting, it was the applicant's position that they had done all that they could to address the parking issues by informing the Council's parking team and directing patrons to nearby car parks. The applicant appeared to have failed to consider section 10 of Southwark's statement of licensing policy regarding the third licensing objective, the prevention of public nuisance. Had the applicant had regard to this licensing objective, it would have assisted in dealing with a range of nuisances that could potentially impact on residents in the vicinity of the premises, which included noise nuisance and parking (paragraph 264).

Whilst the applicant may have limited control concerning matters beyond the premises curtilage, such as parking, They did not dispute the premises was the source of the problem. If this licence application were granted, the sub-committee are of the view that the promotion of public safety licensing objective would be undermined.

Under Southwark's statement of licensing policy (SoLP) the premises are situated in a residential area. It is also situated in the Peckham cumulative impact area (CIA). The classes of premises to which the policy applies is defined as follows: night clubs; pubs and bars; off-licences, grocers, supermarkets, convenience stores; and similar premises

Under the CIA there is a rebuttable presumption that applications for new premises licenses that are likely to add to the existing cumulative impact will normally be refused. It is a matter for the applicant to demonstrate that if the application is granted, the premises would not contribute to the negative local cumulative impact on any one or more of the licensing objectives. In this case, the applicant failed to rebut the presumption to refuse this premises licence application.

The sub-committee were referred to R (on the application of Westminster City Council) -v- Middlesex Crown Court [2002] EWHC 1104 in which HHJ Baker adjudicated "Notwithstanding the applicant being a fit and proper person and the premises would be well run a licence could be refused on the sole ground that the area was already saturated with licence premises....and the cumulative effect of the existing premises was impacting adversely on the area to an unacceptable level".

The applicant is of course at liberty to submit a further application. However, in order for any premises licence application to be successful, the applicant is strongly encouraged to address cumulative impact and properly engage with residents so that there is no negative impact on them from the operation of the premises. It is suggested that the applicant utilises the TENs regime for the wakes and other events to properly demonstrate that they are a capable and effective manager to hold a premises licence.

In the circumstances and since the premises is located in the Peckham CIA this application is refused.

In reaching this decision the sub-committee had regard to all the relevant considerations and the four licensing objectives, the public sector equality duty 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 desire to contend that:

- a. The licence ought not to be 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.

7. LICENSING ACT 2003: 210, 210 RYE LANE, PECKHAM, LONDON SE15 4NL

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

The applicant and their representative addressed the sub-committee. Members had questions for the applicant and their representative.

It was noted that the responsible authorities had conciliated with the applicant.

The licensing sub-committee heard from other persons objecting to the application. Members had questions for the other persons.

The licensing sub-committee also noted the written representations of other persons objecting to the application, who were not in attendance.

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

The meeting adjourned at 12.54pm for the sub-committee to consider its decision.

The meeting reconvened at 1.08pm and the chair advised everyone of the decision.

RESOLVED:

That the application made by London Spacemakers Ltd for a premises licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known as 210, 210 Rye Lane, Peckham, London SE15 4NL be granted as follows:

- Recorded music (indoors):
 - Sunday to Thursday: 23:00 to 00:00
 - Friday and Saturday: 23:00 to 01:00
- Late night refreshment:
 - Sunday to Thursday: 23:00 to 23:30
 - Friday and Saturday: 23:00 to 00:30
- Supply of alcohol (on and off the premises):
 - Sunday to Thursday: 10:00 to 23:30
 - Friday and Saturday: 10:00 to 00:30
- Opening hours:
 - Sunday to Thursday: 07:30 to 00:00
 - Friday and Saturday: 07:30 to 01:00

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, the conditions agreed with the Metropolitan Police Service, environmental protection team and licensing as a responsible authority during the conciliation process and the following additional conditions agreed by the sub-committee:

- i. That no alcohol shall be served other than to patrons seated who are taking a substantial table meal. All service shall be by waiter/waitress service.

Reasons

This was an made by London Spacemakers Ltd for a premises licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known as 210, 210 Rye Lane, Peckham, London SE15 4NL.

The licensing sub-committee heard from the licensing officer who confirmed to members that the premises was situated in a major town centre area in addition to the Peckham cumulative impact area (CIA). Under the Southwark's Statement of Licensing Policy 2021-2026 the Peckham CIA paragraph 156 the classes of premises which the policy applied was defined as "night clubs; pubs and bars; off-licences, grocers, supermarkets, convenience stores; and similar premises."

When the premises licence application was submitted, the responsible authorities were of the view that the premises was one of the classes of premises where the CIA was applicable. However, since the applicant had agreed a "restaurant condition", the licensing authority was satisfied that the premises was now exempt from the CIA.

The licensing sub-committee heard from the representative for the applicant who advised that the application had significantly changed since its submission on 1 May 2022.

Through the conciliation process, a condition had been agreed that no alcohol would be served other than to patrons seated taking a substantial table meal. It was therefore accepted by the applicant that since the premises was a restaurant, the Peckham cumulative impact area was not applicable.

The operating hours had also been pulled back in line with the framework hours in the Southwark statement of licensing policy 2021-2026. A dispersal policy had also been submitted and accepted by Licensing as a responsible authority. In addition, a capacity of 70 had also been agreed.

The applicants advised that the premises was located on Rye Lane, which was a busy main road and the rear garden area would not be used for any licensable activities, until such time as the necessary planning permission has been applied for and granted.

They advised that a new kitchen was due to be installed complete with appropriate extraction and ducting system; planning consent would be obtained for the extraction system, which would address the concerns raised by the Environmental Protection Team.

The applicants were very experienced operators and already had a premises in the Peckham cumulative impact area at 138 Rye Lane (ZAPOI), where there had been no reported incidents over the previous three years. This had afforded the applicants an opportunity at running a licensed premises in a challenging area. Robust conditions had also been offered to further ensure that there would be no

increase in negative cumulative impact (beyond the Peckham CIA) and that the licensing objectives would be fully promoted.

The licensing sub-committee heard from other person 7, who advised that the granting of another licensed premises would attract an increase in noise, when there was already a lot of noise generated by other licensed premises. They also were of the view there would be an increase in litter and waste from people going to/from the premises and from those gathering outside the premises as well as an increase in light pollution. Unlike most of the premises on Rye Lane, the premises was directly opposite a large residential complex who would be disturbed by the premises.

Other person 4, agreed with what other person 7 had stated to the sub-committee.

The licensing sub-committee noted the representations of seven other persons who objected to the application who were not in attendance at the meeting.

The licensing sub-committee were satisfied that the premises was exempt from the Peckham CIA and therefore the rebuttal presumption (that the premises is likely to add to the existing cumulative impact and would normally be refused) was not applicable. The applicants were experienced and no issues had been reported concerning the premises they ran at 138 Rye Lane.

In addition, the operating schedule include a suite of conditions and the applicants has agreed further conditions with the responsible authorities. The sub-committee were therefore satisfied that the premises would not have a detrimental effect on the residents opposite.

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 desire to contend that:

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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 1.10pm.

CHAIR:

DATED: