

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Tuesday 10 January 2023 at 10.00 am at Ground Floor Meeting Room G01C - 160 Tooley Street, London SE1 2QH

PRESENT: Councillor Charlie Smith (in the chair)
Councillor Jane Salmon (reserve)
Councillor Kath Whittam

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

**OFFICER
SUPPORT:** Debra Allday, legal officer
Ray Moore, trading standards officer
Andrew Heron, licensing officer
Jayne Tear, licensing responsible authority officer
Andrew Weir, constitutional officer

1. APOLOGIES

This was a virtual licensing sub-committee meeting.

The first item of business was to nominate a chair for the meeting. Councillor Kath Whittam nominated Councillor Charlie Smith to chair the meeting. This was seconded by Councillor Jane Salmon.

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

Apologies were received from Councillor Ian Wingfield. Councillor Jane Salmon was in attendance as the reserve member.

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 none.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

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

The legal representative for the applicant made a request to adjourn the meeting as the notice of decision of the previous sub-committee, who had considered this remitted application, was included in the agenda pack.

The meeting adjourned at 10.33am for the sub-committee to consider the points raised by the legal representative.

The meeting reconvened at 10.56am and the chair advised that the meeting would continue and that the sub-committee would disregard the previous notice of decision.

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

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

The officer representing the Metropolitan Police Service then addressed the sub-committee. Members had questions for the police officer.

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

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

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

The meeting adjourned at 12.58pm for the sub-committee to consider its decision.

The meeting reconvened at 2.00pm 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 modify the premises licence.

Hours

- The sale of alcohol to be consumed off the premises:
 - Monday to Sunday: 08:00 to 23:00
- Opening hours:
 - Monday to Sunday: 00:00 to 00:00.

Conditions

1. That all staff are trained in their responsibilities under the Licensing Act 2003 and training records to be kept and updated every six months and shall, upon request, be made immediately available to officers of the police and the council.
2. That all invoices shall be from reputable bona fide companies and shall be on headed paper.
3. That CCTV conditions shall be amended to:
 - i. That the premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Southwark police licensing unit.
 - ii. That all entry and exit points shall be covered enabling frontal identification of every person entering in any light condition.
 - iii. That the CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises and will include the external area immediately outside the premises entrance.

- iv. That all recordings shall be stored for a minimum period of 31 days with date and time stamping.
 - v. That viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.
 - vi. That a staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
4. That a personal licence holder shall be on the premises at all times alcohol is for sale.
 5. That a challenge 25 scheme shall be maintained at the stalls selling alcohol requiring that staff selling alcohol request that any customer who looks under 25 years old, and who is attempting to purchase alcohol, provides valid photographic identification proving that the customer is at least 18 years old. Valid photographic identification is composed of a driving licence, passport, UK armed services ID card and any Proof of Age Standards Scheme (PASS) accredited card such as the Proof of Age London (PAL) card.
 6. That all staff involved in the sale of alcohol shall be trained in the prevention of sales of alcohol to underage persons, and the challenge 25 scheme in operation at the stall. A record of such training shall be kept/be accessible at the stall at all times and be made immediately available for inspection at the stall to council or police officers on request. The training record shall include the trainee's name (in block capitals), the trainer's name (in block capitals), the signature of the trainee, the signature of the trainer, the date(s) of training and a declaration that the training has been received.
 7. That clearly legible signs shall be prominently displayed where they can easily be seen and read by customers stating to the effect that a challenge 25 policy is in operation at the premises, that customers may be asked to provide proof of age and stating what the acceptable forms of proof of age are. Such signage shall be displayed at all entrances, points of sale and in all areas where alcohol is displayed for sale. The signage shall be kept free from obstructions at all times.
 8. That a register of refused sales of alcohol shall be maintained in order to demonstrate effective operation of the challenge 25 policy. The register shall be clearly and legibly marked on the front cover as a register of refused sales, with the address of the premises and with the name and address of the licence holder. The register shall be kept / be accessible at the premises at all times. The register shall be made immediately available for inspection at the premises to council or police officers on request.

9. That outside of the hours authorised for the sale of alcohol, all alcohol within the trading area is to be secured behind locked grills/screens or secured behind locked cabinet doors to the satisfaction of the Southwark police licensing unit.
10. That no beers / ciders in single cans, bottles or multipacks with an ABV of above 6.5% will be displayed / sold or offered for sale from the premises, unless prior written permission has been obtained from a Metropolitan Police Licensing Officer for Southwark. Such permission must be kept at the premises and made available immediately on request to the relevant authorities.
11. That the premises license holder shall ensure that invoices (or copies) of all alcoholic goods purchased (for retail sales at the shop) will be kept on the premises and made available to officers of the council, police or HMRC upon request.
12. That the licence holder shall not permit drinking outside the premises or in the immediate vicinity of the premises on Camberwell Road Park Street by its customers.

Reasons

This was an application made by trading standards under Section 51 Licensing Act 2003 for the review of the premises license held by Mohammad Choudrey in respect of the premises known as Costless, 23-25 Camberwell Road, London SE5 0EZ.

The representative for the premises made an application to adjourn the hearing on the basis that his client would not receive a fair and unbiased hearing. The agenda contained the notice of decision made by the licensing sub-committee on 31 March 2022, which in his view meant his client would be automatically prejudiced. The legal representative requested that the hearing be vacated.

After considering the submission, the chair to the sub-committee informed those in attendance that the sub-committee members were very experienced councillors and that they were satisfied that the offending documents could be disregarded and a decision would be made based upon the written evidence and the verbal submissions.

The licensing sub-committee then heard from the trading standards officer, the applicant for the review. The trading standards officer informed the sub-committee that on 27 January 2022 trading standards attended the premises on the request of both the police and licensing administration team because the business had not paid its licence fee and was operating unlicensed.

The police had also received complaints that the business was selling alcohol that were being consumed in the immediate vicinity of the premises, which was leading to anti-social behaviour.

On 27 January the officer made a positive test purchase of a can of Carlsberg Special Brew. The officer and three police officers from the night time economy team then entered the shop and explained the reason for the visit was due to the licence fee not being paid and that alcohol was being sold without a premises licence (offences under Sections 36, 137 and 138 of the Licensing Act 2003).

None of the employees on the premises at the time held a personal licence (breach of condition 100 and 101). They showed ID in the form of Residency Permit Cards providing Student Leave to Enter status, allowing for them each to work a maximum of 20 hours a week in term time. Paperwork at the shop showed that the employees worked 12 hour shifts with weekly totals as 81 hours each.

The employees stated that both the premises licence holder and the then, designated premises Supervisor (DPS), John Hussein were on holiday didn't know when they would return.

On the premises and in the storerooms there was a large quantity of West African lagers and stouts. The officer requested the traceable invoices (reg.19(1) Food Safety & Hygiene (England) Regulations 2013) for these and inspected paperwork behind the counter. These were not provided fully until November 2022.

A licensing inspection was then carried out to check compliance with the licence conditions if a license had been in place. In addition to selling/displaying alcohol without a licence, the premises was also in breach of: conditions 100 (No designated premises supervisor); 101 (alcohol sold must be made/authorised by, a personal license holder); 336 (personal license holder to on the premises at all times alcohol is supplied); 326 (age identification scheme training) and 342 (training records). A notice listing the issues at the premises was issued and the employees were informed that no alcohol was to be sold whilst there was no premises licence in place.

On 28 January 2022 a further positive test purchase was made at the premises.

On 29 January 2022 officers from the night time economy team attended the premises and witnessed alcohol being served.

On 31 January 2022 payment was received for the premises licence. Following this, police informed trading standards that they had spoken with the then DPS (John Hussein), who stated that he hadn't worked at the premises for the previous two years. The premises had effectively been selling alcohol without a license or without a DPS in place for two years.

A further notice detailing the illegal sales of alcohol on 27 and 28 January 2022 was delivered by hand to the premises on 3 February 2022. One of the police

officers also in attendance requested access to the CCTV but no one was able to access it. Sales receipts were printed off sales detailing the alcohol sales since the officer's previous visit. The employees present at the premises admitted that although alcohol had been sold the previous week, they had stopped selling alcohol that day. A further licensing inspection was carried out and the premises was found to be in breach of conditions 100; 101; 288; 289; 326; 336 and 342.

Other regulatory breaches were identified by trading standards during visits to the premises since 31 March 2022 namely:

- i. Advice provided to the premises licence holder who was unaware that snap off knives were included in the age restricted sales legislation on 22 June 2022.
- ii. Making a proxy sale to a minor of nicotine inhaling products on 26 August 2022.
- iii. Exposing One Shot drain cleaner (91% sulphuric acid) when a precursor's (EPP) licence is required to purchase products containing 15%+ sulphuric acid on 17 November 2022.

The licensing sub-committee heard from the Metropolitan Police Service whose evidence had been provided by several members of the night time economy team who had visited the premises along with trading standards, when breaches of the premises licence were witnessed. The police officer representing the Metropolitan Police Service contended that it was not behaviour expected from a responsible license holder.

In addition, the premises had been identified during 2021 when a significant number of complaints had been received from residents concerning street drinkers and drinking generally on the streets in the vicinity and general anti-social behaviour displayed as a result of intoxication. The complaints triggered responses from the police and the council.

The licensing sub-committee then heard from the officer for licensing as a responsible authority whose representation was submitted with regards to prevention of crime and disorder, prevention of public nuisance and the protection of children from harm licensing objectives.

The officer explained that a joint visit was carried out by licensing, trading standards and the police prior to the COVID-19 lockdowns, when several breaches of the premises licence were witnessed and resulted in the licensing unit serving a warning letter regarding the breaches.

The officer also stated that the breaches (between 27 January to 3 February 2022) replicated the breaches originally witnessed in 2019. In addition, the premises licence was suspended, so the premises was operating without a licence at that time.

Correspondence had been emailed and sent to the licence holder's home address (in this case, Mr Choudrey); firstly with a warning and then when there was no response, the licence was suspended. It is claimed that Mr Choudrey had moved and was under an obligation to notify the licensing authority which he failed to do was an offence under Section 127 Licensing Act 2003.

When the review application was submitted, there was then a DPS variation and Mr Zahir Hussain was added as an extra licensee. Whilst this provides a backup, Zahir Hussain has had numerous dealings with the premises over the years. It was the officer's view that adding Zahir Hussain as an additional licensee (and as DPS) didn't rectify the issues at the premises as Mr Choudrey and Zahir Hussain were both elusive during enforcement visits, resulting in difficulty in achieving compliance at the premises resulting in the premises undermining the licensing objectives.

The licensing sub-committee then heard from the legal representative for the premises who advised that the breaches were all disputed. At no time had Mr Choudrey been asked to attend an interview under caution. There had been no warnings and no prosecution. On that basis, there had been no breaches of license conditions and no offences committed.

Concerning the licence, it was advised that Mr Choudrey no longer lived at the address in question, although he still owns the property. However, his brother who occupies the property now, gets the post and no correspondence was ever received from the licensing unit. Any email sent by the licensing unit was not received as it was sent to a disused email address.

The licence fee/renewal was due in August and was suspended in October 2021, but it took officers three to four months to attend the premises on a late Thursday/Friday to then tell them that they shouldn't be selling alcohol, without being clear why. None of the notices served specified that a fee was required to be paid. They simply cited "no licence". It wasn't until the Sunday when the closure notice was served that the police said the licence fee was outstanding, which was then paid the following day.

It was argued that the test purchase exercises were excessive and unnecessary; an officer could have simply attended the premises in September/October 2021 and explain that the licence fees hadn't been received and the matter could have been resolved immediately.

The representative for the premises stated that a DPS remained the DPS until they remove themselves and given notice to the premise license holder. The representative stated he had spoken with the then DPS (John Hussain) in January 2022 who had advised him that he was content to remain the DPS until an alternative was found. Therefore, with the then DPS remaining in place, no offence had been committed. Trading standards suggestion that there was no DPS for two years was simply wrong.

The representative for the premises also argued that trading Standards did not have an immigration role and should not have been questioning the immigration status of individual employees. In relation to the suggested 81 weekly hours per employee, this was similarly wrong. The hours were not being carried out during term time, but during the summer holidays, when there were no restricted hours. No offences had been committed whatsoever with regard to this. Furthermore, Immigration Enforcement as a responsible authority failed to submit a representation, so any implications made by trading standards on this should be disregarded in its entirety.

Trading standards had failed to take action on any of the alleged licensing breaches, they had issued no caution(s), no warnings, held no case interviews, and undertaken no investigation other than the request for invoices from the premises. On this basis, the review submitted by trading standards had to fail.

Concerning the complaints of the premises fuelling street drinking, it was suggested that any issue was due to the other late night premises in the area. Of the “hundreds” of complaints received from residents, none were received about Costless. The police has produced no CADs, no crime analysis, no causal link between the complaints of residents and social behaviour.

Of all the complaints, the premises had been mentioned on two occasions, when officers witnessed someone entering the shop and believed them to be intoxicated. The two incidents could be described as isolated and minor in nature and did not warrant the revocation of a premises licence.

Since February 2022, Zahir Hussein had been made a joint premises licence holder and DPS and the premises would operate far more strictly under his management.

In terms of the alleged public nuisance, certain alcoholic beverages were being marked with a code on the containers and monthly litter picks were taking place to ascertain the extent of any problem of the items being from the premises. To date, none of the products were from Costless.

The licensing sub-committee were satisfied that there was a catalogue of licence condition breaches and offences committed by the premises:

- i. 27 March 2019 – Breaches of licence conditions 100, 326, 327, 334, 336, 340, 342.
- ii. May 2019 – Failure to provide non-traceable invoices, non-duty paid alcohol and illegal worker employed at the premises.
- iii. 27 January 2022 – Carrying on or attempting to carry on a licensable activity when premises licence suspended (offence under Section 136(1) of the Licensing Act 2003). Exposing alcohol for retail without authorisation when premises licence suspended (offence under Section 137(1) of the Licensing

Act 2003. Breach of conditions: 100, 101, 326, 336, 342.

- iv. 28 January 2022 – Carrying on or attempting to carry on a licensable activity when premises licence suspended (offence under Section 136(1) of the Licensing Act 2003). Exposing alcohol for retail without authorisation when premises licence suspended (offence under Section 137(1) of the Licensing Act 2003). Breach of conditions: 100, 101, 288, 289, 326, 336 and 342.
- v. 29 January 2022 – Carrying on or attempting to carry on a licensable activity when premises licence suspended (offence under Section 136(1) of the Licensing Act 2003). Exposing alcohol for retail without authorisation when premises licence suspended (offence under Section 137(1) Licensing Act 2003). Breach of conditions: 101, 288, 289, and 336.
- vi. 3 February 2022 – Carrying on or attempting to carry on a licensable activity when premises licence suspended (offence under Section 136(1) Licensing Act 2003). Exposing alcohol for retail without authorisation when no DPS (offence under Section 137(1) Licensing Act 2003). Breach of conditions: 101, 288, 289 and 336.

There were also other regulatory breaches witnessed:

- i. 26 August 2022 - Making a proxy sale to a minor of nicotine inhaling products (an offence under Section 91 Children and Families Act 2014 as amended by the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015).
- ii. 17 November 2022 – Exposure of One Shot drain cleaner being 91% sulphuric acid and is a precursor in explosives. An EPP license is required to purchase products containing 15%+ sulphuric acid.
- iii. 22 June 2022 – Advisory visit conducted as the premises licence holder was unaware that snap off knives were included in the age restricted sales legislation under Section 141A of the Criminal Justice Act 1988.

There have been issues at the premises since 2016. The premises licence holder was given ample opportunity to rectify the issues in 2016 and 2019 but failed to do so. The same issues and licence condition breaches had occurred in 2022.

The premises licence holder was under a duty to notify the council of his change in address and failure to do so without reasonable excuse. 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. Both of these are offences under Section 33(6) of the Licensing Act 2003.

The licensing as a responsible authority officer stated that the purpose of inspections is to achieve compliance. The absence of the licensee and/or DPS during the many inspections has made it almost impossible for the premises to

achieve compliance.

It was suggested that the staff with student leave to enter status did not have a good command of the English language. Given that they were on degree courses, the sub-committee did not accept this argument.

Members were also asked to disregard any implication of trading standards questioning staff on immigration matters. Immigration Enforcement as a responsible authority did not submit a representation and on this basis, no implication has been read into any immigration issue.

What does concern this sub-committee is employees are not permitted to work more than 48 hours unless the employees opted out of the working time regulations. The hours worked by the staff were 81 hours, close to double the hours permitted. In view of neither trading standards nor the representative for the premises specifying that the employees had signed opt out agreements, the sub-committee has worked on the basis that there are none. This is raised purely because Southwark is committed to taking a robust approach in tackling modern day slavery.

The sub-committee is also satisfied that the premises contributed to anti-social behaviour in the vicinity, specifically, in relation to street drinking. Contrary to the representative for the premises suggesting that there were only two incidents when the premises contributed to street drinking anti-social behaviour, at least four incidents were witnessed by the following night time economy team officers: Simon Gaffney on 3 November 2021, Miguel Gomes on 6/7 November 2022, John Ducker and Mark Lynch on 12 November 2022, and Maria O'Mahoney on 29 January 2022.

A local authority has a discretion to prosecute offences, it is not a duty (see Section 186(2) of the Licensing Act 2003: "Proceedings for an offence may be instituted.....").

Further, paragraph 11.25 of the Home Office Revised Guidance, issued under Section 182 of the Licensing Act 2003 (December 2022) provides: "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".

The licensing sub-committee is therefore not in agreement that the review should fail because no criminal proceedings were instigated.

If this review application came before members for determination sooner, it would have been minded to revoke the premises licence. However, given the change in management and the passage of time, resulting in other (non-alcohol licensing) regulatory breaches, members agreed that it would be neither proportionate nor appropriate to revoke the premises licence.

Costless is a premises open and selling alcohol 24 hours a day. Such a premises licence requires qualified staff and a strong management in place. Zahir Hussein has been added as a joint licence holder and DPS. It is noted that Mr Hussein has previously been employed at the premises when issues have arisen. It remains to be seen whether he will employ a strong management style.

For this reason, the sub-committee has agreed to modify the licence and have added more robust conditions. In the event of further breaches resulting in an application to review the premises licence, there would be a very real chance that the licence would be revoked.

Finally, under Southwark's statement of licensing policy 2021-2026 the premises is located in a residential area and the recommended appropriate closing time for an off-licence within this area is 23:00 hours daily. The sub-committee have reduced the hours for the sale of alcohol so that it is in line with the recommended hours in the statement of licensing policy as it is felt this will reduce any anti-social behaviour from street drinkers.

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 2.05pm.

CHAIR:

DATED: