

Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 19 January 2023 at 10.00 am at Online/Virtual: please contact andrew.weir@southwark.gov.uk for a link to the meeting and the instructions for joining the online meeting

PRESENT: Councillor Renata Hamvas (Chair)
Councillor Margy Newens
Councillor Charlie Smith

**OTHER
AUTHORITIES
PRESENT:** P.C. Mark Lynch, Metropolitan Police Service

**OFFICER
SUPPORT:** Debra Allday, legal officer
Barry O'Callaghan, licensing officer
Paul Newman, environmental protection team
Andrew Weir, constitutional team

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 or urgent items of business.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

5. LICENSING ACT 2003: THE PIGEON. GROUND FLOOR 41 CAMBERWELL CHURCH STREET, LONDON SE5 8TR

The licensing officer presented their report. Members had questions for the licensing officer.

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

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

The environmental protection officer addressed the sub-committee. Members had questions for the environmental protection officer.

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

The meeting adjourned for a comfort break at 11.31am. The meeting reconvened at 11.40am.

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

The meeting adjourned at 11.48am for the sub-committee to consider its decision.

The meeting reconvened at 12.01pm and the chair advised everyone of the decision.

RESOLVED:

That the application made by Cycle PS Limited to vary a premises licence to be varied under the Licensing Act 2003 in respect of the premises known as The Pigeon. Ground Floor 41 Camberwell Church Street, London SE5 8TR be refused.

Reasons

This was an application made by Cycle PS Limited to vary a premises licence in respect of the premises known as The Pigeon. Ground Floor 41 Camberwell Church Street, London SE5 8TR.

The licensing sub-committee heard from the applicant and their legal representative who advised the premises previously operated as an indie pub. They advised that when the applicant took over the premises in September 2022 it

was in a very poor state. Since September 2022, the premises had not been operational as it was currently undergoing extensive refurbishment.

It was intended that the premises would be opening from mid-February/early March 2023. The refurbishment would include full sound proofing with 15mm thick DB Board, providing up to 49 decibels of sound insulation, and the installation of a new CCTV system.

The premises would be a cocktail lounge/wine bar with a strict dress code and operate with trained and mature bar staff. Patrons would be assigned a table upon entry and Challenge 25 would be operated. Drinks and finger food/snacks would be ordered from the table and brought to the table. Vertical drinking would be strictly forbidden, meaning the premises would attract a more mature and responsible clientele.

Concerning security and noise management, from 23:00, there would be at least one SIA registered security officer and they would operate a clicker/counter system to ensure the capacity was not exceeded. The SIA would be assisted by other staff acting as street marshals to ensure that patrons disperse quietly until the premises closed in accordance with the dispersal that would be approved by the responsible authorities.

Regarding the residents above the premises, there would be no internal noise, as there would only be background music.

Through questions, members of the sub-committee established that the applicant had another premises in Wandsworth which had operated since 2019. The applicant's time would be split between the two premises on a 50/50 as/when required basis. There would be five members of staff and training would be provided monthly. There would be a capacity of 45 excluding staff. The applicant stated that he was agreeable to a "table service" condition. They also confirmed that last entry would be half an hour before closing.

The licensing sub-committee heard from the Metropolitan Police Service who advised that they objected to the application under all of the licensing objectives, but particularly the prevention of crime and disorder. The officer from the Metropolitan Police Service informed the sub-committee that the premises were situated in a cumulative impact area and the hours sought far exceeded those detailed in Southwark's statement of licensing policy 2021-2026. In addition, the applicant had provided very few conditions to address the licensing objectives for such extended hours nor had they rebutted the presumption of refusal.

The licensing sub-committee then heard from the officer from the council's environmental protection team (EPT) who raised concern regarding noise from loud amplified music, plant and patrons during the applied hours on nearby residential premises. The EPT's objection was in respect of the prevention of public nuisance and the applicant had they were of the view that the applicant failed to propose any suitable conditions for the promotion of that licensing

objective. Furthermore, the hours far exceeded those identified in the Southwark's statement of licensing policy.

The EPT officer advised that they had also initially raised concerns regarding the removal of conditions 345 (no alcohol shall be taken outside of the premises at any time after 22.00.) and 346 (customers shall use no outside area after 22.00 other than those who temporarily leave the premises to smoke a cigarette) from the existing licence as this would have a major impact on the nearby residents. However, the applicant had now agreed not to remove these conditions.

The officer representing EPT also informed the sub-committee that there was a planning restriction, that the premises were prohibited from operating outside the hours: 11:00 to 16:00 on Sunday and Bank Holidays and 15:00 to 20:00 on Monday to Saturday.

The licensing sub-committee then heard from 'other person A' who resided above the premises and objected to the application. Their bedroom was directly above the back of the bar and even when music was played at a reasonable level, it prevented them from sleeping or resting. Currently, the hours were tolerable, although difficult. If the hours were extended beyond 00:30, they would have to move.

The licensing sub-committee then heard from 'other person B' who was the freeholder of the building. They advised that they objected to the application as it was felt there would be an increased risk of crime and disorder as patrons leave the bar having consumed alcohol in the early morning, the residents above the premises include females whose safety would be compromised and there would be an increase of public nuisance through noise pollution.

The licensing sub-committee noted the representation from 'other person C' who was not in attendance at the hearing.

It was noted that the current applicant had not yet operated the business under the existing license, nor had he applied for any temporary event notices. The sub-committee felt that the applicant needed to demonstrate that he was able to operate the premises under the existing license conditions without causing a nuisance to neighbours prior to any consideration being given to extending the operating hours.

The licensing sub-committee took the view that because no acoustic report had been produced, insufficient consideration was given by the applicant whether the proposed insulation would provide satisfactory protection for the upstairs residents against any noise egress from the premises. The sub-committee could not therefore, be sure whether the prevention of public nuisance licensing objective would be promoted.

The officer from EPT very helpfully explained to members the process as to how the applicant may access any comment from EPT on this. An acoustic report

would be submitted with any planning application (to support any change in planning hours) and EPT would then comment to the report at that point. It appeared to members that since the applicant had not instructed an acoustic expert, the variation application had been made prematurely.

Although licensing and planning are two separate regimes, the sub-committee was mindful of paragraph 101 of Southwark's statement of licensing policy 2021-2026, that the council should look to ensure proper integration with the licensing and planning regimes, to allow clarity and consistency both for the applicant and also for enforcement purposes.

On balance, it was felt that 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 licensing sub-committee did want to stress that it was impressed with the concept of applicant's premises being brought to the Camberwell area and once the deficiencies identified had been addressed, then a fresh application should be submitted which may have a more favourable outcome.

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 to modify the conditions of the licence; and

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

- a. That the variation ought not to have been made; or
- b. That, when varying the licence, the licensing authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way

may appeal against the decision.

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

authority of the decision appealed against.
The meeting ended at 12.04pm.

CHAIR:

DATED: