



Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Thursday 20 June 2024 at 10.00 am at Online/Virtual

PRESENT: Councillor Renata Hamvas
Councillor Margy Newens
Councillor Kath Whittam

OTHER AUTHORITIES PRESENT: P.C. Walter Minka Agyeman, Metropolitan Police Service

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

1. APOLOGIES

The chair explained to the participants and observers how the 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 none.

4. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

5. LICENSING ACT 2003: RINCON COSTENO, ARCH 146 MALDONADO WALK, EAGLE YARD, HAMPTON STREET, LONDON SE1 6SP

This was a reconvened hearing from 3 May 2024.

The licensing officer provided a summary of the reasons for the adjournment.

They advised that the responsible authorities were in attendance to answer questions on the matter relating to the connection between the current applicant and the previous owners of the business.

Members had questions for the police.

Members had questions for the licensing responsible authority.

The meeting adjourned at 10.37am for members to view the lease for the premises.

The meeting reconvened at 11.06am.

Members had questions for the applicant and their representative.

Other person A, objecting to the application addressed the sub-committee. Members had questions for Other person A.

The sub-committee noted the three written representations from other persons, who were not present.

Other person A had nothing to add in summing up.

The applicant was given up to five minutes for summing up.

The meeting adjourned at 10.54am for the sub-committee to consider its decision.

The meeting reconvened at 11.45am and the chair advised everyone of the decision.

RESOLVED:

That the application made by Irina Elizabeth Solorzano Chango for a premises licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known Rincon Costeno, Arch 146 Maldonado Walk, Eagle Yard, Hampton Street, London SE1 6SP be refused.

Reasons

This was an application made by Irina Elizabeth Solorzano Chango for a premises licence in respect of the premises known Rincon Costeno, Arch 146 Maldonado Walk, Eagle Yard, Hampton Street, London SE1 6SP.

At the hearing of 30 May 2024, the licensing sub-committee heard from the applicant who advised that the premises was a South American restaurant and the restaurant was losing custom due to not having an alcohol licence. The premises was a family restaurant which had an outside area, used primarily during the summer. Music would be strictly background only, via a television. It was decided that she would take over the restaurant in December 2023 and the restaurant had been operating under her management (without alcohol) since January 2024.

There was discussion about the restaurant's website which stated that there was also a premises in Brixton that opened in 2022 and belonged to the applicant's aunt. The applicant said that the Brixton premises was now closed. The restaurant was originally located in Elephant and Castle, but due to construction work, the restaurant moved to Brixton, but now returned, hence the application.

The Applicant did not recall the address of the previous premises. Through questions, it was established the previous restaurant was Pasaje Primavera which had its premises licence revoked in 2021. The owner of Pasaje Primavera, was in fact the applicant's aunt.

When asked whether the police were aware of this, the Applicant stated "I think they do because I had a meeting with one of the police officers and I explained to him". The applicant's cousins and sisters would help in the restaurant "with the food, to buy the food". This contradicted the applicant's previous statement to the sub-committee that she was not connected to the previous licence holder.

Members of the sub-committee were not satisfied that the responsible authorities were aware the applicant's connection with the previous licence holder prior to their conciliation, so the hearing was adjourned until 20 June 2024 for the Metropolitan Police Service and licensing as a responsible to answer three specific questions:

- i. Whether they were aware of the connection.
- ii. Whether any documentation was seen proving the transfer of the business/lawful occupancy of the premises (such as a lease) was provided by the Applicant to support the contention the business was under new management control.

- iii. In light of this information, whether responsible authorities remain satisfied with the conciliated control measures and the applicant can promote the licensing objectives.

At the reconvened hearing (20 June 2024) the members asked these questions of the responsible authorities.

The officer from the Metropolitan Police Service advised that he was not aware of the applicant's connection with the previous licence holder for the premises. Following the sub-committee hearing on 30 May the applicant willingly shared the information with the police in addition to transfer documents for the business premises, but this was the first the police became aware of the matter.

In light of the new information and the connection with the previous licence holder, the police were no longer happy with the conciliated conditions. Had the police known all the information, they may have not conciliated with the applicant. However, since the police had conciliated, the officer could only suggest additional condition(s) in relation to the previous owner and that they should not have any involvement in the daily running of the business, including the opening, closing or serving of any members of public during the time that the licence block activities are taken place.

The same questions were put to the officer representing licensing as a responsible authority, who advised that they had not received the documentation for the transfer for the business premises. Similarly to the police, they would now ask for a condition that certain individuals with a connection to the previous premises be barred from the restaurant's operation. The lease transfer documentation for the physical premises was only provided to the licensing authority during the course of the hearing.

In response to the answers from the responsible authorities, the applicant stated that she had not informed the responsible authorities of her connection with the previous licence holder because they were not involved in the restaurant in any way. The applicant also explained she believed the police were aware of the connection because they had made contact with her. The applicant was reminded that at the initial hearing, she had stated that her family would be involved in the running of the restaurant and that in particular, they would buy the food. In response, the applicant said that they would not be in the restaurant and that their involvement was limited to her borrowing their car to market to buy food.

The applicant was also reminded that at the initial hearing that the restaurant previously operated in Elephant and Castle, but could not recall the actual address and it transpired it was the same premises which she had been operating since January 2024. To this the applicant stated that she was not distancing herself from the premises' previous operation, and that she still

needed to memorise the address.

The chair of the sub-committee then asked the applicant when and where she obtained her personal licence. She stated that she had applied in September 2023 (but it took some time for it to be issued) and that Southwark had issued her personal licence. The chair also asked the Applicant what the four licensing objectives were. The applicant responded that she did not know. It was then confirmed by the licensing officer that the applicant's personal licence had been issued by Lambeth Council.

The licensing sub-committee heard from other person A who advised that he and other residents were concerned to read of the reasons for 30 May adjournment what and from what had been said at the hearing, he had even less confidence in the proposed operation of the premises.

The licensing sub-committee noted the representations of two other persons who were not in attendance at the hearing.

The licensing sub-committee were aware of the history of the premises when it was known as Pasaje Primavera, provided in the notice of sub-committee dated 10 August 2021 (pages 68-72 of the Agenda). Suffice to say the premises licence was revoked following extremely serious breaches of the licence conditions in December 2018 and again in July 2021 that wholly undermined the prevention of crime and disorder licensing objective. At the time, the premises was managed by the applicant's aunt.

It was apparent that the applicant had not been entirely transparent in the application process in disclosing her connection with the previous licence holder, which primarily resulted in this negative decision. Because of issues during the review application process with insincere transfer applications being lodged, the licensing committee introduced 95 of Southwark's statement of licensing policy 2021-2025 (SoLP) being:

"95. Where, such applications are made, this Authority will require documented proof of transfer of the business / lawful occupancy of the premises (such as a lease), to the new proposed licence holder to support the contention that the business is now under new management control".

Although this was an application for a premises licence the sub-committee conscious of the sentiment of this paragraph and it was due to the applicant's lack of transparency in the application process that resulted in the hearing being adjourned, for responsible authorities to be satisfied that there had been a legitimate transfer of the business pursuant to paragraphs 95 of the SoLP. Unfortunately, the lease transfer document was only disclosed to the licensing authority during the course of the hearing on 20 June, giving it insufficient time to make the necessary enquiries.

Members of the licensing sub-committee were also mindful of the local residents' disgruntlement in relation to the licensed premises in Eagle Yard. Residents, primarily from Draper Estate and the Strata SE1 tower have raised significant issues in recent years with the council, (including to councillors) and the local policing team of noise and nuisance arising from licensed venues and their patrons on Maldonado Walk. The area had therefore become a hotspot for anti-social behaviour and residents complain regularly being disturbed by the licensed premises on Maldonado Walk including patron noise. Of the eight railway arches between Walworth Road and Maldonado Walk, six were already licensed and concentrated in the 50 metres of the alleyway. The acoustic qualities in the Eagle Yard vicinity meant that noise travels causing a disturbance to neighbouring residents.

Paragraph 117 of Southwark's SoLP provides inter alia:

"In considering applications for new licences, variations of existing licences and licence reviews, this Authority will take the following matters into account:

- Whether the premises is located within a current Cumulative Impact Area;
- The type and mix of premises and their cumulative impact upon the local area;
- The location of the premises and their character;
- The views of the responsible authorities and other persons;
- The past compliance history of the current management;
- The proposed hours of operation;
- The type and numbers of customers likely to attend the premises;
- Whether the applicant is able to demonstrate commitment to a high standard of management for example through the level of consideration given to the promotion of the licensing objectives; by active participation in PubWatch; and adopting the Council's Women's Safety Charter;
- The physical suitability of the premises for the proposed licensable activities i.e. in terms of safety, access, noise control etc".

Further, pursuant to paragraph 14.42 of the Home Office revised guidance issued under Section 182 of the Licensing Act 2003, the licensing sub-committee may also take into account evidence of cumulative impact even when the particular premises does not fall within the geographical area covered by an existing cumulative impact area:

- "14.42 The absence of a CIA does not prevent any responsible authority or other person making representations on an application for the grant or variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives, However, in each case it would be incumbent on the person making the representation to provide relevant evidence of

cumulative impact”.

Due to the fact that the Eagle Yard area is a challenging area, a strong management for the premises is imperative and for the reasons provided in this notice of decision, the sub-committee is not satisfied that the Applicant can adequately promote the licensing objectives.

The applicant was however informed by the sub-committee that she could reapply in the future, but it was essential that she be open and honest throughout the application process, with the responsible authorities and the sub-committee. It was also stressed that the applicant did not have the requisite knowledge she ought to have as a personal licence holder. It was therefore recommended if the applicant were to reapply, then she should obtain further licensing training to increase her knowledge to run a premises as a personal licence holder.

It is therefore this licensing sub-committee’s decision to refuse this application.

In reaching this decision the sub-committee had regard to all the relevant considerations, the four licensing objectives and equality duties 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.

The meeting ended at 11.59am.

CHAIR:

DATED: