

NOTICE OF DECISION**LICENSING SUB-COMMITTEE – 26 AUGUST 2021****SECTION 17 LICENSING ACT 2003 PONCE'S CORPORATION, ARCH 144 EAGLE YARD, HAMPTON STREET, LONDON, SE1 6SP****1. Decision**

That the application made by Ponce's Corporation Limited for a premises licence to be granted under Section 17 of the Licensing Act 2003 in respect of the premises known as Ponce's Corporation, Arch 144 Eagle Yard, Hampton Street, London SE1 6SP be refused.

2. Reasons

The licensing sub-committee heard from the licensing officer. He stated that trading standards had withdrawn their objections to this application. Their objections were not considered at this meeting. He stated that the premises had previously held a licence under a company that went into liquidation. As the licence was not transferred within the time limits, the licence had lapsed. The applicant was the designated premises supervisor of the liquidated company and that the premises had operated under a number of temporary event notices (TENs) in the interim.

The licensing officer stated that the Metropolitan Police Service and the licensing responsible authority objected to the application on the grounds that it undermined the prevention of crime and disorder and the prevention of public nuisance licensing objectives. He went on to say that seven objections were raised by other persons namely, residents and their associations. Their objections also pertained to the prevention of crime and disorder and the prevention of public nuisance. He stated that conciliation had not been achieved. He directed the licensing sub-committee to the relevant pages of his report. The licensing officer confirmed that the applicant had provided a dispersal policy that morning and had confirmed an accommodation limit of 80.

The licensing sub-committee heard from the applicant. He stated that he was the manager and owner of Ponce's Corporation and said that his business is like a family. He said that he employed 8 to 10 people and, if the licence application were refused, they would become unemployed.

He explained that he had to close the business for one year due to Covid-19, but he managed to keep things afloat. He said that the problems with the residents and noise concerned other businesses and not his. He said that he would be happy to speak with the residents and would be happy for residents to approach him with any problems they may have.

The applicant said that his security staff also had to address issues relating to patrons from other establishments who would congregate, make noise and drink outside his premises. He stated that the police attended his premises as there had been 100

people or so, in the car park and he asked the police for help to remove them. He denied that his premises was responsible for the noise nuisance and said that those people in the car park were not his patrons as he only allowed 30 customers in his premises during covid. He went on to say that, he had no objection to the police attending his premises. He said that if the police pointed out mistakes he had made, those mistakes would be rectified

The applicant stated that he does not use the patio area, which could be seen on the premises plan submitted with his application. He said that up to five people could go outside to smoke. The applicant stated that usually he would have up to 60 people inside the premises and that presently, he seats 40 people to make allowances for the Covid-19 provisions.

The licensing sub-committee queried whether 80 people could be seated within the premises and estimated from the scaled plans that approximately 40 or so people could be seated within the premises.

In relation to the Covid-19 breaches that had taken place at his restaurant, the applicant stated that the council gave advice which he subsequently followed. He confirmed that presently, he was operating as a restaurant and that the kitchen closes at 23:00. In relation to breaches of his previous licence condition to serve alcohol with food, he stated that his patrons ordered food with their drink but then would order another glass or bottle of alcohol that would outlast the food. The applicant confirmed that he would not use single use plastics wherever possible.

The licensing sub-committee heard from the licensing responsible authority officer. The licensing officer stated that that she had concerns around this application due to previous complaints. The licensing officer compared the previous licence with the current licence and noted that the applicant did not agree the conditions for food to be served with alcoholic drinks nor did he specify in good time the accommodation limit or dispersal policy in this application. The licensing officer had concerns around the restaurant's lack of condition to serve alcohol with a meal. It was noted by the licensing officer that this was the same condition that had been previously breached under the old licence. She also stated that the majority of the complaints surrounding this application concerned the allegation that the applicant was running the restaurant as a bar.

The licensing sub-committee heard from the Metropolitan Police Service. The police were of the view that the premises was not operating as a bona fide restaurant. The police took the view that a bona fide restaurant would not have attracted as many complaints as this premises had. The police stated that the premises had a dual role in that it would start as a food led establishment and then at some point during the evening/night would turn into an alcohol led establishment. The police officer explained that on 11 July 2020, police and other responsible authorities attended the premises to find amplified music being played, people dancing, drinking and that no social distancing being exercised. On that occasion, the police witnessed Covid-19 and licence breaches as food was not being served with meals to persons seated.

On 21 May, 25 June and 19 September 2020, the police and other responsible authorities attended the premises and witnessed further breaches of the licence and Covid-19 Regulations. The police went on to submit that it was their belief that the Ponce's Corporation would not adhere to any conditions on their licence given its

conduct under the previous premises licence and breaches that occurred whilst the premises was operating under TENs.

The licensing sub-committee heard from three of the residents. They were concerned that the granting of a licence would result in nuisance. Resident 1 disputed that only five people were allowed to smoke outside the premises as suggested by the applicant. The resident stated that the restaurant routinely opened later than the time on the licence and that his patrons would fight and argue outside the premises.

Resident 2 explained that the premises is situated a long way from the nearest public highway, that it is accessed by a private alleyway that runs parallel to the railway arches and that the venue directly opens out to the yard behind the Strada Tower. He said the restaurant is bounded by Drapers Yard and Crossways Church. He stated that the location provided a natural space for patrons to congregate and that the acoustics in that area meant that the noise is amplified disproportionately and, heard by the residents on the other side of the yard.

He pointed out to the licensing sub-committee that the licence application says café and restaurant, however the new signage outside the premises says bar and restaurant. He stated that the two terms gave different impressions. He said theoretically, the premises comfortably seated 40 people as per the submitted application plan, but could not hold 80 people in restaurant conditions. He went on to say that 80 people could be accommodated if they were standing; but those conditions would not make the premises a restaurant. Resident 2 pointed out that the social media marketing of the premises showed a DJ in bar/club like setting. He stated that the advert did not look like a restaurant.

Resident 3 stated that she attended the premises on two occasions asking them to close the fire doors to stop the music emanating from the premises. She believed the music systems had been upgraded as the noise levels had significantly increased as she could now hear the DJ speaking. She said that she had witnessed fighting by patrons and that patrons and staff urinated outside the premises. She said the premises is known for throwing a good party. She accepted that it was a restaurant up to approximately 8 pm but after that, it was a club.

The applicant said that he did not ordinarily have a DJ but would hire one on special occasions such as weddings and birthdays. He said that his patrons would not dance to the music and that he would hire a DJ once or twice a month.

The licensing sub-committee formed the view that the objections put before it could not be allayed by the applicant being made subject to any conditions. The licensing sub-committee were not confident that the applicant would adhere to any conditions placed on his licence due to the way the applicant had conducted himself and the premises whilst previously holding a licence and more recently, the way he conducted himself and the premises under TENs.

In reaching this decision, the licensing sub-committee had regard to all the relevant considerations, the four licensing objectives and; considered that its decision was appropriate and proportionate in all the circumstances.

3. 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 been 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

Issued by the Constitutional Team on behalf of the Director of Law and Governance.

Date: 26 August 2021