



NOTICE OF DECISION

LICENSING SUB-COMMITTEE – 31 OCTOBER 2023

SECTION 34 LICENSING ACT 2003: PECKHAM FOOD AND WINE, 176 PECKHAM HIGH STREET, LONDON SE15 5EG

Decision

That the application made by Muhammad Baloch for a premises licence to be varied under Section 34 of the Licensing Act 2003 in respect of the premises known as Peckham Food and Wine, 176 Peckham High Street, London SE15 5EG be granted.

Reasons

This was an application made by Muhammad Baloch for the variation of the premises licence in respect of the premises known as Peckham Food and Wine, 176 Peckham High Street, London SE15 5EG

The licensing sub-committee heard from the applicant's representative who advised that there had been no breach of condition 843 because Asif Ali had never been a member of management of the premises; he was a paid member of staff. His name had been included to the condition erroneously, having been involved in another premises in Southwark. It was accepted that he had received a caution for trading standards offences, but it was disproportionate and unreasonable for an individual to be banned from working at all licensed premises indefinitely within in the borough for transgressions, nine years ago. Further, neither the police nor had any resident objected to the application.

The licensing sub-committee heard from the officer representing licensing as a responsible authority who objected to the application based on all four licensing objectives. The officer explained that the removal of Asif Ali's name from the condition 843 was an attempt to subvert the decision of the licensing sub-committee and employ a person who has previously been found unable to promote the licensing objectives.

Reference was made to the witness statement of Barry O'Callahan who advised that the applicant had employed Asif Ali at the premises in the full knowledge that it would be a breach of the condition when on 24 February 2023, he had been found to be working at the premises. A number of other breaches of the licence were noted including:

- i. Open beyond terminal hour.
- ii. Condition 343 (training records not available).
- iii. Condition 841 (ASPAL Premier Cru cider alcohol (with alcohol of above 6.8% volume) on display).
- iv. Condition 842 (alcohol to be in a locked cabinet/cooler when the premises are open to the public and the licence is not in operation).
- v. Condition 843 (Asif Ali had not been excluded from the premises).

The following day (25 February 2023) PC Maria O'Mahoney attended the premises and again, found Asif Ali working at the premises, in breach of condition 843. There was also non-compliance with conditions 340 and 341 (installation operation and training concerning CCTV).

The officer returned the next day (26 February 2023) and was informed by the member of staff working that the CCTV in breach of wasn't working, again in breach of conditions 340 and 341. The same member of staff also stated that the EPOS system wasn't working meaning none of the alcohol or cigarettes were being scanned (in breach of condition 845).

The licensing sub-committee heard from The trading standards officer, who advised that he had objected to the applications under all of the licensing objectives. The officer advised he had attended 176 Peckham High Street on 9 March 2023 and found that Asif Ali had been authorised to sell alcohol, he had signed the premises training records and made entries in the refusals register. It was explained that condition 843 had been imposed following the new premises licence application previously made, when Asif Ali had been named as the designated premises supervisor (DPS).

The officer confirmed that Asif Ali had not previously been associated with Peckham Food and Wine, but another premises within Southwark, which had its premises licence revoked for a number of issues including allegations of modern day slavery and other breaches of the licence. This resulted in Asif Ali accepting a caution. Concerning the Applicant's legal representative argument that condition 843 had not been breached (because Asif Ali was not a previous member of management), the officer suggested in passing that arguably, Asif Ali had been a member of management when he was the proposed DPS.

The premises is located in the Peckham cumulative impact area (CIA) which applies to off-licences and alcohol sales in grocers and supermarkets. The Peckham CIA was introduced to address serious problems of alcohol fuelled nuisance and disorder arising in the area, including street drinking.

The sub-committee also took into account Westminster City Council v Middlesex Crown Court [2002] EWHC 1104 which confirmed that a premises licence could be refused on the sole ground that the area was already saturated with licensed premises.

The licensing sub-committee had regard to the Home Office Revised Guidance issued under section 182 of the Licensing Act 2003 (July 2023). Paragraph 2.1 provides:

"Licensing authorities should look to the police as the main source of advice on crime and disorder".

The sub-committee noted that the police had not submitted an objection opposing the application, suggesting that there the removal of Asif Ali's name from condition 843 would not undermine the licensing objectives.

The applicant's legal representative also referred to paragraph 2.5 which provides:

"Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the

licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety”.

The legal representative for the applicant stated that Paragraph 2.5 was equally applicable to the appointment of managers and that it was the Applicant as the employer and licensee to ensure that the manager appointed was competent and appropriately trained. The exclusion condition was only justified in rare circumstances, which this was not.

The sub-committee also had regard to the Ministry of Justice Guidance on the Rehabilitation of Offenders Act 1974 and The Exceptions Order 1975 (31 October 2023) that provides the rehabilitation period for a caution starts from the date the caution penalty was imposed. Regardless, it is deemed spent immediately.

Overall, the licensing sub-committee took the view that this was a case where it could make an exception not to apply the CIA policy. The caution that Mr Ali accepted was historic and in any event, it had long since been spent. The sub-committee makes no finding on the interpretation of “previous management” and condition 843 and agrees that it is unreasonable to hold Asif Ali to this condition any further.

There has been a questionable history of regulatory compliance at the premises, albeit when it was under a different licensee. This is mentioned due to the non-compliance with conditions 340, 241, 343, 841, 842 and 845 (detailed above). The premises being in a CIA means it deal with the most challenging of customers in terms of crime and disorder. This sub-committee therefore expects complete compliance with the premises licence forthwith.

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 desire to contend that:

- a) The variation ought not to be been granted; 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.

Issued by the Constitutional Team on behalf of the Assistant Chief Executive –
Governance and Assurance

Date: 7 November 2023