

LONDON BOROUGH OF TOWER HAMLETS

RECORD OF THE DECISIONS OF THE LICENSING SUB COMMITTEE

HELD AT 2.00 P.M. ON TUESDAY, 12 MARCH 2024

COUNCIL CHAMBER - TOWN HALL, WHITECHAPEL

Members Present in Person:

Councillor Ana Miah
Councillor Suluk Ahmed
Councillor Faroque Ahmed

Apologies:

None

1. DECLARATIONS OF INTEREST

There were no declarations of interest.

2. RULES OF PROCEDURE

The rules of procedure were noted.

3. MINUTES OF THE PREVIOUS MEETING(S)

The minutes of the meetings held on 4th and 19th December 2023 and 25th and 13th February 2024 were agreed and approved as a correct record.

4. ITEMS FOR CONSIDERATION

4.1 Application for a New Premise Licence for the Troxy, 490 Commercial Road, London, E1 0HX

The Sub-Committee considered an application by Troxy London Ltd. for a new premises licence to be held in respect of The Troxy, 490 Commercial Road, London, E1 0HX ("the Premises"). The application sought authorisation for the sale by retail of alcohol, the provision of late night refreshment, and various forms of regulated entertainment. The start times differed but all ceased at midnight on Sunday, 02:00 hours Monday to Thursday, and 04:00 hours on Friday and Saturday. The closing times were thirty minutes after the cessation of licensable activities. In addition, non-standard timings were sought to 04:00 hours on bank holidays, until 06:00 hours on New Year's Day, and twenty-four

hours when there was “a significant sporting event.” The premises are already licensed and the application confirmed that the existing licence would be surrendered in the event that the application was granted.

Representations were received against the application from two local residents and from a residents’ association. These were based predominantly on the prevention of public nuisance and alleged, among other things, noise and obstruction from patrons queuing, use of drugs and laughing gas and associated litter, noise disturbance late at night, and public urination.

The Sub-Committee heard from the applicant’s agent, Mr. Donne, and Mr. Sutton-Roberts, the director of the applicant company. Mr. Donne explained that the application had been made because the venue was to be refurbished. The refurbishment included the provision of around forty extra toilets. The existing licence conditions were vague and unenforceable and the conditions had been thoroughly reviewed and reconsidered in the application. None of the responsible authorities had any concerns about the application and they had engaged with the proposed conditions. Additional conditions over and above what had been sought by the responsible authorities had also been agreed.

Mr. Roberts briefly outlined the history of the Troxy. The venue had been reopened in 2006 and held around 150 events each year. Around 150,000 people attended these events in total. They generated business for the community and employed local residents. It was a very important live music venue, especially as many others had been closed. Flyers had been sent to around 300 residents and businesses. The allegations of Nitrous Oxide (NOx) use were nothing to do with patrons of the Premises; it was not uncommon to see vehicles park up and their occupants inhaling NOx.

The Sub-Committee heard from Mr. Askor, who had made a representation. He stated that the area was residential and that a number of elderly people lived in the nearby blocks. Ogilvie House, which was across the road, contained 150 flats. Crowd control was poor and the pavement by the Premises was frequently blocked by the queues. He had made a number of complaints about noise nuisance, none of which had been resolved. Residents were unable to open windows due to the noise and patrons would urinate in their car parks and doorways. He asserted that the Premises should not be able to operate beyond midnight.

The Sub-Committee also heard from a spokesperson on behalf of the Pitsea TRA. He stated that they did not wish to stop the licence but did not consider that licensable activity should be permitted after midnight. He echoed some of Mr. Askor’s concerns and also stated that music from within the Premises was audible. He stated that they had not seen the flyer sent out by the venue. He reiterated the allegations in the representation such as public urination, use of and selling of drugs, and blocking of the highway.

During questions from members, the spokesperson for the TRA accepted that he could not prove that drugs were being sold and that it was linked to the

Premises but that he knew what it looked like. It was not clear that complaints of noise breakout from the venue had been made to any of the authorities.

There was discussion as to precisely what might constitute a “significant sporting event.” The Sub-Committee was told that this would include events such as international or European football or rugby, The Ashes, and similar. The Legal Adviser further explored the possibility of greater clarity around this and which potentially included prior notification to the Licensing Authority.

Mr. Donne emphasised that the benefit of granting the application was a better licence overall, with clearer conditions. He noted that some of the issues of concern related to issues during the daytime, such as queues. People left promptly after club nights and there were no issues with dispersal. This would be more tightly conditioned if the application were to be granted.

The issue of toilets and patrons urinating in public was discussed. Mr. Donne had noted in his skeleton argument that the person urinating did not appear to be one of their patrons, given that he was wearing a shirt and tie. In any event, however, they had explored the use of portaloos on the highway with the Council and this had not been possible. SIA were deployed at an early time and the videos seen by members showed them dealing with people and moving them off the road. Litter would be dealt with by litter picking after any events. There were no public waste receptacles on Pitsea Street. The objectors, however, asserted that litter picking was not carried out.

Mr. Donne clarified that the current licence allowed a capacity of 3,100 people standing and that they had applied for 3,600. The fire risk assessment allowed for 3,800. He also suggested that the current licence allowed for a number of late events and that the new licence was not as generous as the existing licence.

This application engages the licensing objectives of the prevention of public nuisance and the prevention of crime and disorder. It should be noted at the outset that the Premises are already licensed and this was not a review application. Similarly, it was not a variation. To some extent, this limited the Sub-Committee’s options.

The Sub-Committee noted the lack of representations from responsible authorities and from others. However, that was an entirely neutral factor and could not be taken as indicating tacit support. Had the responsible authorities wished to expressly support the application they could have done so. Similarly, the lack of more residential representations, either in support or against, could not be considered to be anything other than a neutral factor.

The Sub-Committee noted that some of the issues of concern were unrelated to the later hours sought. The issues with queuing, for example, took place during the day and were not a problem at the end of the evening. The Sub-Committee noted also the potential advantages of having more robust and clearer conditions.

The Sub-Committee accepted that some issues could not be attributed to the Premises on the information presented. There was no evidence that the NOx canisters were dropped by patrons and it was of note that the videos the Sub-

Committee were shown did not appear to show any evidence of this. Similarly, there was only one video evidencing public urination and the Sub-Committee could not infer this was from a patron. However, the Sub-Committee accepted that it was likely that the assertion of patrons urinating in the car parks and doorways of nearby residential blocks was true to a degree.

Nonetheless, the Sub-Committee was very concerned about the substantially increased scope of the licence if granted. The licence presently, in general terms, allowed for licensable activity until midnight Sunday to Thursday and to 02:00 on Fridays and Saturdays. The application sought to extend those hours from Monday to Saturday by an additional two hours every day. Whilst Mr. Donne had suggested that this could happen under the existing licence, it could only do so on a limited basis. The licence allowed for an extension until around 06:00 hours on Friday and Saturday on twelve occasions per year (including New Year's Eve) and to 02:00 hours on forty-eight occasions per year on Sunday to Thursday. Capacity limits were also applicable to both particular events and to some of those extended hours.

What this application sought to do was to make the Premises a late-night venue six days per week with a substantially increased capacity. The Sub-Committee noted that the venue was situated in an area that was residential, with a number of blocks in the immediate vicinity. The Sub-Committee was therefore very concerned at the possibility of 3,600 people exiting the Premises late at night or in the early hours of the morning and the almost inevitable consequence of noise disturbance from those patrons, especially after an evening of drinking and loud music. That was far more difficult to control with conditions and it would likely have an impact on residents and others in the immediate vicinity.

The Council has a policy which specifies its preferred hours and whilst these are guideline hours only, the policy highlights the risk of greater scrutiny the later a venue wishes to operate. The Sub-Committee had regard to those matters, which are listed at paragraph 16.9 of the Policy. The Sub-Committee considered that the application did not properly address or consider the likely impact of large numbers of people leaving the venue in the early hours on a much more regular basis than they do at present.

The Sub-Committee noted that there was nothing before it to suggest that the Premises had operated to cause a problem when it did make use of its extended hours. However, those extensions, on at most sixty occasions during the year, did not mean that extending the hours on more than three hundred days per year, which is what this application would do, meant that there could and would be no additional impact on the surrounding area with respect to public nuisance.

The Sub-Committee noted also the statutory guidance at paragraphs 9.42 to 9.44, which makes clear that the Licensing Authority is best placed to decide on what is appropriate and proportionate to promote the licensing objectives. The Sub-Committee considered carefully the options open to it. It considered granting the application in part, with the proposed conditions and modifying the hours to more closely match the current licence. However, as the current

licence would have effect unless and until surrendered, the likely outcome would be that the applicant would simply continue to operate under the current licence. Removing licensable activity from the scope of the licence would not address the Sub-Committee's concerns. It could not be said that any one particular activity would need to be removed in order to allay those concerns. As already mentioned, the applicant would no doubt simply continue to operate under the current licence.

Refusing to specify the DPS was not an option in this instance as there was no evidence from the police that the appointment of the proposed DPS would undermine the licensing objectives. The Sub-Committee was therefore satisfied that the only appropriate and proportionate step that could be taken in these particular circumstances was to refuse the application.

RESOLVED

That the application for a new premises licence for Troxy, 490 Commercial Road, London E1 0HX be **REFUSED**.

4.2 Application for a New Premises Licence for (A.V Wholesale), 47 Goulston Street, London E1 7TP

The Sub-Committee considered an application by AV Kakker Wholesale Ltd. for a new premises licence to be held in respect of A. V. Wholesale, 47 Goulston Street, London, E1 7TP ("the Premises"). The application sought authorisation for the sale by retail of alcohol from 10:30 hours to 20:30 hours seven days per week. The opening hours of the premises were the same as the hours for licensable activity.

The application received objections against it from a number of local residents, two residents' associations, and the Licensing Authority. The representations made reference to the Premises' location within the Brick Lane Cumulative Impact Zone (CIZ) and that the applicant had failed to demonstrate how they would avoid adding to the problems of over-saturation of licensed premises within the CIZ, particularly with respect to public nuisance.

The Sub-Committee heard from Abbie Kumar on behalf of the applicant. He explained that the company's main business is wholesale of cigarettes and household goods. The intention with alcohol sales was to import hard-to-find products. The area was a diverse and multi-cultural one and the intention was to give people that taste of home. It was not intended that these would be items that people would drink on the street and it was suggested that they would be "showpiece" items.

Mr. Kumar did not consider that there would be any noise impact as the Premises would be closing early. In addition, their Saturday hours were flexible. They did not often open on a Saturday, but, if they did, it would usually only be to around 13:00 or 14:00 hours.

Ms. Miller-Johnson addressed the Sub-Committee with respect to her representation. The application had made no mention of the CIZ or the issues that existed there. The applicant had mentioned that the alcohol to be sold was not an “everyday” product, but that had not been mentioned in the application. There was also some confusion over whether the alcohol was being bought in bulk for wholesale. She noted that Mr. Kumar had agreed to her suggested conditions, if the licence were to be granted, but that did not allay her concerns. Mr. Kumar later, following a query from the Legal Adviser, confirmed that that alcohol would be by retail. Our Legal Adviser informed us that the Licensing Act 2003 excluded wholesale of alcohol from the need to be authorised by way of a premises licence.

Christopher Lloyd of SPIRE addressed the Sub-Committee on behalf of SPIRE and some of the local residents. He informed the Sub-Committee that the Premises are located in a hotspot for anti-social behaviour (ASB). The business was the wholesale of cigarettes and selling alcohol would change that. He also expressed concern over the fact that there was no control over the type of alcohol being sold or where it would be consumed.

During questions from Members, Mr. Kumar suggested that there would be a benefit in that it would help to keep people calm by allowing them to obtain alcohol from their home as well as to help promote multi-culturalism. Further, there were no nearby off-licences and so prices in the area were inflated. Granting this licence would therefore encourage competition. When asked how he would avoid adding to ASB in the area, Mr. Kumar stated that they had the right to refuse sales and that they had experience of both the business and the area and they did not think they would add to that. Their immediate neighbours were relatives and since returning to the area a few months ago they had not noticed any ASB and that the only incident of disorder they had seen had been between market traders. In addition, they did not intend to compete on the prices of cans; rather, the intention was to do so with bottles.

The objectors were asked for their views on the applicant’s reasons why the licence could be granted. Mr. Lloyd pointed out that the applicant clearly wished to compete with other off-licences, which was wholly contrary to the point of the CIZ. Randall Thiel, whose representation appeared at Appendix 12, addressed the ASB issues. Ms. Miller-Johnson echoed Mr. Lloyd’s concerns.

This application engages the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. The Sub-Committee had read and considered all of the representations and listened to the oral submissions. The Premises are in a CIZ and the onus is therefore on the applicant to rebut the presumption in favour of refusal. The policy is intended to be strictly applied (Paragraph 7 of the Cumulative Impact Assessments) and that the applicant needs to demonstrate that they will be exceptional. The Policy gives examples of premises which might (not will) be considered exceptional, such as operating within framework hours and not being alcohol-led.

This application was within framework hours. It appeared to be ancillary to the main business of tobacco wholesale. However, if granted there would be nothing to stop that changing in the future. The Sub-Committee was told that the intention was to sell “showpieces” but was given no examples of this or of the prices. Further, this appeared to be contradicted by the applicant’s suggestion that it would allow for more competition. If the intention was to sell hard-to-find alcohol, it is hard to see how this would affect pricing of common products. In the absence of anything to support the applicant’s assertion, the Sub-Committee found it more likely than not that the Premises would be seeking to compete on prices of bottles, whether beers or lagers or spirits, and of products that could be or were similar to those found elsewhere. That could drive prices down and a likely effect of that is that people would purchase alcohol from the Premises to drink on the street within the CIZ and not, as suggested by the applicant, in the comfort of their home. That gave rise to an almost inevitable conclusion that there would be impact on the CIZ. Even though the Premises would be closed by 20:30 hours, the people purchasing alcohol from it might well be in the CIZ for a considerable time thereafter.

The Sub-Committee noted the reference in some of the representations to nearby hostels for people with addiction and substance abuse issues. The application did not appear to take that into account nor did it consider the potential for those persons to seek to purchase cheaper alcohol from these Premises or others as a result of the applicant’s intention to bring more competition.

The Sub-Committee also considered it highly unrealistic of the applicant to suggest that the option to purchase hard-to-find alcohol to give people a taste of home would have a calming effect or add greater harmony to the area. The Sub-Committee was also concerned by the applicant’s apparent lack of appreciation of the area in which they intended to operate. Whilst the application is not required to specifically mention the CIZ, doing so certainly makes clear to the Sub-Committee that it has been considered. However, the operating schedule was wholly inadequate and suggested to the Sub-Committee that no appreciation or thought had been given to the CIZ or the Premises’ potential impact on it.

The Sub-Committee was not satisfied that the applicant had rebutted the presumption against refusal of the application. It considered that the application, if granted, was more likely than not to adversely impact the CIZ by adding to the existing nuisance, ASB and crime and disorder issues already prevalent in the area. The application is therefore refused.

RESOLVED

That the application for a new premises licence for A. V Wholesale, 47 Goulston Street, London E1 7TP be **REFUSED**.

5. EXTENSION OF DECISION DEADLINE: LICENSING ACT 2003

The Sub-Committee agreed to extend the decision deadline to 31st May 2024 for the following applications;

- Monogroup, 1 Monkwood Way, London E3 2EG
- INIS, The Tramprey, 13 Rookwood Way, London E3 2XT
- Burgers LDN, 141 Leman Street London E1 8EY
- Captain Kidd, 108 Wapping High Street, London E1W 2NA

The meeting ended at 4.50 p.m.

Chair, Councillor Ana Miah
Licensing Sub Committee