LONDON BOROUGH OF TOWER HAMLETS

RECORD OF THE DECISIONS OF THE LICENSING SUB COMMITTEE

HELD AT 6.30 P.M. ON TUESDAY, 20 MARCH 2018

THE COUNCIL CHAMBER, TOWN HALL, MULBERRY PLACE, 5 CLOVE CRESCENT, LONDON, E14 2BG

Members Present:

Councillor Candida Ronald (Chair)

Councillor Khales Uddin Ahmed (Member)
Councillor Md. Maium Miah (Member)

Officers Present:

Mohshin Ali	Senior Licensing Officer
PC Mark Perry	Metropolitan Police
PC Thomas Ratican	Metropolitan Police
David Wong	Legal Services
Farhana Zia	Senior Committee Officer

1. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST

No declarations of disclosable pecuniary interests were declared.

2. RULES OF PROCEDURE

The Rules of Procedure were noted by the Sub-Committee.

3. ITEMS FOR CONSIDERATION

3.1 Application to Review the Premises Licence for Paradise Cottage, 477 Bethnal Green Road, London, E2 9QH

At the request of the Chair, Mr Mohshin Ali, Licensing Officer, introduced the report detailing the application for review of the premises known as Paradise Cottage, 477 Bethnal Green Road, London E2 9QH. Mr Ali stated the review was instigated by one of the responsible Authorities, the Metropolitan Police and was supported by the Council's Environmental Noise Protection Team.

He referred Members to supporting evidence appended at Appendix 1 and stated that the premise licence at appendix 2, appeared a bit messy as it was

a converted licence from the 1964 Licensing Act, under grandfather rights in 2005.

Mr Ali stated the current Designated Premises Supervisor (DPS) had been appointed in November 2017 and Appendix 9 listed the visits of the Environmental Noise Protection Team.

The Applicant, PC Mark Perry was invited by the Sub-Committee to present his case and explain why a review of the licence was sought. PC Perry said the report at Pages 31 to 36, documented the grave nature of the incident which took place on the 28th October 2017. He said it was a shocking and disturbing incident and whilst the Premises Licence Holder denies knowledge of the party and the potential risk to under aged girls, it is clear the licence holder, the lessee and the designated premises supervisor, allowed the premises to be used for this type of parties.

Prior to October, the Metropolitan Police did not have any concerns regarding the premises, which is a takeaway Kebab shop and restaurant. The premises came to the attention of the Tower Hamlets Police Licensing Team when the MET's Sexual Exploitation Team contacted them. An undercover surveillance operation was undertaken to gather evidence as there was a real risk to under aged girls, who potentially could have been plied with drugs and alcohol before older males had sexual intercourse with them. This was averted due to the operation undertaken by the Police.

PC Mark Perry referred to Page 41 and the poster which appeared in the window of the premises, advertising a Halloween party designed to attract a young crowd. The premises are not a nightclub yet the poster asks party goers to dress "Smart and Sexy". PC Perry said the Child Sexual Exploitation Team and himself spoke to the Mr Erkan Dogan and Mr Haci Mustafa Unlu and explained they could not sell alcohol past midnight and that they needed a DPS in place for licensable activity. PC Perry said they were careful not to give too much away, as they did not want the planned party to be moved to another venue.

PC Perry said the when he was at the venue a temporary wall to separate the counter of the premises from the area where the party was going to take place was being erected. PC Perry stated he was concerned about this structure as it could easily fall and collapse and was a fire hazard.

The Premises Licence Holder, Ms Sibel Dogan did not make contact with the Responsible Authorities to obtain a Temporary Events Notice (TEN) or have a clue about how to run her premises. It is clear from the evidence presented on page 59, they continued to ignore the advice given to them and held other parties, which they claim were private parties that resulted in noise complaints to the Environmental Noise Protection Team. What is alarming is the entry for 27th November which states "Officers also smelt cannabis emanating from the venue".

These premises are operating and behaving like a club and held a party where potentially under aged girls could have come to harm. It is for this

reason that the Metropolitan Police believe the premises Management and the licence holder cannot be trusted, in particular to holding a late night refreshment licence and licence for the sale of alcohol. Throughout this time, the Premises Licence Holder did not make contact with the Police and continued to hold parties regardless of the warnings issued.

In the circumstances the Police are seeking the revocation of the licence. However, should the Sub-Committee be minded to allow the objectors to continue operating, it should place conditions that they should install CCTV and keep an incident log book.

Mr Michael Dunn, representing the Environmental Noise Protection Team added that they had visited on five different occasions, albeit the second and third incidents mentioned in the police application for review were on the same night. However warning letters issued to the proprietors were ignored.

After the submissions of the applicant, the objector's Counsel, Mr Steven Woolf representing the Premises Licence Holder, Ms Sibel Dogan, Mr Erkan Dogan – the lessee and Mr Mustafa Unlu was invited to present his clients response to the evidence put forward by the Police.

Mr Woolf stated that this was a somewhat difficult objection to make but his clients wholly condemn the heinous allegations detailed in the Police officer's report. With respect to the Officer, the sole evidence provided cannot substantiate that child sexual exploitation was taking place. The poster on page 41 makes a somewhat nebulas reference to "sexy" and this is just an innocent reference. Nothing suggests Child sexual exploitation of children was the intention of the party and no children under the age of 18 were at the premises.

Mr Woolf said he would have sympathy with the Officer if there was evidence to support the assertion that an "Ugg party" was taking place and officers from the Child Exploitation team were present for the hearing. Fundamentally the way in which the review had been bought was on circumstantial suspicion as there was no UGG party taking place at the premises.

Mr Woolf said it was important to have realism here. The Licence for the premises had been in place for many years and the Police were attempting to revoke this on the basis of this alleged party. On the balance of probability, this argument is flawed because the licensing objectives had not been broken. The event on the 28th October did not take place. Mr Woolf continued stating that he could not ignore the fair observation made on page 32 that the DPS was not in place. However there was confusion in relation to the DPS and this was rectified on the 3rd November 2017 when the DPS was changed.

Mr Woolf continued stating the current premises licence allowed for private parties and the incidents referred to on page 59, with points 2 and 3 being one incident and the one on the 2nd December gives the impression that the party continued into the small hours. However that was certainly not the case.

Mr Woolf invited Members to consider the events in isolation and the long history of the premises which are a family run restaurant business that has been in the family for more than 30 years. He said his clients are better informed and now know that private parties at the venue must be managed better and entry and egress strictly adhered to, in order to ensure noise did not escape outside.

Mr Woolf said the Environmental Health Officers comment of the smell of cannabis is extremely difficult to substantiate and answer. There was no clear evidence of drugs being smoked on the premises. There was no evidence that the Premises Licence Holder had committed any offences relating to drugs. The Premises Licence Holder does not condone the selling and use of drugs and will do what is required to prevent this, but it is not her responsibility if people decide to smoke cannabis or other drugs.

In relation to the licensing objectives listed on page 30, it is clear the alleged breach of objective 1 – the prevention of crime and disorder is based on circumstantial evidence as no evidence to support the Police's assertion was found.

With regard to objectives 2 and 3, public safety and the prevention of public nuisance, there are isolated incidents from which the Premises Licence Holder has learnt a very valuable lesson. Turning to objective 4, the protection of children from harm, again it is clear this is based on circumstantial evidence and cannot be substantiated through the evidence presented. Therefore the application to revoke the premises licence should be dismissed.

The incidents referred to are from last year and there have been no further incidents for nearly three months. The DPS is now in place and the Premises Licence Holder has vowed to uphold the licensing objectives and operate the premises as a kebab takeaway and restaurant with no private parties to be held on the premises. The threat to the premises licence has been a awake up call.

No communication has taken place between the Premises Licence Holder and the responsible authorities is because there has been no repeat of noise complaints against the premises. On page 36, the application for review suggests the hours be reduced to the framework hours of the premises licence is not to be revoked. However this would not be convenient to the business. CCTV is already in place and an incident record book will be provided on request to the responsible authorities.

Mr Woolf stated that if the Sub-Committee was of the view that the Premsies Licence Holder was actively participating in the type of parties described, there is no evidence to support this allegation and it is a weak assertion to make.

Members of the Sub-Committee asked the following questions:

- The Police were asked , with reference to Page 31, paragraph 1, was there concrete evidence that the party was an UGG party?

It is a very difficult area but on the intelligence the CSE team had, a decision was made to undertake surveillance with the ultimate goal of protection young children from harm. The witness statement of Sergeant Penney, last sentence states that "without intervention there was a real and serious risk."

The poster was designed to attract a young crowd and 20 year old males were stood outside the venue at the start of the party. The Police strongly believe that the party was about to happen and young girls were in danger. The Members should ask themselves, why would people go to a Kebab shop for a Halloween party? It is the opinion of the Sergeant and Inspector that the way in which the party was run was not sound and children were at risk of harm.

The management claim they had no idea of the nature of the party and take no responsibility for the smoking of cannabis. However in any event they are not a club and cannot operate as one.

- The Objector was asked if she agreed that she should have applied for a TEN when holding parties?
  Yes, with hindsight that would have been a good idea but you must draw a distinction between a 'crowd' for which a TEN is required and a private party. The parties referred to on page 59 were private parties as opposed to the Halloween party, for which a TEN should have been applied for.

- The objector was asked what had the business done to address the Police allegations?
  No action is required to address the allegations as the alleged incidents are in the past and the Premises Licence Holder as decided not to stage any parties or similar events in future and to operate only as a restaurant.

- It was pointed out to the objector that this did not answer the question. As a responsible business owner the Premises Licence Holder had duties and responsibilities to uphold and these are serious allegations.
  The Premises Licence Holder acknowledges these are serious incidents and is conscious the business cannot be used as a club when in fact it is a restaurant. Therefore Ms Dogan has made a business decision that the holding of parties and similar events at the premises will end and the responsible authorities will not hear of any further complaint against the premises. Mr Unlu has been appointed as the DPS and Ms Dogan has no desire to find herself on the wrong side of the Police or Environmental Health.

- The objector was asked to clarify the management structure of the business?
  Ms Sibel Dogan is the Premises Licence Holder. Mr Erkan Dogan – her brother is the lessee and is responsible for the day to day running of the business and Mr Unlu is the DPS.

- The objector was asked to describe the layout of the premises?
  The premises are on Bethnal Green Road and the entrance to the shop is from the street. As you enter, the counter is on the right and beyond that is the bar. The premise's opens out to the seating area and there is a family section for those customers who require privacy. Beyond that, there is a small room and then a small area that leads to the kitchen. There is an exit to the side street.

- The objector was asked what is the capacity of the premises?
  50 people maximum, 30 for the seating area.

- The objector was asked when holding private parties, how many people are permitted?
  A maximum of 25 people.

- The objector was referred to the poster advertising the Halloween Party. A copy of which accompanied the application for review. The poster stated that the party was between 9:00 p.m. and 4:00 a.m. The objector was asked who was to manage this party?
  The premises were hired out to a promoter who said no more than 30 people were to attend.

- The objector was asked in relation to the private parties, who from the management team was present?
  The DPS was present at all times.

- The objector was asked what type of risk assessment was undertaken in relation to such events?
  The premises is compliant with health and safety and we have evacuation procedures in place. Smoke and Carbon Monoxide detectors are in place.

- It was pointed out to the objector that there had been a history of noise nuisance. What steps have been taken to address this?
  There will be a complete stop to parties. The main speakers will be removed to reduce the noise level and the business will operate as a restaurant only.

- The Police were asked if there had been further complaints against this business?
  No further complaints since the 2nd and 3rd December 2017 incidents have been reported or recorded.

Mr Wong asked Mr Woolf to clarify the following point for the Sub-Committee:

Mr Woolf had stated that there was no clear evidence of matters mentioned in the application for review, and what evidence did Mr Woolf consider should have substantiated what was alleged? Mr Woolf clarified that by lack of clear evidence, he meant evidence was hearsay. Mr Wong asked if Mr Woolf was aware that hearsay evidence is not debarred from Licensing Sub-Committee

hearings. Mr Woolf said he was, but it was a matter of who much weight was put on matters where there was no clear evidence. Mr Woolf said that the reference to cannabis was based on hearsay as there is no clear evidence that it was drugs the Officer had smelt, and Ms Cadzow who was the author of the email setting out such things was not present to be questioned on this.

Both the Applicant and the Objector were given an opportunity to sum up their arguments before the Members adjourned at 8:55 p.m. to deliberate and reconvened at 9:35 p.m.

The Licensing Objectives

In considering the application, Members were required to consider the same in accordance with the Licensing Act 2003 (as amended), the Licensing Objectives, the Home Office Guidance and the Council's Statement of Licensing Policy and in particular to have regard to the promotion of the four licencing objectives:

1. The Prevention of Crime and Disorder;
2. Public Safety;
3. Prevention of Public Nuisance; and
4. The Protection of Children from Harm

Consideration

Each application must be considered on its own merit. The Sub Committee has carefully considered all of the evidence before them and considered written and verbal representation from both the applicant and the objectors with particular regard to all four licensing objectives of the prevention of public nuisance, the prevention of crime and disorder and the protection of children from harm and public safety.

The Sub-Committee were concerned about the lack of understanding of the Licencing Objectives by the Premises Licence Holder and her associates.

The Sub-Committee were concerned about the serious allegations made and that no attempt had been made by the Objector to talk to the Responsible Licensing Authorities, namely the Police, Environmental Noise Protection Team and the Council's Licensing Team.

The Sub-Committee were concerned that a premise's had planned to hold an event without a licence and were concerned about the pattern of incidence of noise nuisance.

The Sub-Committee noted that the Objector failed to offer any conditions to give the Sub-Committee confidence that the Premises Licence Holder will uphold the licensing objectives.

Therefore, in view of the above the Sub-Committee were not satisfied that the Objectors had successfully demonstrated that she had rebutted the

presumption against the review of the licence and the Responsible Authorities' application for the revocation of the premises licence.

Accordingly, the Sub-Committee unanimously

RESOLVED
That the application to review the licence of the premises at Paradise Cottage, 477 Bethnal Green Road, London E2 9QH be **REVOKED** to **EXCLUDE** from the scope of the licence.

- The sale by retail of alcohol; and
- The provision of regulated entertainment (recorded music only)

3.2 Application for a variation of a premises licence for (Museum Service Station), 319 - 337 Cambridge Heath Road, London E2 9LH

At the request of the Chair, Mr Mohshin Ali, Licensing Officer, introduced the report detailing the application for Museum Service Station, 319-337 Cambridge Heath Road, London E2 9LH. It was noted that objections had been received from the Metropolitan Police.

Mr Ali stated the Applicant was seeking to extend the hours of opening as well as the time for the sale of Alcohol. He referred Members to points 2.4 and 2.7 of the report which summarised the application and Appendix 1 and 2, which showed the existing licence and the application to vary.

Mr Chris Mitchener, the Applicant's representative addressed the Sub-Committee and stated his client was seeking a variation in line with operating a 24 hour premises. He said the location of the premises was on a busy arterial road with various businesses, shops and restaurants and if a radius line was to be drawn on a map, the catchment of the petrol station would be halved due to its location and the railway line. He referred Members to pages 131 and 133 and said whilst he understood the concerns of the Police, no other responsible authority was objecting to the application nor indeed were any members of the public.

Mr Mitchener stated the Police UK website, which shows crime statistics for the UK, showed there had been a 10% decrease from last year's figures and a 7.5% drop from the previous year, in the catchment area of the petrol station, for anti-social behaviour.

He said his clients Sectorsure No 10 Ltd, had acquired the site in December 2017 and operating Petrol Stations was a normal part of their business. He said no crime and disorder incidents or public nuisance issues had occurred, other than one incident relating to the theft of oil on the premises.

In respect of the drug and alcohol rehabilitation centre located at Edward Gibbons House, Mr Mitchener stated whilst it was right for care to be provided

in the community, the location of the petrol station was not detrimental to the care and welfare of those with substance abuse issues. He said people needed to abide by the rules and the issue should be policed with consent. He said his client was willing to work with the Provider and Commissioner of Edward Gibbon House to refuse alcohol to known addicts.

Mr Mitchener referred to the Council Licensing Policy and case law of *Thwaites –v- Wirral Borough Magistrates Court (2008)* and quoted "drawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act." and "in some cases, the evidence will require them to adjust their own impression. This is particularly likely to be so where it is given by a responsible authority such as the Police."

Mr Mitchener said he had been liaising with the Police and had agreed conditions, should the Sub-Committee be minded to grant the application. Mr Mitchener went further and said in spite of the lack of evidence that the Petrol Station will become a hub for crime and disorder, his client was also prepared to offer up a condition to close between 2:00 a.m. and 6:00 a.m. for the sale of alcohol. He continued that a nightclub which was located 300 metres away was open until 4:00 a.m. and licensed to sell alcohol. His client was a small retailer of Petrol Stations and the sale of alcohol would be undertaken responsibly. Staff had been trained on the sale of alcohol and had undertaken a written test. Field Managers would monitor progress of the Petrol Station and would provide a written audit on the status of the Petrol Station to his client, Sectorsure No 10 Ltd.

The objector, PC Mark Perry presented the concerns of the Metropolitan Police and said the Applicants were a reputable company. However the location of the Petrol Station meant it was in a crime hotspot. It was close to Cambridge Heath Road railway station, where a considerable number of street drinkers congregate. PC Perry referred Members to page 126 of the agenda and the list of other licensed premises in the area. He said the majority of licensees' closed by midnight and if the Petrol Station was granted a 24 hour licence, the concern was it would become a magnet to those addicted to alcohol.

He drew attention to PC Hanlon's statement on page 132 and referred Members to the third paragraph from the bottom of the page quoting "Residents raised concerns regarding the Anti-social behaviour in this location. We have regular calls from repeat callers who inform us that the issues are daily after 17:00 hours." As the Neighbourhood Police Officer, PC Hanlon's local knowledge does carry weight and any 24-hour business selling alcohol will attract street drinkers, who sometimes beg aggressively at the railway station and on the street, and as such the Metropolitan Police think that granting the application is a risk too far.

This concern was also shared by the Council's Adult Social Care Directorate, in their letter on page 133, as any 24 hour sale of alcohol will have a harmful and negative impact on the people they are trying to help. PC Perry referred to the conditions provisionally agreed with the Applicant should the Sub-Committee be minded to grant the application. However in the first instance

the Police were objecting to the application on the evidence before the Sub-Committee.

Members of the Sub-Committee asked the following questions:

- The Police were asked why the sale of alcohol after 5:00 p.m. would exacerbate anti-social behaviour.
  Street drinkers need ready access to alcohol, so whereas the other premises close by midnight, in this instance they will seek the Petrol Station for their need, if it is allowed to sell alcohol 24 hours.
- The Applicant was asked what sort of Late Night Refreshments are to be sold?
  It is mainly hot drinks – tea/coffee and a little food.
- The Applicant was asked why they need to sell alcohol for 24 hours.
  There is a demand for it, and it could be people travelling through the area. People are entitled to purchase it.
- The Police were asked whether there was evidence that the Petrol Station is contributing to Anti-social behaviour?
  Not at present, but if it is granted a 24 hours licence it will become a magnet for street drinkers.
- The Police were asked where were the nearest premises that operate 24 hours.
  Shops in Cambridge Heath Road and Bethnal Green are open until 11:00 p.m. or midnight, e.g. Offee & Toffee and then there are nightclubs – Metropolis and Redon. No other premises' is open for 24 hours in the vicinity.
- The Police were asked whether there are any off-licences close to Edward Gibbon House and where do the drinkers go now?
  The hostel closes at 2:00 a.m. Drinkers will go to the nearest premises to purchase alcohol but because most businesses close by 11:00 p.m. the drinkers access to alcohol is limited.
- The Applicant was asked how many members of staff are on duty late at night.
  Usually one member Mon to Wed; possibly two on busier nights Thurs to Sun.
- The Applicant was asked how do customers access the kiosk when they want to purchase petrol or alcohol.
  The door is locked at 11:00 p.m. and thereafter any customer is allowed in, on the discretion of the Cashier. This is normal practice for most Petrol Stations. The Cashier will make a judgement call as to whether a customer should be allowed in taking into account considerations such as if the Cashier knows the person.

Both the Applicant and the Objector were given an opportunity to sum up their arguments before the Members adjourned the meeting at 7:20 p.m. to deliberate and reconvened at 7:45 p.m.

The Licensing Objectives

In considering the application, Members were required to consider the same in accordance with the Licensing Act 2003 (as amended), the Licensing Objectives, the Home Office Guidance and the Council's Statement of Licensing Policy and in particular to have regard to the promotion of the four licencing objectives:

1. The Prevention of Crime and Disorder;
2. Public Safety;
3. Prevention of Public Nuisance; and
4. The Protection of Children from Harm

Consideration

Each application must be considered on its own merit. The Sub Committee has carefully considered all of the evidence before them and considered written and verbal representation from both the applicant and his representative and the objectors with particular regard to all four licensing objectives of the prevention of public nuisance, the prevention of crime and disorder and the protection of children from harm and public safety.

The Sub-Committee noted that currently there appears to be no anti-social behaviour associated with the Museum Service Station. However the proposed opening hours are significantly longer than other premises for off-sales in the area. If the application were to be granted as it stands, it would be the only licenced premises in the vicinity open for 24 hours, so there is a risk that anti-social behaviour shifts to this location.

The Sub-Committee felt the extended hours, on the balance of probability, despite the negotiated conditions offered by the applicant in discussions with the Police, would not prevent public nuisance and crime and disorder.

The Sub-Committee were concerned about the safety of staff who would be working alone in the late hours and could be put at risk.

Therefore the Sub-Committee were not satisfied that the Applicant had successfully demonstrated that they had rebutted the presumption against granting a variation of premises licence for the premises situated at 319-337 Cambridge Heath Road or that it would not undermine any of the four licensing objectives.

Accordingly, the Sub-Committee unanimously

RESOLVED

That the application for the variation of the premises licence for Museum Service Station, 319-337 Cambridge Heath Road, London E2 9LH be **REFUSED**.

4. EXTENSION OF DECISION DEADLINE: LICENSING ACT 2003

The Sub-Committee Members agreed to extended the deadlines for the following applications to a date to be fixed:

- Alchemist, Unit 10 Crispin Street, London E1 6HQ
- Bean & Wheat, 13 Artillery passage, London E1 7LJ
- Travelodge, London City, 20 Middlesex Street, London E1
- Food & Wine, Mini Market, Unit 13, 71 Ben Johnson Road, London E1 4SA
- Super Kebab, 240 Cambridge Heath Road, London E2 9DA

The meeting ended at 9.42 p.m.

Chair,
Licensing Sub Committee