

**LONDON BOROUGH OF TOWER HAMLETS**

**RECORD OF THE DECISIONS OF THE LICENSING SUB COMMITTEE**

**HELD AT 6.30 P.M. ON TUESDAY, 26 JULY 2022**

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

**Members Present:**

Councillor Sabina Akhtar (Chair)

Councillor Rebaka Sultana (Member)

Councillor Abdul Wahid (Member)

**1. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**2. RULES OF PROCEDURE**

The rules of procedure were noted.

**3. ITEMS FOR CONSIDERATION**

**3.1 Licensing Act 2003 Application for a Premises Licence for (The Hungry Tummy) 24a Wentworth Street, London E1 7TF**

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:

- The Prevention of Crime and Disorder;
- Public Safety;
- The Prevention of Public Nuisance; and
- The Protection of Children from Harm.

Consideration

The Sub-Committee considered an application by The Hungry Tummy Ltd, for a new premises licence to be held in respect of The Hungry Tummy, 24a Wentworth Street, London, E1 7TF ("the Premises"). The application originally

sought authorisation for the sale by retail of alcohol for consumption on and off the Premises and for the provision of recorded music from 10:00 hours to 22:00 hours Monday to Saturday and from 10:00 hours to 18:00 hours on Sunday. These were also the opening hours.

Six representations against the representation were received. These were from the Licensing Authority, the Environmental Protection Service, SPIRE, and three residents. The objections were based on the fact that the Premises were located in the Brick Lane CIZ and that the applicant had failed to demonstrate that they would not add to the overall impact of licensed premises in the area. The residents made specific reference to the fact that they thought this application would lead to more intoxicated people in the area and thus more anti-social behaviour such as public urination and broken bottles in the street.

Conditions had been agreed with the Police. Supporting information from the applicant stated that they were willing to reduce the hours sought for the sale of alcohol. Although no specific time was stated, the time of 20:00 or 21:00 hours was indicated.

Liliana Martens addressed the Sub-Committee on behalf of the applicant. She confirmed that recorded music was to be withdrawn as this was in fact deregulated and no longer licensable in the circumstances of this application. The Premises were very small, with a maximum of ten covers inside and four outside. The applicant was willing to limit the number of patrons smoking outside the Premises to five at any one time. The Sub-Committee were also told that the Premises would not be opening on a Sunday. The food offering was more of a snack/deli-type offering rather than a table meal. The Premises was a Hungarian food business and that they were catering for a niche clientele. The operators themselves lived in the area.

Ms. Martens also stated that she was aware of the CIZ and that where the Premises were located was within a "yellow" area on the CIZ hotspot map. She stated that there was no reason to think the Premises would impact on the CIZ. There was only one other licensed premises in the street.

Ms. Miller-Johnson addressed the Sub-Committee as to her representation. She was concerned that the applicant had initially failed to address the CIZ and of the possibility that the Premises could become a bar in the future. She asked the Sub-Committee to consider imposing the conditions suggested in her representation, if Members were minded to grant the application. She noted that there were no toilets in the Premises and queried what facilities patrons would use if the public toilets across the road were out of order.

Mr. Sherlock addressed the Sub-Committee on behalf of Environmental Protection and expressed concern about the risk of possible noise disturbance. He also suggested that if the Sub-Committee were minded to grant the application, consideration should be given to imposing their suggested conditions.

None of the other persons making representations attended the hearing. Their representations were, however, considered and taken into account.

The Premises were very modest in size and scope. Moreover, the reduction in hours offered up by the applicant meant that there was much less risk of adverse impact on the licensing objectives and that any such impact would be mitigated by the agreed conditions and additional conditions. The size of the Premises, the fact that they were within framework hours, and that they were not alcohol-led, justified an exception to the CIZ policy.

The Committee determined that it was appropriate and proportionate to impose the conditions suggested by the Licensing Authority, save for proposed condition 6 which required all alcohol sales to be with a table meal, given that the applicant was not operating as a restaurant. Similarly, the Sub-Committee determined to impose proposed conditions 2 and 3 from the Environmental Protection Service. Condition 1, restricting the use of loudspeakers was not imposed; the applicant did not seek regulated entertainment, there was no suggestion that they would or intended to place loudspeakers in any external area or on the street and, in the event that they did so, there were other statutory controls in place to address that.

The Sub-Committee did, however, consider it appropriate and proportionate to impose a further condition. No “drinking-up time” had been proposed in the application and the Sub-Committee was concerned to ensure that patrons could not purchase large amounts of alcohol for consumption at the terminal hour and then consume the purchases until closing time. A condition requiring all consumption of alcohol within the premises and in the outside area to cease thirty minutes after the terminal hour would address that concern and help to ensure that patrons leaving the Premises at or near closing time would not be intoxicated. It would also assist to mitigate any impact on the CIZ.

Accordingly, the Sub Committee unanimously;

### **RESOLVED**

That the application for a new premises licence for **(Hungry Tummy) 24a Wentworth Street, London E1 7FT** be **GRANTED** subject to the following hours and conditions:

#### **Sale by retail of alcohol (for consumption on and off the premises)**

Monday to Thursday            10:00 hours to 20:00 hours

Friday and Saturday            10:00 hours to 21:00 hours

#### **Opening hours**

Monday to Saturday            10:00 hours to 22:00 hours

#### **Conditions**

1. A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised

photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.

2. An incident log shall be kept at the premises and be available on request to the Police or an authorised officer. It must be completed within 24 hours of any incident and will record the following:
  - a) all crimes reported to the venue;
  - b) all ejections of patrons;
  - c) any complaints received concerning crime and disorder;
  - d) any incidents of disorder;
  - e) any faults in the CCTV system, searching equipment or scanning equipment;
  - f) any refusal of the sale of alcohol;
  - g) any visit by a relevant authority or emergency service.
3. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Tower Hamlets Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.
4. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
5. When the designated premises supervisor is not on the premises any or all persons authorised to sell alcohol will be authorised by the designated premises supervisor in writing. This shall be available on request by the Police or any authorised officer.
6. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.
7. There shall be no vertical drinking at the premises.
8. Customers shall not be permitted to take alcohol beyond the boundary of the outside seated area, save for those alcoholic beverages in a sealed container for the purpose of takeaway.

9. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall be limited to 5 persons at any one time.
10. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a public nuisance.
11. Patrons shall not be permitted to consume alcohol inside the premises or in the outside seated area more than thirty minutes after the terminal hour for the sale of alcohol.

### **3.2 Licensing Act 2003 Application for a Premises Licence for (Studio Spaces Ltd / E1), 110 Pennington Street, London E1W 2BB**

#### 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 licensing objectives:

- The Prevention of Crime and Disorder;
- Public Safety;
- The Prevention of Public Nuisance; and
- The Protection of Children from Harm.

#### Consideration

The Sub-Committee considered an application by Studio Spaces Ltd. to vary the premises licence held in respect of Studio Space/E1, 110 Pennington Street, London, E1W 2BB ("the Premises"). The variation sought was the removal of a condition which stated, "No nudity or semi nudity permitted."

The application attracted some 200 representations in support. There was one representation against the application, from the Licensing Authority in its capacity as responsible authority, which sought to persuade the Sub-Committee to uphold the condition or modify it so as to clarify precisely what was meant by nudity.

The Sub-Committee heard from Mr. Charalambides, who spoke on behalf of the applicant and, helpfully, those of the supporters who had indicated a wish to address the Sub-Committee. He explained the use of the venue for kink/fetish nights and which catered for the "queer" community, which he used as a convenient umbrella term for various groups (and any reference to "queer" in this decision is used in like manner). These events, which had been held here and at various other venues over a long period of time, were fully risk-assessed, notified to the police, and took place with police approval.

The Sexual Entertainment Venue (SEV) policy operated by Tower Hamlets was concerned with lap-dancing venues and the like rather than venues such as this. The applicant was unclear why, after many years of support, the attitude of the Council had suddenly changed. In respect of the allegation of 12<sup>th</sup> February 2022, both the Council and the police had viewed the footage. There had been no criminal proceedings, the authority did not seek to review the premises licence as a consequence of the alleged breaches, and there was no representation from the police on the basis of the crime and disorder licensing objective.

The Licensing Act 2003 was not concerned with adult entertainment, save for ensuring the protection of children from harm. This was not engaged and the promoters operated age and membership policies to ensure this.

Mr. Charalambides asserted that the authority was in breach of the public sector equality duty (PSED) under the Equality Act 2010 by failing to have due regard to that when deciding to make a representation. The decision would impact on groups with protected characteristics, especially sex, sexual orientation and gender reassignment. His client had, however, produced an equality impact assessment (EQIA) which the Sub-Committee could take into account when complying with the PSED. He told the Sub-Committee that its Statement of Licensing Policy failed to set out how the PSED had been applied when the policy was made and that the Policy had not been updated in that regard in twelve years. He urged that this be reviewed as a matter of urgency.

Mr. Charalambides submitted that the Licensing Authority's position, in seeking to uphold or modify the condition, effectively told consenting adults what they could or could not wear and how they could or could not behave. It raised the question of how the modified condition could properly apply to those who identified as non-binary. Why should a man be permitted to be bare-chested, but not a woman? He urged the Sub-Committee to remove the condition and invited the Sub-Committee to impose a condition that all events be risk-assessed and that there be a safeguarding policy in place by both promoters and the Premises.

Mr. Grant, on behalf of the Licensing Authority, suggested that the Sub-Committee modify the condition to bring it more in line with the definition of nudity as it applied to SEVs. He had added a further clause that meant a man who self-identified as a woman would be classed as such, and vice versa. He told the Sub-Committee that the Licensing Authority took no view on the morality of kink or fetish nights. Their concern was purely one of safeguarding and the importance of the venue and these events being regulated.

The stills from the event of 12<sup>th</sup> February 2022 showed widespread nudity and sexual activity. This had been occurring for some time, on the licence holder's admission and it was, in his view, a breach. He asserted that to remove the condition would be tantamount to rewarding the licence holder and that this could lead to other operators being minded to breach conditions that they did not wish to comply with.

Mr. Grant accepted that the PSED was engaged and that the Sub-Committee needed to comply with that. He reminded the Sub-Committee of the principles to be applied and that Members needed to be satisfied that they had sufficient information about the effect of keeping or modifying the condition on those with protected characteristics. He commented that the Sub-Committee could, if it saw fit, adjourn in order to obtain further information to allow it to properly consider the PSED. Mr. Grant reminded the Sub-Committee that the PSED was not a duty to achieve any particular outcome and that to the extent that the applicant relied upon Article 10 of the European Convention on Human Rights, that too was a qualified rather than absolute right.

The Sub-Committee heard briefly from some of those who had made representations in support of the application, including Karl Verboten. They expanded briefly upon their representations and emphasised the safety of the venue, the importance the promoters placed upon safeguarding, and that they considered it to be important to be able to dress and express themselves freely in these venues.

During questions, the Sub-Committee was told that the applicant's understanding of the condition was that it had been imposed by policy to limit performances of lap-dancing and similar. They had been told this by the police. Mr. Charalambides referred to the relevant section of that old policy as being headed "Striptease." It was a vague condition and was not intended to control patrons. On that basis, there was in fact no breach of condition and the responsible authorities were aware of the activities that went on and had expressed no concerns. Mr. Charalambides stated that there was also no breach because the condition was unclear and therefore unenforceable.

Mr. Charalambides further explained that the Licensing Act 2003 did not contain a definition of nudity because it was not concerned with that and that the regulation of SEVs was concerned with regulating the power dynamic between operators and performers. In clubs such as this, or Crossbreed, or Backstreet, the 2003 Act had no role to play in regulating and controlling those activities.

The Sub-Committee also sought information about how these events were promoted and advertised. In essence, this was via social media to vetted members, in advance of any event.

Mr. Lewis confirmed to the Sub-Committee that there had been no complaints to the Council save for that reported to the police in respect of 12<sup>th</sup> February 2022.

Whilst the Sub-Committee had before it a considerable amount of information and had benefitted from the oral submissions of the parties, the issue for determination was ultimately a simple one; if the condition were to be removed, would that be likely to adversely impact upon the licensing objectives, in this case the prevention of crime and disorder, and public safety? The Sub-Committee understood that were it not for the Licensing Authority's representation, this application would not have been before it.

The Sub-Committee had no evidence at all that the removal of the condition would adversely impact upon any of the licensing objectives. The Licensing Authority's representation referred to just one allegation; by the time of the hearing the Authority had expressly stated it would not ask the Sub-Committee to place any weight on that. There were no representations from any other responsible authority. The police, who the Statutory Guidance refers to as being the main source of information on crime and disorder (paragraph 9.12), had not made a representation. There were no residents making representations against the application. The Sub-Committee would have expected that events at the Premises which gave rise to any problems would have been reported and that this would be reflected in any representations. That the police were aware of these events and raised no concerns also gave an indication that the crime and disorder objective would not be undermined.

With respect to the alleged breach, the Sub-Committee was advised that its function was not to determine guilt or innocence. In any event, given the various issues raised, all that could properly be said is that there was some nudity to a degree. However, the Sub-Committee noted that this was not a review application and that the focus needed to be forward-looking. Even if there had been a breach of that condition, that alone would not justify the condition remaining, unless it could be shown that to do otherwise would undermine the licensing objectives. The Licensing Authority sought to rely upon the alleged breaches of the condition as evidence that the licensing objective of the prevention of crime and disorder would be undermined. However, if the condition were removed, logically that aspect of concern falls away.

The statements of the supporters also provided evidence as to the way that the Premises had been conducted in their experiences. Some referred to having felt unsafe or had been harassed or sexually assaulted or inappropriately touched in "mainstream" venues. That they did not feel unsafe in this venue or at events such as these was a strong indication that the licensing objectives would not be undermined by granting the application.

Given the complete absence of evidence that the licensing objectives would be adversely impacted by the removal of the condition, the Sub-Committee considered that the only appropriate and proportionate course of action open to it was to remove the condition entirely. It follows that the Sub-Committee also did not consider it appropriate and proportionate to impose the modified condition as suggested by the Licensing Authority.

The Sub-Committee was, however, minded to impose a condition with respect to welfare policies, as suggested by Mr. Charalambides. The Sub-Committee noted that there was a condition requiring risk assessments. For the avoidance of doubt, this will apply equally to queer/fetish/kink events and a condition added accordingly.

Finally, the Sub-Committee did have concern, especially in light of the publicity that this application had attracted, that there was a risk of increased numbers attending the Premises and which could adversely impact upon the licensing objectives. Given that the applicant stated that these events were

held and open only to members of clubs or schemes operated by the various promoters, the Sub-Committee considered that imposing a condition to this effect was appropriate and proportionate for the promotion of the licensing objectives.

In light of this decision, the Sub-Committee considers that it can address the PSED issue quite briefly. The Sub-Committee specifically considered the applicant's EQIA and, in the absence of any other relevant information from the Licensing Authority, felt constrained to adopt the applicant's EQIA. The Sub-Committee noted that the nature of the events meant that there was a greater impact on certain groups with protected characteristics. The Sub-Committee noted that although the events at the Premises tended to cater to the queer community, there were disparate groups of people attending these events, some of whom shared one protected characteristics, others who shared another, and some who had none at all. The Sub-Committee was informed that these events were inclusive and welcomed diversity and were open to all; being of the queer community was not a prerequisite for attendance or entry. Given the comments made by some of the supporters as to harassment and discrimination that they had faced in mainstream venues, and how safe they felt at events such as Klub Verboten, the Sub-Committee accepted that these events were of considerable importance to the queer community.

For completeness, however, the Sub-Committee was aware that the PSED did not require it to achieve a particular result and the above was in no way determinative of the issue. Whilst the Sub-Committee had had due regard to the PSED, the removal of the condition was simply because of the approach required to be taken under the Licensing Act 2003.

Accordingly, the Sub Committee unanimously;

### **RESOLVED**

That the application for the variation of the premises licence for **(Studio Spaces Limited/E1) 110 Pennington Street, London E1W 2BB** be **GRANTED with conditions.**

### **Conditions**

1. The premises licence holder shall implement, maintain and comply with a wellbeing and safeguarding policy for queer, kink and fetish events. The premises licence holder shall ensure that any external promotor putting on queer/fetish/kink events is aware of and complies with this policy. A copy of the policy will be made available to the Licensing Authority and Police upon written request. Any updates to the policy shall be communicated to the Local Authority and Police within seven days of such updates.
2. Any queer/kink/fetish events being promoted at the premises shall operate a members-only policy by the promoter.

3. Condition 24 of Annex 2 shall apply to any queer/fetish/kink events taking place on the premises

**4. EXTENSION OF DECISION DEADLINE: LICENSING ACT 2003**

Nil items.

The meeting ended at 9.08 p.m.

Chair, Councillor Sabina Akhtar  
Licensing Sub Committee