

LONDON BOROUGH OF TOWER HAMLETS**RECORD OF THE DECISIONS OF THE LICENSING SUB COMMITTEE****HELD AT 12.05 P.M. ON TUESDAY, 28 MARCH 2023****COUNCIL CHAMBER - TOWN HALL, WHITECHAPEL****Members Present in Person:**

Councillor Suluk Ahmed
Councillor Ahmodul Kabir
Councillor Sabina Akhtar

1. DECLARATIONS OF INTEREST

There were no declarations of interest.

2. RULES OF PROCEDURE**3. ITEMS FOR CONSIDERATION****3.1 Application for a new Premise Licence for Chaiwala, 55 Brick Lane, London E1 6PU**

The Sub-Committee considered an application for a new premises licence to be held by Brick Lane Chai Ltd. in respect of Chaiwala, 55 Brick Lane, London, E1 6PU ("the Premises"). The application originally sought authorisation for the provision of late night refreshment from 23:00 hours to 23:30 hours Monday to Thursday and from 23:00 hours to midnight on Friday and Saturday. Non-standard timings to 02:00 hours during Ramadan and on Eid were also sought.

Following discussions with the Licensing Authority, the application was amended so as to apply on Friday and Saturday only, with the non-standard timings to remain.

Objections were received from the Environmental Health Service and from a local resident. These were based on the licensing objective of the prevention of public nuisance.

The Sub-Committee heard from the Applicant's agent, Mr. Rathore, who said that there was no logical basis on which to refuse the application. The application was only for late night refreshment and the Premises catered to people who might want to socialise later but without alcohol. The operator was a franchisee, who operated several other branches in London, including one in Bethnal Green, without any problems. The capacity was around 50 patrons and the hours sought had been significantly reduced as a result of the representations. The Applicant had tried to engage with the Noise Service,

without success, and would accept their proposed conditions if the Sub-Committee saw fit to impose them. Mr. Rathore suggested that the resident making a representation was speculating and there was no evidential basis for suggesting there would be problems.

The Sub-Committee heard from Ibraheem Elias, who spoke briefly to the representation from his service. The resident was not in attendance.

During questions the Applicant explained that there was demand for the later opening times during Ramadan. They had experience of this in their other premises and had never had problems with the police or other responsible authorities. The Sub-Committee was told that people did not tend to congregate outside late at night; they were more likely to be inside the Premises. To ensure adequate control over younger people, especially during Ramadan, they ensured that the store manager was on duty for the evening shifts.

This application engaged the licensing objective of the prevention of public nuisance. The Sub-Committee noted that the Premises were located in the Brick Lane Cumulative Impact Zone (CIZ) and thus it was for the applicant to rebut the presumption that the grant of the licence would impact on the CIZ. Whilst the applicant asserted that they fell within an exception, that was not entirely correct. The Policy indicated what may justify an exception rather than what will justify an exception. Similarly, that the application was for late night refreshment did not justify an exception given that the policy specifically applies to premises selling alcohol and premises providing late night refreshment.

Furthermore, new licence applications invariably require a degree of speculation given that the focus is on the likely impact. This is reflected in the statutory guidance at paragraph 9.4. However, given that the Premises is open, albeit not at the later hours sought, the Sub-Committee would expect to have seen some evidence of public nuisance arising from the operation of the Premises. There was none.

The Sub-Committee therefore did consider that the applicant had rebutted the presumption. They were a food-led business and would be operating to framework hours. The Sub-Committee noted the reduction in hours during the week, which further mitigated any potential impact. A number of conditions had been agreed with some of the responsible authorities, which would also ensure that there would be no impact.

The Sub-Committee noted the supporting information provided by the resident. The reference to the Licensing Sub-Committee hearing in Nottingham was not relevant, given that it was not clear that it was the same franchisee. In any event, however, it was a different premises in a very different area. The photos and videos provided did not, in the Sub-Committee's view, demonstrate any issues of public nuisance. The lack of any evidence arising from the operation of the Premises at present, particularly nearer to closing time, indicated that there was no reason to consider that there would be issues were the Premises to be permitted to open later on

Friday and Saturday, which are normally days on which licensed premises are permitted to open later. For these reasons, the Sub-Committee was similarly not satisfied that granting the non-standard timings would adversely impact upon the licensing objectives.

The Sub-Committee further considered that some of the conditions proposed by the Noise Service would also be appropriate and proportionate for the promotion of the licensing objectives. Proposed conditions 1 and 3 were not imposed. In respect of 1, the Premises was not applying for the provision of regulated entertainment, it was not clear that they had a lobby and, in any event, placing loudspeakers on the street was covered by other legislation. Similarly, proposed condition in essence prohibits the Premises from causing a public nuisance, which is already prohibited by law. Conditions should not duplicate other statutory requirements or obligations nor should they replicate offences in the 2003 Act or other legislation.

The application is therefore granted with the amendments and conditions as set out below:

Provision of late night refreshment

Friday and Saturday 23:00 hours to 00:00 hours

Non-standard timings During the holy month of Ramadan and on Eid, from 23:00 hours until 02:00 hours on the following day.

Opening times of the Premises

Monday to Thursday 08:00 hours to 00:00 hours

Friday and Saturday 08:00 hours to 00:30 hours

Sunday 08:00 hours to 23:00 hours

Conditions

1. 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.
2. An incident log shall be kept at the premises and record all incidents of crime and disorder associated with the premises. The incident log shall be made available on request to an authorised officer of the Council or the Police.
3. Signs shall be prominently displayed both inside and outside the premises asking customers to respect local residents and be quiet when leaving the premises.

4. Clear Signage to be placed in the restaurant windows stating that the premises supports the Council's 'No Touting' policy.
5. Patrons permitted to temporarily leave and then re-enter the premises e.g. to smoke shall be limited to five persons at any one time.
6. There shall be no idling of any vehicles by business customers or drivers associated with the premises.

3.2 Application for a new Premise Licence for Hamlet Pizza, 479 Cambridge Heath Road, London, E2 9BU

The Sub-Committee considered an application for a new premises licence to be held by Hamlet Pizza Ltd. in respect of Hamlet Pizza, 479 Cambridge Heath Road, London, E2 9BU ("the Premises"). The application sought authorisation for the provision of late night refreshment from 23:00 hours to 04:00 hours seven days per week. A number of conditions were offered by the Applicant on the operating schedule.

Representations objecting to the application were made by the Licensing Authority, the Police, Environmental Health, and a local resident. These were based on the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance.

The Sub-Committee heard from the Applicant's agent, Mr. Mangrio. He said that the director of the company, Mr. Hamidi, had been in business for five years with no complaints or issues. The agent asserted that the concerns raised by the responsible authorities were historic and associated with previous operators. The Applicant assured the Sub-Committee that he would comply with any conditions imposed. The Applicant proposed to have SIA-staff on duty to assist with any problems.

Mr. Mangrio confirmed that Mr. Hamidi was the brother of the previous owner. He addressed the residential objection briefly by asserting that no objections had been raised previously and that as the extractor fan in question was by the resident's kitchen window it should not be an issue.

Kathy Driver, on behalf of the Licensing Authority, outlined her objections. In short, there was a long history of the Premises providing late night refreshment outside of the permitted hours when the Premises had been licensed. This included a time when Mr. Hamidi's brother was the licence holder. Various other individuals had been linked to the Premises. Numerous complaints had been made to the Licensing Authority suggesting that the Premises operated almost 24 hours per day. Test purchases and visits in 2021 and 2022 demonstrated this.

The previous licence had been revoked in October 2022 following a review. Mr. Hamidi had applied for a new licence in November 2022. That application had been invalid. Two applications were made in December 2022, neither of

which were valid. Mr. Hamidi had been warned of the issues at the Premises on 1st September 2022, when he had taken over the business. In spite of that, a test purchase on 18th December 2022 showed the Premises operating without a licence, Complaints from residents, which went up to January 2023, also indicated that this was not a one-off incident. Mr. Hamidi had been present on 18th December 2022, when the last test purchase had been carried out. On that occasion, staff became aggressive and confrontational. The Premises' website shows them being open for the supply of hot food until 04:30 hours. Ms. Driver had no confidence in the licence holder complying with any conditions, if the licence were to be granted.

PC Perry echoed Ms. Driver's concerns and commented that the Premises caused noise nuisance as a result of its patrons. He too was of the view that if a licence was to be granted, the Applicant would not comply with it given that he had shown he would not comply with the basic requirements of the law.

Ibraheem Elias of the Noise Service spoke briefly to his service's representation, which opposed the application.

The Sub-Committee heard from Mr. Tian, a resident, who's concern was about the noise from a ventilation pipe. It initially appeared that this was more of a private nuisance rather than public, and more properly dealt with under other legislation. However, Mr. Tian indicated that the noise caused rumbling in the structure. The Sub-Committee was given advice that this could constitute a public nuisance and heard from him about the effects of the fan.

During questions from members, the Applicant stated that he was operating to 23:00 hours and there had been no issues since the December 2022 test purchase. In respect of that it was asserted that the test purchaser had been persuasive and complaining about the late hour and that she had a child who was still awake. The pizza was for a member of staff to take home but they had made the supply in the interests of good community relations. No charge had been made. This account was maintained, despite being clearly at odds with the officer's account. Ms. Driver provided additional detail, which included delivery drivers entering and exiting the Premises and the shutters being partially down.

The Applicant confirmed that he was aware that he did not have a licence to provide late night refreshment. He denied that he had operated past 23:00 hours. He alleged that the complaints were being instigated by other rival businesses. He confirmed, however, on questions from the Legal Adviser, that there was no evidence of that. The Legal Adviser also confirmed that the provision of late night refreshment involves the supply rather than sale so that even if the Applicant's account of no payment having been taken on 18th December 2022 was true, it still constituted the provision of late night refreshment.

The Sub-Committee had considered all the representations made. In terms of Mr. Tian's representation, it did not consider that the noise from the ventilation pipe was likely to be a public nuisance but, even if it was, it was better controlled by other legislation.

The Sub-Committee noted the previous history and the fact that it appeared that the Premises operated without any regard to the law, regardless of whoever had been operating it. The Sub-Committee had concerns about the fact that one of the previous operators had been Mr. Hamidi's brother; whilst his brother's actions are not his, there was clearly a long history of non-compliance by various different operators and Mr. Hamidi put forward nothing to suggest that things would be different if he were to be granted a licence.

Of particular concern was the fact that the Premises appeared to have been carrying on the provision of late night refreshment not only after Mr. Hamidi's company allegedly took over, but also after warnings had been given. The Sub-Committee did not consider the Applicant's version of events on 18th December 2022 to be at all credible. The Sub-Committee, based on all the evidence before it, drew the inference that unauthorised licensable activity had not been carried on simply on a handful of occasions but, as officers and the residents had suggested (albeit that the Sub-Committee notes that the residential complaints were anonymous), on an almost daily basis.

Whilst the Sub-Committee took account of the fact that this was a new application and therefore looked to the future rather than the past, the fact remains that the past was highly relevant to the conduct of those managing the Premises in the future. The long history of failing to comply with the licence or the law, when the Premises were unlicensed, gave the Sub-Committee no confidence at all that this would change in the future. The association between Mr. Hamidi and the operator meant that this was not a situation where the applicant could be said to be a "new broom."

Moreover, Mr. Hamidi himself had demonstrated that he would not uphold the licensing objectives or comply with the licence because he had simply ignored the law after he took over the Premises. This meant that the Sub-Committee could place no weight on his assertions as to future compliance. In this instance, there were really only two options open to the Sub-Committee. Those were to grant the licence, subject to conditions that were appropriate for the promotion of the licensing objectives, or to refuse the application. The Sub-Committee had no confidence that Mr. Hamidi would comply with any conditions imposed nor that the Premises would operate in a way so as to not undermine the licensing objective of the prevention of public nuisance. The application is therefore refused.

3.3 Application to Review the Premises Licence for Bow Supermarket, 163-167 Devons Road, London E3 3QX

The Sub-Committee considered an application for a review of the premises licence held by Cem Yesil in respect of Bow Supermarket, 163-167 Devons Road, London, E3 3QX ("the Premises"). The licence authorises the sale of

alcohol for consumption off the premises. The application was brought by the Licensing Authority and was triggered by sales being made out of hours.

The Sub-Committee heard from Ms. Holland, who set out the history. There had been out-of-hours sales in December 2021 and April 2022. Following the second purchase the Licensing Authority asked Mr. Yesil to add conditions to the licence as those on the licence, which had been “grandfathered” over when the Licensing Act 2003 came in to force, were not suitable. A minor variation had been submitted in August 2022 but contained an application to extend the hours, which cannot be achieved by way of a minor variation. When Mr. Yesil was advised of this, he was informed that a review would be brought to add conditions if a minor variation was not sought.

In November 2022, the variation had still not been sought. Ms. Holland contacted Mr. Yesil on 9th November, who explained he had had some family issues. He was again warned of the risk of a review. He told Ms. Holland that his solicitors would apply within the next couple of weeks. There had been no further contact.

Ms. Holland told the Sub-Committee that the applicant had now agreed the proposed conditions, albeit that there was an amendment being sought to one condition. That was to proposed condition 1, which required a personal licence holder to be present at all times; Mr. Yesil sought to have that apply from 15:00 hours. Ms. Holland had no objection.

Mr. Sutherland addressed the Sub-Committee on behalf of Mr. Yesil. He apologised for this review having been brought. He told the Sub-Committee that Mr. Yesil had instructed solicitors in August to deal with the variation and that they had let him down. Prior to that he had been in Turkey in June and July as his father had been very ill. It was only after the review application had been lodged that he realised his solicitors had let him down, following which he had instructed Mr. Sutherland. He agreed to the imposition of the conditions suggested, with a minor modification to condition 1 proposed by the Legal Adviser to the Sub-Committee.

The application engages the four licensing objectives. The Sub-Committee was content, given the agreed position, to adopt the course requested by both parties. The Sub-Committee considered that it would be disproportionate to take any stronger action when neither party suggested that was warranted in the circumstances and given that there were no further issues arising since April 2022. The Sub-Committee therefore grants the application for review and modifies the conditions of the premises licence as follows:

1. There shall be a personal licence holder on duty on the premises from 15:00 hours and at all times when the premises are open and carrying on licensable activity.
2. 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.

3. The premises shall install and maintain a comprehensive CCTV system. 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. 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) any incidents of disorder;
 - c) any faults in the CCTV system,
 - d) any refusal of the sale of alcohol;
 - e) any visit by a relevant authority or emergency service.
6. All alcohol shall be secured behind lockable grills/screens when the shop is open for business beyond the hours for licensable activities.
7. 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.
8. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available to the police or authorised officer upon request.
9. There will be a prominent signage near the door to the premises reminding the customers to leave the area quietly.
10. All alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises or immediately outside.

4. EXTENSION OF DECISION DEADLINE: LICENSING ACT 2003

The meeting ended at 2.00 p.m.

Chair, Councillor Sulik Ahmed
Licensing Sub Committee