

LONDON BOROUGH OF TOWER HAMLETS

RECORD OF THE DECISIONS OF THE LICENSING SUB COMMITTEE

HELD AT 6.35 P.M. ON TUESDAY, 4 JULY 2023

COUNCIL CHAMBER - TOWN HALL, WHITECHAPEL

Members Present in Person:

Councillor Ana Miah
Councillor Suluk Ahmed
Councillor Shahaveer Shubo
Hussain

Members In Attendance Virtually:

Other Councillors Present in Person:

Other Councillors In Attendance Virtually:

Apologies:

Officers Present in Person:

Officers In Attendance Virtually:

Representing applicants Item Number Role

Representing objectors Item Number Role

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) - TO FOLLOW

The minutes of the meeting were agreed and approved as a correct record.

4. ITEMS FOR CONSIDERATION**4.1 Application for a new premises licence in respect of Parnell Mini Market 117A Parnell Road, London E3 2RT - WITHDRAWN**

This application was withdrawn.

4.2 Application for a new premises licence in respect of Blu Ivy Cafe, Block C 24 Stoneway Walk, E3 5SH

The Sub-Committee considered an application by Levent Demirci in respect of the Blue Ivy Café, Block C 24 Stoneway Walk, London, E3 5SH (“the Premises”). The application sought authorisation for the sale by retail of alcohol for consumption on the Premises from 11:00 hours to 22:30 Monday to Saturday and from 11:00 hours to 22:00 hours on Sundays. The application attracted a number of representations against it, from local residents. These representations were based on all four licensing objectives.

The Sub-Committee was informed that various conditions had been agreed with the responsible authorities. These included the keeping of refusals and incident logs, the supply of alcohol to be ancillary to a table meal, and the prohibition of vertical drinking.

The applicant failed to attend the hearing. The Democratic Services Officer confirmed that the relevant hearing notice had been sent. No response had been received from the applicant. There had been no communication to suggest whether they would or would not be attending. The Sub-Committee was informed of its power to proceed with the hearing in the absence of the applicant and Members chose to do so.

Given the number of representations and that many of them were similar, the Sub-Committee heard from two of the residents, Ms. Eren and Mr. Rizvi, who spoke on behalf of all the objectors.

Ms. Eren expanded on her representation. She told the Sub-Committee that the Premises were located in a quiet area, which did not even have a convenience store. At night it was quiet. The area had the 8th highest alcohol-related crime in London and the 2nd highest rate of anti-social behaviour in London. The residents currently experienced vandalism, drug-taking and drinking in the local park.

Ms. Eren suggested that the Premises would not be able to comply with a table meal condition and suggested that they would be serving simply nibbles and lots of alcohol.

As to the use of the outside area, she queried who would be enforcing that after 21:00 hours and asserted that the number of smokers permitted (10) was an arbitrary figure. She said it amounted to 42% of the interior capacity. Ms. Eren also told the Sub-Committee that lots of under-age drinking took place in the area and that the existence of a licensed premises would attract younger people to the area to drink. She suggested that this would inevitably also lead to drug use. Ms. Eren further spoke to issues relating to planning, such as the permitted operating time. She was informed by the legal adviser that licensing and planning are separate regimes and that if a licence was granted as sought and planning only allowed the Premises to operate to 22:00 hours, then the Premises would be bound to adhere to the planning condition.

Mr. Rizvi expanded upon his representation. He also referred to alleged breaches of planning conditions but emphasised his view that this went to the trust that could be placed in the proprietor to adhere to any licensing conditions. He told the Sub-Committee that there was often Blue Ivy branded litter lying around the area. When he mentioned this to the Premises staff, he was told that they had no interest in dealing with that. He also suggested that the waste bins were overflowing with commercial waste and which impacted upon the residents' ability to dispose of their own waste. When Premises' staff were challenged, the response would be verbal or physical abuse.

Other issues included cars idling late at night which were linked to the Premises. Street furniture was left outside constantly, as was rubbish. Mr. Rizvi said that there had also been problems with noise breakout from the Premises when they played music. He said he had also witnessed near-misses in the parking areas.

Other issues alleged were opportunistic thefts and the general design of the area, which was off-road with one access by road and three by foot, which made it easy for gangs to scatter without being followed. It was suggested that these problems would increase if the licence were to be granted.

This application engages the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. The Sub-Committee did not consider that the other licensing objectives were properly engaged. The public safety objections seemed to be related to the risk of patrons falling into the water after they have left the Premises. However, that is not a matter for the Premises given that patrons would be out of their direct control after they

leave. Similarly, the suggestion that the licence, if granted, would attract under-age drinkers to the area or cause them to take drugs was fanciful and unsupported by evidence.

The Sub-Committee noted that some of the concerns raised seemed to be problems that existed already and were entirely separate from and unrelated to the Premises. The suggestion, for example, that thefts from balconies were likely to increase or that vandalism would do so if the Premises were allowed to sell alcohol was unrealistic.

The Sub-Committee accepted, however, that there was a risk of increased public nuisance, particularly later at night. The location apparently made noise more likely to reverberate in the area, causing disturbance. The Sub-Committee accepted that there could be increased noise outside when patrons went to smoke or when they left and that alcohol did tend to make people louder.

The Sub-Committee noted the suggestion that failing to comply with the planning conditions meant that they could repose less confidence in the management of the Premises to adhere to the licensing conditions. The Sub-Committee was not assisted in this regard by the failure of the applicant to appear. Given that there was nothing to contradict these assertions, that was a matter of some concern to the Sub-Committee. Similarly, the suggestion that the Premises had no qualms about leaving litter and other waste around, which would blight the area, and that they abused residents when confronted, did not give the Sub-Committee any confidence in their willingness to comply with any conditions that might be imposed.

The Sub-Committee noted further that some of the written representations referred to music noise and which it is said they've needed to ask staff to turn down. Whilst it may be that the Premises would nonetheless benefit from the deregulation provisions of the Licensing Act 2003, if there is a need to frequently request that music be turned down, it calls into question the willingness and ability of the management and staff to be mindful of the impact on the neighbouring community and that the risk is that any impact on public nuisance will not be mitigated.

The Sub-Committee considered the application and the agreed conditions. Whilst additional conditions were potentially available, such as the imposition of a litter-cleaning regime, it had no basis for being sure that this would be adhered to by the applicant. It was not open to the Sub-Committee to exclude the sale of alcohol from the scope of the licence since that would amount to a refusal. The conditions for refusing to specify the proposed designated premises supervisor were not met. In the circumstances, the Sub-Committee was satisfied that the only appropriate and proportionate step that could be taken on the information before it was to refuse the application.

4.3 Review of a premises licence in respect of Deni's New Swaton Road E3 4ES

The Sub-Committee considered an application by Alex Brander, on behalf of Tower Hamlets Trading Standards, for the review of the premises licence held in respect of Denni's News, 15 Swaton Road, London, E3 4ES ("the

Premises"). The application followed an under-age sale at the Premises on 1st August 2022, which also indicated other breaches of the premises licence.

The application attracted representations in support from the Licensing Authority and from the Home Office. Trading Standards and the Licensing Authority sought the revocation of the licence.

The Sub-Committee was informed at the start of the hearing that there had been an application to transfer the licence from Dinesh Kanzaria to Manesha Sookun (his daughter and the Designated Premises Supervisor (DPS)) the day before. That had been ineffective due to a failure to provide right to work documentation. However, a further application had been lodged in the afternoon shortly prior to the hearing, to take immediate effect. The Licensing Officer present confirmed that this was the case. The Sub-Committee was informed by the Legal Adviser that, subject to any objection by the police, the transfer appeared to be effective but that the review application would still proceed.

Mr. Brander informed the Sub-Committee of the circumstances surrounding the under-age sale and the other issues found at the shop. These included non-functioning CCTV and no refusal book. The seller had apparently been left in the shop by a member of staff. It is not clear why that happened. The seller, however, gave his address as the shop and, when challenged, called Mr. Kanzaria directly on the phone.

Mr. Brander's written application also referred to other problems at premises operated by Mr. Kanzaria at other premises. These included trade mark offences in June 2009 at 101-103 Brabazon Street, E14, an under-age sale at another premises in Newham in 2011, and most recently an under-age sale at the Brabazon Street premises in December 2022, which is still being investigated.

Mr. Brander accepted that there could be additional conditions imposed on the licence. However, in all the circumstances he had no confidence in the management to comply with any licence conditions in the future and he asked that the Sub-Committee revoke the licence.

Corinne Holland addressed the Sub-Committee on behalf of the Licensing Authority. She stressed that there had been no age-verification policy in place and that the CCTV had not worked for at least two months. Both Mr. Kanzaria and Ms. Sookun had admitted that the refusal book was not being used. Ms. Holland also expressed her concern at the fact that the person selling alcohol had never been identified, was apparently not known to the management, and yet had called Mr. Kanzaria. She suggested that he must have known who he was. Ms. Holland expressed concern that Ms. Sookun did not have sufficient knowledge or experience of licensing and that the transfer would make no difference. She queried the wording of some of the proposed conditions that had been circulated just before the hearing, and whether they were appropriate or enforceable. The Home Office did not appear. Their representation was concerned with illegal working. A visit had been conducted on 6th March 2020 at the Premises. One of those working there had been

found to be working in breach of their employment conditions. A Civil Penalty Referral notice was issued to the business.

The Sub-Committee heard from Mr. Craig on behalf of the premises licence holder. He briefly addressed the proposed conditions and confirmed that one (condition 13) would need amending to delete the last few words, which were not appropriate to these premises. He disagreed with Ms. Holland as to the enforceability of others.

Mr. Craig told the Sub-Committee that Mr. Kanzaria had been unwell for some time and had now stepped back from operating the Premises. The sale had taken place a year ago. Steps have been taken to address the issues and Ms. Sookun was aware of what Challenge 25 was, the requirement to operate a refusal book, and the need for CCTV.

Mr. Craig explained that when the sale took place, the toilets were not functioning. The employed member of staff had left to go to the toilet outside and had allowed a customer to look after the shop. It was suggested that insufficient steps had been taken to identify this person. He maintained that this person was not known to the management.

The company operated by Mr. Kanzaria (Dennis Bow Ltd.) and Mr. Kanzaria plead guilty to all the offences charged. Ms. Sookun, however, pleaded guilty only to the failure to display the statutory tobacco notice and no evidence was offered on the other charges. She had no criminal liability for the other offences and had now taken on the responsibility of holding the premises licence. Mr. Craig asserted that Ms. Sookun should not be held responsible for the issues relating to her father's management of the Premises.

Mr. Craig suggested that rather than revoking the licence, the Sub-Committee should consider imposing additional conditions, removing Ms. Sookun as the DPS, and imposing a period of suspension commensurate with the offending to mark the breach and act as a deterrent.

This application engages the licensing objectives of the prevention of crime and disorder and the protection of children from harm. The Sub-Committee takes under-age sales very seriously, as paragraphs 2.23 and 11.27 of the Statutory Guidance make clear. The Sub-Committee was particularly concerned that the under-age sale revealed other issues, which were that the CCTV had not been working for at least two months, and that the refusals book appeared to have never been used. Whilst the Sub-Committee accepted that there was only the evidence of one sale, the fact remained that without these measures in place it was impossible to be sure that this was an isolated incident. Indeed, Mr. Brander's review application suggested that it was not.

Whilst it was said that Mr. Kanzaria's management of the Premises had deteriorated, the Sub-Committee noted other issues arising at both this shop and another one, both of which involved under-age sales, one as recently as December 2022. The Sub-Committee accepted that Ms. Sookun may not have anything to do with that other shop; however, these shops were operated as a family business and the Sub-Committee noted that the transfer

of the licence did not take place at a much earlier time but just before the review hearing. The responsible authorities had concerns over the management's ability to operate in accordance with the law and this did not give the Sub-Committee confidence that matters would now be addressed.

The Sub-Committee noted that Ms. Sookun had been the DPS since April 2019. This pre-dated the Home Office enforcement visit in 2020. The prevention of illegal working is stressed throughout the Statutory Guidance. Whilst she may not have been directly involved in the employment of that person, given the expectation that the DPS will have day-to-day responsibility for a premises, it undermines any confidence that the Sub-Committee can place in her. The Sub-Committee noted that admissions made at her interview, which included not knowing what Challenge 21 was or that it was a condition of the premises licence, not knowing whether staff did or did not hold personal licences, and not having any written processes to deal with under-age sales.

The Sub-Committee noted the assertion made that the seller was unconnected with the Premises. Members were not convinced that the seller was not known to the Premises. The seller called Mr. Kanzaria on the telephone immediately. It did not strike the Sub-Committee as being at all likely that the seller was unknown in those circumstances.

The Sub-Committee noted that Ms. Sookun now understood the importance of the conditions and what was required of her. However, at the relevant time she was the DPS and thus held a personal licence. She ought to have known what was required of her in that role and the meaning of things such as Challenge 25 and the importance of compliance with the licence conditions. It was clear to the Sub-Committee that her day-to-day oversight was lacking and had been for a prolonged period of time; this was not a one-off incident.

The Sub-Committee has carefully considered the options open to it. It accepts that its role is not to determine guilt or innocence but to ensure the promotion of the licensing objectives. It does not consider that taking no action is appropriate here and it was not suggested by any party that this was the case. Removing a licensable activity would be tantamount to revocation given that the licence only authorises the sale of alcohol. Mr. Craig had suggested that the Sub-Committee should impose new conditions on the licence and combine that with the removal of Ms. Sookun as the DPS and to impose a period of suspension. However, the Sub-Committee needed to be satisfied that this would suffice to promote the licensing objectives.

The Sub-Committee had particular regard to the Statutory Guidance. Paragraph 11.21 notes that poor management may be a *“direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented.”* This seemed to the Sub-Committee to be the case here. Paragraph 11.23 of the Statutory Guidance states that *“[I]t will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed*

premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.”

Similarly, paragraphs 11.26 to 11.28 remind licensing authorities of the importance of taking tough action in certain cases. At paragraph 11.26 the Statutory Guidance states that *“It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority’s duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.”*

This is not a case where the problems have arisen despite full compliance with conditions and with the best efforts of staff and the licence holder (or the DPS). These problems have arisen because of their failings. Paragraph 11.27 indicates that certain activity associated with licensed premises needs to be treated particularly seriously. These include where the premises are being used for the sale of alcohol to minors, for the employment of people who have no right to work in the UK, and the storage or sale or smuggled tobacco or alcohol. The Sub-Committee considered that the prior finding of counterfeit alcohol, albeit in another shop run by Mr. Kanzaria, was equally serious and that it was appropriate to have regard to those other matters as they affected the confidence the Sub-Committee could have in the management as a whole.

The Sub-Committee accepted that Ms. Sookun may not have been involved with the Premises before April 2019. However, this and the other shops appeared to be a family-run business and the Sub-Committee had concerns as to how much of a clean sweep this would in fact be and that this would not suffice to promote the licensing objectives. There was a history of problems over a long period of time, and the Premises’ management had had ample opportunity to improve things. That had not happened, and the Sub-Committee had no confidence that things would now change. The Sub-Committee is therefore satisfied that the only appropriate and proportionate step to take is the revocation of the premises licence.

5. APPLICATION FOR A TEMPORARY EVENT NOTICE FOR BOAT LIVE, 90 WHITE POST LANE HACKNEY WICK LONDON E9 5EN

This application was withdrawn.

6. EXTENSION OF DECISION DEADLINE: LICENSING ACT 2003

Snack N That 381 Bethnal Green Road E2 0AN	18 th July
Wapping Tavern 78-80 Wapping Lane, London E1W 2RT	18 th July
Limin 455-459 Hackney Road London E2 9DY	LICENSING SUB-COMMITTEE, 04/07/2023 18 th July SECTION ONE (UNRESTRICTED)
Wicked Fish, Queen Yard White Post Lane, London, E9 5EN - Variation	18 th July
Wicked Fish, Queen Yard White Post Lane, London, E9 5EN – Review	18 th July

The meeting ended at 8.35 p.m.

Chair, Councillor Ana Miah
Licensing Sub Committee