

LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE LICENSING SUB COMMITTEE

HELD AT 6.35 P.M. ON TUESDAY, 9 JANUARY 2024

COUNCIL CHAMBER - TOWN HALL, WHITECHAPEL

Members Present in Person:

Councillor Ana Miah
Councillor Suluk Ahmed
Councillor Iqbal Hossain

Officers Present in Person:

Ms Lavine Miller-Johnson
Ms Nicola Cadzow
Ms Corrine Holland
Mr James Doherty
PC Mark Perry

Others In Attendance :

Mr Tituana
Mr Bennatti
Mr Miranda
Mr Rhys Rose

1. DECLARATIONS OF INTEREST

There were no declarations of interest.

2. RULES OF PROCEDURE

The rules of procedure were noted.

3. ITEMS FOR CONSIDERATION

**4. APPLICATION FOR VARIATION OF A PREMISES LICENCE FOR BAR
104, 104 BRICK LANE, LONDON, E1 6RL**

The Sub-Committee considered an application by Bar 104 Ltd. to vary the premises licence held in respect of Bar 104, 104 Brick Lane, London, E1 6RL ("the Premises"). The licence currently authorises the sale by retail of alcohol (on-sales) and recorded music from 11:00 hours to midnight seven days per week and late-night refreshment from 23:00 hours to midnight every day. The application sought to vary the terminal hour for the provision of late night refreshment to 02:00 hours on Fridays and Saturdays.

Representations against the application were received from the Licensing Authority and from the Environmental Health Service. The representations referred to the fact that the Premises are located in the Brick Lane Cumulative Impact Zone (CIZ), which was not referenced in any way in the application, and that the applicant offered no conditions to address the potential impact of the proposed variation on the licensing objectives of the prevention of public nuisance and the prevention of crime and disorder.

Applicant

Carlos Tituana, the Designated Premises Supervisor (DPS) and Federico Benatti. Mr. Tituana explained that the variation was sought as the Premises currently closed early and they were catering to the local Bolognese community. Conditions had been agreed with the police and he apologised for not having offered any conditions in the application. He explained that the Premises could hold only a small number of people and there was no proposal to vary the hours for the sale of alcohol or music. They also indicated that they would have a dispersal policy in place.

Mr. Benatti explained that they operated premises in other similar locations and that staff were trained to handle complaints and dispersal.

During questions from Members, Mr. Tituana confirmed that they were not aware of the CIZ at the time of making the application and that they only became aware of it afterward. He also informed the Sub-Committee that he had not checked this beforehand. He said that he was not aware that he needed to suggest conditions himself but that he had since agreed conditions with the Police. He suggested that they would be willing to arrange for a manager to be SIA-trained and if there were to be queues outside, they would consider the use of security.

Mr. Tituana confirmed that he had taken over the Premises in August 2023 and that they had been operating since October 2023. There were two staff on duty at all times. Mr. Tituana, in response to a question from the Legal Adviser to the Sub-Committee, agreed that if the variation was granted he was content for there to be a condition requiring alcohol consumption to cease at 00:30 hours i.e. thirty minutes "drinking-up time." Otherwise, patrons could potentially buy large quantities of alcohol just before midnight and continue to consume it.

Environmental Protection

Ms. Cadzow of the Environmental Health Service addressed the Sub-Committee and spoke to her representation. She was concerned about the lack of any conditions proposed to promote the licensing objective of the prevention of public nuisance, particularly if there was increased footfall. She was also concerned about how alcohol sales after hours would be controlled. She asked the Sub-Committee to refuse the application but, if it was minded to grant, to impose appropriate conditions.

Licensing Authority

Ms. Miller-Johnson addressed the Sub-Committee on behalf of the Licensing Authority. She echoed Ms. Cadzow's concerns about the Premises' location within the CIZ and the lack of any suggestion in the application as to how the variation could impact on the CIZ and be mitigated. It was not clear how customers would be stopped from accessing alcohol, for example. She considered that this variation would impact on the CIZ.

Both officers confirmed, when asked, that there were no complaints in relation to the Premises that they were aware of.

The application engaged the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. The Premises are located in a CIZ and the applicant therefore has to prove that they will not add further to the impact experienced in an already saturated area. The Policy is intended to be strictly applied (Paragraph 7 of Appendix 3 to the Policy) and the Policy gives non-exhaustive examples of premises that might be considered as exceptions (Paragraph 12). The Premises does not fall within the suggested exceptions.

The Policy states, at Paragraph 11 of Appendix 3, that "...applicants will be expected to comprehensively demonstrate why a new or varied licence will not add to the cumulative impact. They are strongly advised to give consideration to mitigating potential cumulative impact issues when setting out steps they will take to promote the licensing objectives in their operating schedule." (emphasis added)

The responsible authorities were rightly concerned by the lack of any proposed conditions in the application, particularly as this was a licence that had been "grandfathered" over when the Licensing Act 2003 came into force. The applicant had no knowledge at all that they were operating within a CIZ. Mr. Tituana said he was not aware he needed to suggest conditions. As a DPS, the Sub-Committee was surprised that a DPS would be unaware of the importance of conditions, particularly within a CIZ. The Sub-Committee noted that the applicant was willing to agree to conditions; however, it suggested a real lack of understanding of the particular area in which the Premises were operating.

The Sub-Committee also took account of the applicant being a relative newcomer. Although the licence had been held in respect of the Premises for some years, the applicant had only been operating the Premises for three months. Whilst the Premises might have a track record, the applicant does not. That too suggested to the Sub-Committee that they did not fully understand the area in which they operated or the issues that would arise in respect of a venue opening late into the night at the weekend.

Decision

The Sub-Committee acknowledged that the variation sought was relatively modest, to open an extra two hours on only two days and that it did not seek to extend the sale of alcohol or the provision of regulated entertainment. Those two days are of course the weekend, when the problems within a CIZ will likely be at their highest and to the later hours when those issues are more likely to occur. For the reasons set out above, the Sub-Committee was not satisfied that the applicant had rebutted the presumption against grant and had demonstrated that they could operate without adding further impact on the CIZ. The Sub-Committee's decision is to refuse the variation.

5. APPLICATION FOR A PREMISES LICENCE FOR (BOAT LIVE), 90 WHITE POST LANE, LONDON E9 5EN

The Sub-Committee considered an application by Boat Live Works Ltd. for a new premises licence to be held in respect of Boat Live, 90 White Post Lane, London, E9 5EN ("the Premises"). The application sought authorisation for licensable activities as follows:

The sale by retail of alcohol (on-sales)

- 10:00 hours to 23:30 hours Monday to Thursday;
- 10:00 hours to 00:00 hours Friday and Saturday;
- 10:00 hours to 22:30 hours Sunday

Regulated entertainment (recorded music – indoors)

- 08:00 hours to 22:30 hours Sunday to Thursday;
- 08:00 hours to 00:00 hours Friday and Saturday

Provision of late night refreshment

- 23:00 hours to 23:30 hours Monday to Thursday;
- 23:00 hours to 00:00 hours Friday and Saturday.

The premises would be open to the public from 08:00 hours every day until thirty minutes after licensable activities cease.

Representations were received against the application from the Police, the Environmental Health service, the Health & Safety service, the Licensing Authority, the London Legacy Development Corporation (LLDC) and a local resident. The representations were concerned with the impact of the application, if granted, on the licensing objectives of the prevention of public nuisance, the prevention of crime and disorder, and public safety.

Representations were also received in support of the application from three local residents. These related to the licensing objectives of the prevention of public nuisance and the prevention of crime and disorder.

Applicant

The Sub-Committee heard from Antonio Miranda, director of the applicant company, and Rhys Rose, the proposed designated premises supervisor (DPS). Mr. Miranda told the Sub-Committee that some of the properties nearby were commercial properties rather than residential. He asserted that there were no residential leases in that area.

He said the Premises were not likely to be there permanently. He suggested that the venue would probably only be there for about two years and would then move on. He said that they would be promoting co-working, that the Premises would be soundproofed, and that they intended having up to four SIA-accredited staff, which would create jobs. With respect to the representation from the LLDC, Mr. Miranda asserted that the planning regime allowed for “pop-ups”, which was what they were doing and that there was no contravention of planning control.

Mr. Rose added to Mr. Miranda’s submissions to explain that they had scaled the application back following the rejection of a previous application. They had provided, detailed operating procedures and a detailed suite of conditions. His ability to manage the event space was not in question; the Premises had operated under 26 days of temporary event notices (TENs). To the best of his knowledge, no problems had arisen as a result.

Metropolitan Police

PC Perry addressed the Sub-Committee. He told the Sub-Committee that there were two internal areas in the Premises as well as the outside space. The Premises were very close to residential properties and that meant that the venue had to operate to complete efficiency if it were not to cause problems to those neighbouring properties.

He noted that it would be very difficult to keep up to three hundred people quiet when leaving the venue at midnight after having been partying. He noted that work had been done by the applicant. He was concerned that there was no dedicated search area and that it was not clear how they would manage people at the door. The applicant had mentioned four SIA staff but PC Perry had not seen a security plan.

PC Perry told the Sub-Committee that the police had no concern with the applicant hosting community events. However, it was the late-night events that caused concern. It was not clear how the potential impact on crime and disorder would be addressed.

Environmental Protection

Nicola Cadzow addressed the Sub-Committee on behalf of the Environmental Health Service. Her main concern was the risk of public nuisance and the impact on nearby residential properties. Her colleague had visited in November with other officers and whilst the sound testing had been carried out, he had stood in the stairwell of a nearby block and had been able to hear bass noise. It was also acknowledged that ambient noise levels in the area were louder at night because of other nearby venues and this venue adding to that was a concern.

Licensing Authority

Lavine Miller-Johnson of the Licensing Service spoke to her representation. She echoed the concerns of PC Perry and Ms. Cadzow. Various concerns had been flagged with the applicant in September 2023 and had still not been addressed by November, when officers visited again. Some of the work that had been done gave rise to further hazards. There were concerns from a crime and disorder perspective.

Ms. Miller-Johnson was also concerned about noise clashing between the boat and the container. She remained of the view that this location was not appropriate for a venue of this nature.

Health and Safety

James Doherty addressed the Sub-Committee in relation to health and safety concerns, which had been outlined in his written representation. He acknowledged that most were 'housekeeping' matters such as loose cables. Of more concern were an insecure handrail, a lack of smoke alarms, and non-functioning fire gates. It was not clear to him that these issues had yet been addressed.

During questions from members, PC Perry acknowledged that he had seen a number of documents sent by the applicant late the evening before. There was a considerable level of detail. His concern, however, was that various matters of concern had been brought to the applicant's attention already and if those had not yet been addressed, it called into question the confidence the Sub-Committee could have that they would be addressed.

Mr. Miranda confirmed that some of the issues addressed had been dealt with. The wall inside the boat, for example, which Ms. Miller-Johnson considered a potential trip hazard, had been addressed by creating an alternative entrance into the boat. Mr. Rose highlighted that the wall had never actually been a problem and that people stepped over it easily and without incident. A ramp had been built so that wheelchair users could access the toilets.

Mr. Rose, when asked about the differences between this application and the last application, stated that this was a time-limited application although he could not recall the proposed end date. The Legal Adviser sought clarification that this was correct as the application form did not indicate that a time-limited licence was sought. The applicant confirmed that this was the case and suggested, if the application was granted, that it be for one year from the date of grant. The responsible authorities were asked for their views on this and whether it altered their position in any way. It did not. Fundamentally, they remained of the view that there was still more that needed to be done but that this was not an appropriate location for a venue of this nature.

The applicant also confirmed following queries from the legal adviser that work had been done inside the boat and the container so that there were effective sound lobbies. This would prevent noise escape as patrons entered

and exited the boat or the container. In addition, a sound limiter condition had been proposed by the applicant.

This application engages the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance, and public safety. The Sub-Committee had read the papers and noted the written representations made. It should also be noted that members of the Sub-Committee had some familiarity with the premises as a number of TEN hearings had been held over the last several months as well as an application for a premises licence that was heard by the Sub-Committee in August 2023. However, this application was considered on its own merits.

With respect to the representation by the LLDC, the Sub-Committee was not in a position to assess whether or not the application, if granted, would be a contravention of planning control. However, enforcement of planning control is a matter for the local planning authority and the grant of a premises licence would not be an indication that the use of the land in planning terms is lawful.

The Sub-Committee noted the concerns of the responsible authorities, and Mr. Doherty in particular, as regards public safety. Clearly, premises need to be safe for the users. Mr. Doherty fairly admitted that a number of his concerns were “housekeeping” matters, such as minor trip hazards and loose cables. In and of themselves, these would not justify a refusal of a premises licence. The licence holder would be required to comply with other statutory requirements such as under the Health and Safety at Work etc. Act 1974 and the Regulatory Reform (Fire Safety) Order 2005. It is therefore particularly important that the Sub-Committee does not duplicate other statutory requirements. Whilst Mr. Doherty was right to flag his concerns, the Sub-Committee did not consider that the public safety issues, in and of themselves, were so serious as to justify refusal of the application. What the Sub-Committee did take into account, however, and was a concern, was the fact that

some of these issues still appeared unresolved to date. The applicant’s own documents, provided the evening before the hearing, indicated that their health and safety contractor was not due to inspect until 11th January 2024 (email from Jenna Ward dated 3rd January 2024).

By the same token, the Sub-Committee considered that some of the concerns raised by the responsible authorities could be addressed by way of conditions. For example, the suggestion of “noise clash” between the boat and the container could be addressed by the sound limiter condition proposed by the applicant. Further, the applicant asserted (although no documentation had been provided) that there were sound lobbies installed which mitigated noise escape as patrons entered and exited.

Similarly, whilst the Sub-Committee noted that that bass noise could be heard in the stairwell of a nearby residential building, it did not follow that it was audible within the residential properties themselves. However, it could nonetheless still constitute a public nuisance. Again, however, this was potentially something that could be mitigated by way of a condition.

However, other matters seemed to the Sub-Committee to be less able to be dealt with by way of conditions. The Premises are located very close to residential properties. Mr. Miranda maintained that there were no nearby residential properties. Given the number of objections to TENs that have been heard by the Sub-Committee as well as the previous licence application, which have highlighted the proximity of residential premises nearby, it is surprising that this is being asserted now for the first time. Not only was this clearly at odds with the representations made by several of the responsible authorities, but it was also at odds with the applicant's own acoustic report, which clearly referenced nearby residential properties. This did not give the Sub-Committee confidence in Mr. Miranda that his company would promote the licensing objectives, particularly that of the prevention of public nuisance.

In addition, whilst it was possible to impose some conditions to mitigate music noise (the Sub-Committee recognised that these would technically be enforceable only from 23:00 hours to the terminal hour due to the deregulation of regulated entertainment), such conditions would not be able to address noise from patrons within the outside area. The Sub-Committee considered that such noise would be inevitable, particularly later in the evening when patrons have been consuming alcohol and have been in a contained environment and then come into the open. Such noise, in such close proximity to residential properties, would be likely to impact upon the public nuisance licensing objective.

In addition, as PC Perry noted, there was nowhere for patrons to wait for transport home and that as they left the venue patrons would inevitably be hanging about in close proximity to residential premises, again adding to the potential. If as many as three hundred people left at the end of the evening (the Sub-Committee recognised that this would not always be the case) it was hard to see how noise disturbance would not be almost inevitable.

The Sub-Committee also recognised that the applicant had carried out some works to the Premises. Nonetheless, the responsible authorities queried whether the Sub-Committee could have confidence in those managing and running the Premises to

do what was necessary, given how long it had taken to address some matters and that some nonetheless remained outstanding. This was particularly the case with some matters that seemed relatively easy to resolve, such as the repositioning of the CCTV cameras to afford a full view of the search area.

The objection by one local resident refers specifically to problems following some of the events held under TENs. This referred to patrons urinating in the surrounding area, particularly around Schwartz Wharf and noise from the patrons. There were three supporting representations from local residents. Two of those were identical, the other referred to the potential positive effect of inclusion. It did not say anything specific about any of the licensing objectives. The Sub-Committee derived limited assistance from these although it accepted that the presence of SIA staff could assist in making people in the area feel safer.

The Sub-Committee considered the options open to it. Whilst it considered that some of the concerns raised could be addressed by way of conditions, it did consider that the licensing objectives of the prevention of public nuisance and the prevention of crime and disorder would not be promoted by granting this licence. The key concern was the very close proximity of the Premises to residential properties and the likely impact of noise from patrons in the outside area as well as much later in the evening upon dispersal. Mr. Miranda's suggestion that there were no nearby residential properties did not instil the Sub-Committee with confidence in him. Whilst Mr. Rose would be the DPS and have some day-to-day control, the licence holder would be the company, not Mr. Rose.

In addition, the concerns raised that works still needed to be done after what was effectively a lengthy period of time did not give the Sub-Committee confidence that they would be carried out in a timely manner and before the Premises opens to the public. The Sub-Committee noted that matters had been addressed in a rather haphazard manner, with documents being provided late the evening before and Mr. Miranda telling the Sub-Committee that work had been done but that no-one had been able to get to the Premises within a day or so of the hearing in order to provide up-to-date photographs. Similarly, the fact that it was unclear to all concerned that the intention was to apply for a time-limited licence also served to highlight the degree of disorganisation that appeared to be linked to this application. None of this instils the Sub-Committee with confidence that a similar approach will not be taken to the running of the Premises, with the potential impact upon the licensing objectives.

Decision

It did not seem feasible to the Sub-Committee to exercise the power to remove a licensable activity from the scope of the licence. The provision of late night refreshment was, in this context, not of particular concern. Removing either or both the sale by retail of alcohol or recorded music would significantly alter the nature of the venue and it was not suggested that this was a realistic option.

The Sub-Committee considered that one fundamental difficulty that cannot be overcome is the proximity to residential properties. The Sub-Committee did consider whether the suggestion that the licence would be time-limited but this did not fundamentally change matters. If public nuisance was the likely outcome of this application, then granting the licence for one year would not alter that outcome. That was a rather different proposition from a TEN or a time-limited premises licence for a weekend. Having regard to all the material before it, the Sub-Committee was satisfied that the only appropriate and proportionate decision open to it is to refuse the application in its entirety.

6. EXTENSION OF DECISION DEADLINE: LICENSING ACT 2003

Carwash, 1 Quaker Street, London E1 6SZ
Princelyn Grocery & Restaurant 477 Bethnal Green Road London E2 9QH
Bar Ceylon Basement & Ground 57 Commercial Street London E1 6BD
Code Floor 3-4, 34 Westferry Circus Canary Wharf London E14 8RR
Wang Wang 4a Commercial Street E1 6LP
All Points East Victoria Park Grove Road Bow E3 5TB

To be extended to the 25th January 2024

The meeting ended at 8.30 p.m.

Chair, Councillor Ana Miah
Licensing Sub Committee