

**LONDON BOROUGH OF TOWER HAMLETS**

**MINUTES OF THE LICENSING SUB COMMITTEE**

**HELD AT 3.30 P.M. ON THURSDAY, 31 AUGUST 2023**

**COUNCIL CHAMBER - TOWN HALL, WHITECHAPEL**

**Members Present in Person:**

Councillor Suluk Ahmed  
Councillor Iqbal Hossain  
Councillor Peter Golds (Leader of the Conservative Group)

**Others Present in Person:**

Mr Gasior  
Mr James Rankin  
Mr Studd  
PC Mark Perry  
Mr Mohshin Ali  
Mr Jonathan Melnick  
Mr Joel West.

**1. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**2. RULES OF PROCEDURE**

The rules of procedure as set out in the agenda pack were noted.

**3. MINUTES OF THE PREVIOUS MEETING(S)**

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

**4. ITEMS FOR CONSIDERATION**

**4.1 Application for a variation of a premises licence for Wicked Fish Queens Yard White Post Lane London E9 5EN**

The Sub-Committee considered an application by Wicked Fish, Queens Yard White Post Lane London E9 5EN ("the Premises") for a variation of its licensable hours for Late Night Refreshment. Representations on this application had been received from the Police and the Licensing Authority.

The Sub-Committee considered at the same time an application by PC Mark Perry on behalf of the Metropolitan Police for the review of the premises licence held by Wicked Fish, Queens Yard White Post Lane London E9 5EN ("the Premises"). The application followed police analysis of CCTV at the premises over the course of several weeks in early 2023 identifying alleged breaches of licence conditions. The application was supported by the Licensing Authority.

All parties present confirmed they no objections to both items being heard together.

The Sub-Committee then heard representations from

- PC Mark Perry, on behalf of the Metropolitan Police.
- Moshin Ali, Licensing Officer, on behalf of the Licensing Authority.
- Michal Gaiser (Applicant), James Rankin, (Barrister) and Adrian Studd on behalf of the Premises licence holder.

### **Applicant**

Mr Rankin who was representing his client made his submission to the sub-committee, this was a High end late night premises. The applicant was originally unaware of the licensing requirements. and has applied for variations of the licence several times with no objections. The applicant was confused with the terms of trading.

It was not an offence to consume food after the hours. Mr Gazier states that he had no previous involvement with Wicked Fish nor had any connection to the unfortunate murder that had taken place. Mr Gazier provided CCTV. Willingly to the police which is not a condition of his license. The Police are side-tracked by identifying the licensable hours.

The Law changed in 2003, with the provision of late night refreshment The offence being this, and the venue being open is case law, this is not an offence queuing on the cctv was evidence of that.

The context of this was many people just sitting and consuming food which was not an offence. And could do that for as long as they wished. The problem was the lost trust by the police, the continuing misunderstanding between trading and serving. The Applicant was sorry if this were a prosecution, he would get a fine. But we are before the sub-committee, being asked to be stripped of his licence, which was step too far. And disproportionate.

NOX users are those that go to nightclubs not late night refreshment venues. The reality were clubbers. However, with the exception of some people using NOX at the premises. Mr Gasior was not present rolling a joint.

Officers did visit the premises that night, where they witnessed rolling of the joint. and possibly seen NOX too. They did not take action on this. The person

in question was a member of staff. He is no longer an employee. And there have been no other reference to drugs connected to premise.

This has been an expensive experience for Mr Gasior Mr Ranking sought the sub-committee to suspend the licence and send a message, or could give undertaking not to trade after 23:00hrs for a period that Sub-Committee decides, to revoke the licence was a step too far.

### **Metropolitan Police/Licensing Authority**

PC Perry submitted that as the area grew more residential and the night-time economy attracted more people, crime and disorder would increase, particularly given that the Premises' staff were allowing people to deal from it. The only way to prevent this was for the Premises to not open beyond 23:00 hours. He referred to an email of a tasking operation on 28<sup>th</sup> and 29<sup>th</sup> July, which appeared at Page 4 of the supplemental agenda, and which referred to two illegal food stalls being shut down and which reduced the crowds over the two nights and reduced the demand for NOx. In his view, only revocation would address the issue and granting the variation would not assist and would simply be rewarding bad behaviour.

Mr Mohshin Ali, on behalf of the Licensing Authority, addressed his representation briefly. He commented that Mr. Gasior was aware of the need for a licence and to comply with it. He was of the view that not revoking the licence or granting the variation would lead to further breaches.

After the presentations from all parties the Sub-Committee had the opportunity to ask questions which were answered and responded to.

### **Decision**

The Sub-Committee considered two applications with respect to premises known as Wicked Fish, Queen's Yard, White Post Lane, London, E9 5EN ("the Premises"). The premises are currently licensed for the sale by retail of alcohol from 12:00 hours to 23:00 hours Monday to Sunday and for the provision of late night refreshment from 23:00 hours to 01:00 hours Sunday to Thursday and from 23:00 hours to 04:00 hours on Friday and Saturday. The closing time of the Premises as set out on the licence was thirty minutes after the cessation of licensable activity. The licence holder is Michael Gasior.

The first application was an application for review of the premises licence brought by the Metropolitan Police on the basis of the crime and disorder and prevention of public nuisance licensing objectives. That application was supported by the Licensing Authority. The application had originally come before the Sub-Committee on 6<sup>th</sup> June 2023 and been adjourned to this evening. The second application, which had been prompted by the review application, was an application to vary the premises licence so as to extend the opening hours and the permitted hours for the provision of late night refreshment. That application sought an extension to the permitted hours for

the provision of late night refreshment to 05:00 hours on Friday and Saturday. That had been objected to by the police and by the Licensing Authority.

As the two applications addressed the same issues and the evidence to be relied upon was the same in both applications, the parties were agreed that the Sub-Committee should hear them both together rather than considering each separately.

The review itself had been triggered after the police had reviewed the Premises' CCTV footage initially supplied to assist with an investigation into a murder committed in Queen's Yard on 11<sup>th</sup> February 2023. The Sub-Committee was informed clearly that there was no suggestion that the Premises had any involvement in or bore any responsibility for that incident.

The CCTV footage supplied had revealed potential breaches of the premises licence, namely trading outside of permitted hours. As a result, the police viewed a further one month's worth of footage. PC Perry told the Sub-Committee that this footage showed two things. Firstly, that the Premises had been constantly trading beyond its permitted hours over the course of that month. Secondly, the late opening hours of the Premises hindered rapid dispersal of patrons from other venues. It encouraged people to hang around the area. Some of those people would be vulnerable, as a result of drink or drugs, and might end up as victims of crime.

PC Perry referred to a warning letter to the licence holder dated 14<sup>th</sup> October 2021 (Page 167), which warned Mr. Gasior that he was providing late night refreshment without a licence operating beyond 23:00. At Page 169 was an email response from Mr. Gasior, stating he might have been open a little longer because of a massive crowd and that he was in the process of applying for a premises licence. PC Perry's view was that the licence holder had received plenty of warnings from the responsible authorities and knew what his permitted hours were.

PC Perry told the Sub-Committee that the review of the Premises' CCTV footage showed repeated trading outside of permitted hours. Mr. Gasior's account was that it was an honest mistake and said that he had been told by his licensing consultant that he could trade until 04:30 hours. The CCTV, however, showed trading until 05:00 hours at times, to which Mr. Gasior's response was that he could not see his clock and sometimes lost track of time. This was not, in PC Perry's view, a credible explanation.

PC Perry explained that staying open beyond the permitted hours caused people to congregate in the area. There were issues of crime and disorder in the area that were associated with dispersal. He referred to an incident about a week before the hearing where members of the public were assaulted by Nitrous Oxide (NOx) sellers.

PC Perry referred the Sub-Committee to photographic stills from the CCTV (Pages 143 to 149). He said these showed people queuing and eating. He referred to Mr. Studd's reports, which suggested that the issues of NOx and drugs was unrelated to the Premises and was the result of people loitering. He drew the Sub-Committee's attention to the photos on Pages 146 and 147.

These showed balloons, which were consistent with NOx use, two large canisters of NOx, and someone filling up the balloon. The photo on Page 146 also showed a card payment reader and which he suggested was evidence of dealing in NOx. He also referred to what he said was a cannabis grinder in the photo on Page 147, and that he did not believe these to be one-off incidents.

Mr. Gasior asserted that the police had attended during this period and had done nothing. PC Perry told the Sub-Committee that the area was the second-biggest nighttime economy and that one of the key tasks of the Late Night Levy police was to tackle NOx dealing. He found it hard to believe that police officers witnessing such activity in the area would not deal with it. There had been two specific operations in the last month which had been focused in the area. PC Perry told the Sub-Committee that he would have expected Mr. Gasior to contact him for advice if there was drug dealing taking place in his venue. Mr. Gasior had not contacted him directly or to the Safer Neighbourhood Team.

PC Perry submitted that as the area grew more residential and the night-time economy attracted more people, crime and disorder would increase, particularly given that the Premises' staff were allowing people to deal from it. The only way to prevent this was for the Premises to not open beyond 23:00 hours. He referred to an email of a tasking operation on 28<sup>th</sup> and 29<sup>th</sup> July, which appeared at Page 4 of the supplemental agenda, and which referred to two illegal food stalls being shut down and which reduced the crowds over the two nights and reduced the demand for NOx. In his view, only revocation would address the issue and granting the variation would not assist and would simply be rewarding bad behaviour.

Mohshin Ali, on behalf of the Licensing Authority, addressed his representation briefly. He commented that Mr. Gasior was aware of the need for a licence and to comply with it. He was of the view that not revoking the licence would lead to further breaches and that the Sub-Committee should revoke the premises licence.

Mr. Rankin addressed the Sub-Committee on behalf of his client and explained that when he had first started the business Mr. Gasior had been unaware of the need for a premises licence. Once that was brought to his attention he had applied for a licence and that was granted in December 2021. Two variations had been sought since and neither had been opposed by any responsible authority.

Mr. Rankin told the Sub-Committee that there appeared to be a degree of confusion and that no offence was committed by allowing patrons to remain on the Premises to consume their food as long as it had been purchased before the terminal hour. He accepted, however, that there were some occasions where it was clear that the Premises had traded beyond its permitted hours, particularly where the CCTV footage showed patrons queueing after 04:00 hours. It was for that reason that Mr. Gasior had sought the variation.

Mr. Rankin asserted that this was an honest mistake on Mr. Gasior's part. He submitted that a revocation on a first review would be disproportionate. Customers could presently purchase food before 04:00 hours and consume it on the Premises to 04:30. He accepted the Police's concerns about people hanging around and suggested that there would be more force in PC Perry's submissions if the Premises closed at 02:00 hours. The patrons were not those using NOx; those users were those attending nightclubs.

Mr. Rankin accepted that the stills of 11<sup>th</sup> February 2023 showed people in the Premises with balloons and canisters of NOx. He accepted too that a patron was seen rolling a cannabis joint during that evening. However, Mr. Gasior was not present at the time. The member of staff who had allowed that to happen had been dismissed. Mr. Rankin also stated that Mr. Gasior's account was that police had entered during this time and seen this activity going on and had done nothing.

Mr. Rankin submitted that the way to deal with these problems was a multi-agency approach, such as had been undertaken recently. This had been an expensive experience for Mr. Gasior and he was unlikely to be in front of the Sub-Committee again. He suggested that a short period of suspension could be the appropriate step. The variation was intended to address the problem that had occurred of trading outside of permitted hours. There had been no complaints from residents or other people and a petition signed by 775 people had been submitted in support of the venue.

During questions from members, PC Perry explained that the only late-night venue in Queen's Yard was Colour Factory and so the only people dispersing from the area late at night were theirs. The reason that the NOx sellers came to places such as Queen's Yard was in order to sell to those people.

PC Perry also confirmed that he assumed that those queuing were ordering food and that they appeared to be queuing at the bar area. Of more concern to him, however, was the photograph at Page 146 which showed not only the use of NOx but potentially also the supply; there was a card payment reader to the right of one of the users. Mr. Rankin disagreed with this. He reminded the Sub-Committee that the CCTV footage had been supplied by Mr. Gasior. If PC Perry had evidence of NOx dealing inside the Premises he would have said so. The photo did not evidence NOx dealing; it could be explained as the NOx seller simply having some food before going out. Mr. Rankin stated that of a month's worth of CCTV footage, this was the only evidence in relation to NOx. Mr. Gasior accepted that it should not have happened. However, he had dealt with the staff member responsible. PC Perry accepted that he did not have evidence of dealing inside as the police did not have the resources to look at every piece of footage. However, he submitted that the Sub-Committee could infer that this took place regularly.

Mr. Studd explained the issue of gradual dispersal to the Sub-Committee. If all premises in Queen's Yard closed at the same time, for example, that risked causing problems. Gradual and staggered dispersal meant that some people would inevitably stay in the area and others will gradually move on. In his experience, NOx users tended to be club-goers. He also referred to his report

dated 28<sup>th</sup> June 2023 (Pages 227 to 238) and that he had carried out observations in the area on 23<sup>rd</sup> June 2023. He had not seen any police in the area during the course of his visit.

Members asked Mr. Gasior about his clientele. He said he catered for families in the area but did also cater for the club-goers. He accepted that that was where the money was and without the revenue from the Friday and Saturday nights, he would need to close the business.

The application engages the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. The Sub-Committee is aware that its function is not to determine guilt or innocence, but to determine what action will be appropriate to ensure that the licensing objectives are promoted. The Sub-Committee's powers on an application to vary is either to grant the variation (in whole or in part), subject to any conditions that are considered appropriate or to refuse the application.

Mr. Rankin took objection to the characterisation of the Premises having been subject to constant warnings. The Sub-Committee accepted that the evidence produced by the responsible authorities showed warnings prior to the grant of the licence but nothing since. However, the Sub-Committee did not consider that Mr. Gasior had language difficulty such that he did not properly understand the requirements of his licence. Even if that were the case, however, it was incumbent upon him to ensure that he understood those requirements. Furthermore, the fact that he had applied for two variations after the initial grant of the licence (albeit that the Sub-Committee had no information as to the nature of the variations) arguably indicated knowledge of what the licence did or did not permit. The licence was entirely clear as to the permitted hours. The Sub-Committee did not consider Mr. Gasior's explanation for trading beyond permitted hours, namely that he could not see the clock and sometimes lost track of time, to be at all credible. If it were true, however, then it gives the Sub-Committee cause for concern as to his ability to effectively run the Premises. Compliance with the permitted hours is a basic concept.

Whilst the Sub-Committee accepted that the information presented by the police did not show that the Premises always traded past its hours, the Sub-Committee considered that it could reasonably infer that the incidents seen by the police in their review of the CCTV were not one-off incidents. If Mr. Gasior did not understand the permitted hours authorised by his licence it was more likely than not that he would have failed to adhere to them on a number of other occasions. Even in the absence of other evidence of concerns, this would undermine the licensing objective of the prevention of crime and disorder.

The Sub-Committee was particularly concerned by the photographs showing what appeared to be evidence of possession and use of NOx as well as the possibility of dealing having taken place on the Premises. The Council has a Public Spaces Protection Order in place across the Borough to address use of NOx associated with anti-social behaviour, breach of which is a criminal offence. Possession with intent to supply and supply are both criminal

offences. Whilst the Sub-Committee could not be sure that dealing had taken place inside the Premises on 11<sup>th</sup> February, the fact that canisters and balloons were on display demonstrated an utter lack of regard by the staff to something that is a serious problem across the borough. Similarly, the card payment reader at the very least suggested a willingness to supply. The openness with which those items were on display, combined with PC Perry's statement of having seen another person rolling a joint in the Premises on the same day (which was not disputed) again gave rise to a strong inference that this was not an unusual occurrence.

Whilst it was suggested that PC Perry had been selective in the images put forward in support of his representations in respect of both applications, the licence holder did not produce the CCTV himself to support his assertions. Mr. Gasior was not present on the night in question and asserted that police had entered the Premises and seen the NOx and the joint and had taken no action. PC Perry disputed the likelihood of this. The Sub-Committee preferred his evidence on this point given the use of Late Night Levy funding for regular police patrols and multi-agency tasking. The Sub-Committee noted Mr. Studd's reference in his report to seeing no police officers whilst present at the time of his visit. However, it appears he was only there for a relatively brief period and the Sub-Committee did not consider it could conclude that this sufficed to conclude that the police had not visited on other nights.

The Sub-Committee noted further that the Premises' SIA staff also appeared to have done nothing to tackle the NOx use or possession in the Premises.

Granting the variation application would clearly be inconsistent with the Sub-Committee's decision on the review application and the findings it has made in that regard.

The Sub-Committee noted paragraphs 9.42 to 9.44 of the Statutory Guidance. Paragraph 9.44 states that "...the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the licensing objectives and the track record of the business.

In this instance, the track record is a particular concern. Mr. Gasior had been warned in the past, which had led to the grant of his licence. Mr. Gasior knew what was expected of him.

If the variation was granted, there were no additional conditions that could be added to the licence; the Sub-Committee noted the suggestion that granting the application, which would allow late night refreshment throughout the hours stipulated by the Licensing Act 2003, would be akin to rewarding bad behaviour. The Sub-Committee agreed. If the licence holder cannot comply with his permitted hours, the remedy is not to vary the licence so as to disapply those and allow him to trade through the early hours.

The Sub-Committee took account of the area in which the Premises are situated. There is only one other late-night venue in the immediate area. If Wicked Fish stays open to capture those patrons as they leave, it will inevitably impact on the area, particularly with respect to crime and disorder



and public nuisance. The Premises staying open and providing late night refreshment from 23:00 hours to 05:00 hours would inevitably cause people to hang around longer rather than dispersing and the Sub-Committee has seen that this encourages other criminal activity. Whilst that is not within Mr. Gasior's control, it is a consequence of staying open late. He has given the Sub-Committee no reason to be confident in his ability to properly run the Premises in the night-time economy and to do what he can to deter drug and NOx use. He may have little or no control over what takes place outside the Premises. However, he does have control over what happens inside and he has demonstrated that he is not controlling or managing that effectively or at all.

The Sub-Committee was particularly concerned by the photographs showing what appeared to be evidence of possession and use of NOx as well as the possibility of dealing having taken place on the Premises. The Council has a Public Spaces Protection Order in place across the Borough to address use of NOx associated with anti-social behaviour, breach of which is a criminal offence. Possession with intent to supply and supply are both criminal offences. Whilst the Sub-Committee could not be sure that dealing had taken place inside the Premises on 11<sup>th</sup> February, the fact that canisters and balloons were on display demonstrated an utter lack of regard by the Premises' staff to something that is a serious problem across the borough. Similarly, the card payment reader at the very least suggested a willingness of those people to supply. The openness with which those items were on display, combined with PC Perry's statement of having seen another person rolling a joint in the Premises on the same day (which was not disputed) again gave rise to a strong inference that this was not an unusual occurrence. The solution to dealing with these problems is not to increase the permitted hours of the Premises.

Given the issues that are prevalent in the area and combined with the inability of the licence holder to operate his Premises with the requisite degree of control, the Sub-Committee considered that granting the application would undermine the licensing objectives. It would continue to play a role in attracting others to the area and encouraging people to remain in the area instead of dispersing and the Sub-Committee has taken account of the criminal element attracted to the area late at night and the failure of the Premises to take action to remove them from the Premises. **The application is therefore refused.**

#### **4.2 Application for Review under Section 53 A of the Licensing Act 2003 for Wicked Fish, Queens Yard White Post Lane London E9 5EN**

The Sub-Committee considered an application by Wicked Fish, Queens Yard White Post Lane London E9 5EN ("the Premises") for a variation of its licensable hours for Late Night Refreshment. Representations on this application had been received from the Police and the Licensing Authority.

The Sub-Committee considered at the same time an application by PC Mark Perry on behalf of the Metropolitan Police for the review of the premises licence held by Wicked Fish, Queens Yard White Post Lane London E9 5EN ("the Premises"). The application followed police analysis of CCTV at the premises over the course of several weeks in early 2023 identifying alleged breaches of licence conditions. The application was supported by the Licensing Authority.

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### **Applicant**

Mr Rankin who was representing his client made his submission to the sub-committee, this was a High end late night premises. The applicant was originally unaware of the licensing requirements. and has applied for variations of the licence several times with no objections. The applicant was confused with the terms of trading.

It was not an offence to consume food after the hours. Mr Gazier states that he had no previous involvement with Wicked Fish nor had any connection to the unfortunate murder that had taken place. Mr Gazier provided CCTV. Willingly to the police which is not a condition of his license. The Police are side-tracked by identifying the licensable hours.

The Law changed in 2003, with the provision of late night refreshment The offence being this, and the venue being open is case law, this is not an offence queuing on the cctv was evidence of that.

The context of this was many people just sitting and consuming food which was not an offence. And could do that for as long as they wished. The problem was the lost trust by the police, the continuing misunderstanding between trading and serving. The Applicant was sorry if this were a prosecution, he would get a fine. But we are before the sub-committee, being asked to be stripped of his licence, which was step too far. And disproportionate.

NOX users are those that go to nightclubs not late night refreshment venues. The reality were clubbers. However, with the exception of some people using NOX at the premises. Mr Gasior was not present rolling a joint.

Officers did visit the premises that night, where they witnessed rolling of the joint. and possibly seen NOX too. They did not take action on this. The person in question was a member of staff. He is no longer an employee. And there have been no other reference to drugs connected to premise.

This has been an expensive experience for Mr Gasior Mr Ranking sought the sub-committee to suspend the licence and send a message, or could give undertaking not to trade after 23:00hrs for a period that Sub-Committee decides, to revoke the licence was a step too far.

### **Metropolitan Police/Licensing Authority**

PC Perry submitted that as the area grew more residential and the night-time economy attracted more people, crime and disorder would increase, particularly given that the Premises' staff were allowing people to deal from it. The only way to prevent this was for the Premises to not open beyond 23:00 hours. He referred to an email of a tasking operation on 28<sup>th</sup> and 29<sup>th</sup> July, which appeared at Page 4 of the supplemental agenda, and which referred to two illegal food stalls being shut down and which reduced the crowds over the two nights and reduced the demand for NOx. In his view, only revocation would address the issue and granting the variation would not assist and would simply be rewarding bad behaviour.

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After the presentations from all parties the Sub-Committee had the opportunity to ask questions which were answered and responded to.

### **Decision**

The Sub-Committee considered two applications with respect to premises known as Wicked Fish, Queen's Yard, White Post Lane, London, E9 5EN ("the Premises"). The premises are currently licensed for the sale by retail of alcohol from 12:00 hours to 23:00 hours Monday to Sunday and for the provision of late night refreshment from 23:00 hours to 01:00 hours Sunday to Thursday and from 23:00 hours to 04:00 hours on Friday and Saturday. The closing time of the Premises as set out on the licence was thirty minutes after the cessation of licensable activity. The licence holder is Michael Gasior.

The first application was an application for review of the premises licence brought by the Metropolitan Police on the basis of the crime and disorder and prevention of public nuisance licensing objectives. That application was supported by the Licensing Authority. The application had originally come before the Sub-Committee on 6<sup>th</sup> June 2023 and been adjourned to this evening. The second application, which had been prompted by the review

application, was an application to vary the premises licence so as to extend the opening hours and the permitted hours for the provision of late night refreshment. That application sought an extension to the permitted hours for the provision of late night refreshment to 05:00 hours on Friday and Saturday. That had been objected to by the police and by the Licensing Authority.

As the two applications addressed the same issues and the evidence to be relied upon was the same in both applications, the parties were agreed that the Sub-Committee should hear them both together rather than considering each separately.

The review itself had been triggered after the police had reviewed the Premises' CCTV footage initially supplied to assist with an investigation into a murder committed in Queen's Yard on 11<sup>th</sup> February 2023. The Sub-Committee was informed clearly that there was no suggestion that the Premises had any involvement in or bore any responsibility for that incident.

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PC Perry submitted that as the area grew more residential and the night-time economy attracted more people, crime and disorder would increase, particularly given that the Premises' staff were allowing people to deal from it. The only way to prevent this was for the Premises to not open beyond 23:00 hours. He referred to an email of a tasking operation on 28<sup>th</sup> and 29<sup>th</sup> July, which appeared at Page 4 of the supplemental agenda, and which referred to two illegal food stalls being shut down and which reduced the crowds over the two nights and reduced the demand for NOx. In his view, only revocation would address the issue and granting the variation would not assist and would simply be rewarding bad behaviour.

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Mr. Rankin told the Sub-Committee that there appeared to be a degree of confusion and that no offence was committed by allowing patrons to remain on the Premises to consume their food as long as it had been purchased before the terminal hour. He accepted, however, that there were some occasions where it was clear that the Premises had traded beyond its permitted hours, particularly where the CCTV footage showed patrons

queueing after 04:00 hours. It was for that reason that Mr. Gasior had sought the variation.

Mr. Rankin asserted that this was an honest mistake on Mr. Gasior's part. He submitted that a revocation on a first review would be disproportionate. Customers could presently purchase food before 04:00 hours and consume it on the Premises to 04:30. He accepted the Police's concerns about people hanging around and suggested that there would be more force in PC Perry's submissions if the Premises closed at 02:00 hours. The patrons were not those using NOx; those users were those attending nightclubs.

Mr. Rankin accepted that the stills of 11<sup>th</sup> February 2023 showed people in the Premises with balloons and canisters of NOx. He accepted too that a patron was seen rolling a cannabis joint during that evening. However, Mr. Gasior was not present at the time. The member of staff who had allowed that to happen had been dismissed. Mr. Rankin also stated that Mr. Gasior's account was that police had entered during this time and seen this activity going on and had done nothing.

Mr. Rankin submitted that the way to deal with these problems was a multi-agency approach, such as had been undertaken recently. This had been an expensive experience for Mr. Gasior and he was unlikely to be in front of the Sub-Committee again. He suggested that a short period of suspension could be the appropriate step. The variation was intended to address the problem that had occurred of trading outside of permitted hours. There had been no complaints from residents or other people and a petition signed by 775 people had been submitted in support of the venue.

During questions from members, PC Perry explained that the only late-night venue in Queen's Yard was Colour Factory and so the only people dispersing from the area late at night were theirs. The reason that the NOx sellers came to places such as Queen's Yard was in order to sell to those people.

PC Perry also confirmed that he assumed that those queuing were ordering food and that they appeared to be queuing at the bar area. Of more concern to him, however, was the photograph at Page 146 which showed not only the use of NOx but potentially also the supply; there was a card payment reader to the right of one of the users. Mr. Rankin disagreed with this. He reminded the Sub-Committee that the CCTV footage had been supplied by Mr. Gasior. If PC Perry had evidence of NOx dealing inside the Premises he would have said so. The photo did not evidence NOx dealing; it could be explained as the NOx seller simply having some food before going out. Mr. Rankin stated that of a month's worth of CCTV footage, this was the only evidence in relation to NOx. Mr. Gasior accepted that it should not have happened. However, he had dealt with the staff member responsible. PC Perry accepted that he did not have evidence of dealing inside as the police did not have the resources to look at every piece of footage. However, he submitted that the Sub-Committee could infer that this took place regularly.

Mr. Studd explained the issue of gradual dispersal to the Sub-Committee. If all premises in Queen's Yard closed at the same time, for example, that risked

causing problems. Gradual and staggered dispersal meant that some people would inevitably stay in the area and others will gradually move on. In his experience, NOx users tended to be club-goers. He also referred to his report dated 28<sup>th</sup> June 2023 (Pages 227 to 238) and that he had carried out observations in the area on 23<sup>rd</sup> June 2023. He had not seen any police in the area during the course of his visit.

Members asked Mr. Gasior about his clientele. He said he catered for families in the area but did also cater for the club-goers. He accepted that that was where the money was and without the revenue from the Friday and Saturday nights, he would need to close the business.

This application engages the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. The Sub-Committee is aware that its function is not to determine guilt or innocence, but to determine what action will be appropriate to ensure that the licensing objectives are promoted.

Mr. Rankin took objection to the characterisation of the Premises having been subject to constant warnings. The Sub-Committee accepted that the evidence produced by the responsible authorities showed warnings prior to the grant of the licence but nothing since. However, the Sub-Committee did not consider that Mr. Gasior had language difficulty such that he did not properly understand the requirements of his licence. Even if that were the case, however, it was incumbent upon him to ensure that he understood those requirements. Furthermore, the fact that he had applied for two variations after the initial grant of the licence (albeit that the Sub-Committee had no information as to the nature of the variations) arguably indicated knowledge of what the licence did or did not permit. The licence was entirely clear as to the permitted hours. The Sub-Committee did not consider Mr. Gasior's explanation for trading beyond permitted hours, namely that he could not see the clock and sometimes lost track of time, to be at all credible. If it were true, however, then it gives the Sub-Committee cause for concern as to his ability to effectively run the Premises. Compliance with the permitted hours is a basic concept.

Whilst the Sub-Committee accepted that the information presented by the police did not show that the Premises always traded past its hours, the Sub-Committee considered that it could reasonably infer that the incidents seen by the police in their review of the CCTV were not one-off incidents. If Mr. Gasior did not understand the permitted hours authorised by his licence it was more likely than not that he would have failed to adhere to them on a number of other occasions. Even in the absence of other evidence of concerns, this would undermine the licensing objective of the prevention of crime and disorder.

The Sub-Committee was particularly concerned by the photographs showing what appeared to be evidence of possession and use of NOx as well as the possibility of dealing having taken place on the Premises. The Council has a Public Spaces Protection Order in place across the Borough to address use of NOx associated with anti-social behaviour, breach of which is a criminal

offence. Possession with intent to supply and supply are both criminal offences. Whilst the Sub-Committee could not be sure that dealing had taken place inside the Premises on 11<sup>th</sup> February, the fact that canisters and balloons were on display demonstrated an utter lack of regard by the Premises' staff to something that is a serious problem across the borough. Similarly, the card payment reader at the very least suggested a willingness of those people to supply. The openness with which those items were on display, combined with PC Perry's statement of having seen another person rolling a joint in the Premises on the same day (which was not disputed) again gave rise to a strong inference that this was not an unusual occurrence.

Whilst it was suggested that PC Perry had been selective in the images put forward in support of his representations in respect of both applications, the licence holder did not produce the CCTV himself to support his assertions. Mr. Gasior was not present on the night in question and asserted that police had entered the Premises and seen the NOx and the joint and had taken no action. PC Perry disputed the likelihood of this. The Sub-Committee preferred his evidence on this point given the use of Late Night Levy funding for regular police patrols and multi-agency tasking. The Sub-Committee noted Mr. Studd's reference in his report to seeing no police officers whilst present at the time of his visit. However, it appears he was only there for a relatively brief period and the Sub-Committee did not consider it could conclude that this sufficed to conclude that the police had not visited on other nights.

The Sub-Committee noted further that the Premises' SIA staff also appeared to have done nothing to tackle the NOx use or possession in the Premises.

The Sub-Committee has considered all the options open to it and had regard to paragraphs 11.20 to 11.23 of the Statutory Guidance. It did not consider that taking no action was appropriate nor was any form of warning. Those had been given in the past and Mr. Gasior knew what was expected of him. The Sub-Committee did not consider that removing alcohol from the scope of the licence was appropriate as the sale of alcohol was not in issue. For that reason, removal of the DPS was not an appropriate step here.

Removing late-night refreshment from the scope of the licence would effectively amount to a revocation. There were no additional conditions that could be added to the licence; the permitted hours are fundamental and if the licence holder cannot comply with those, it gives the Sub-Committee no confidence in his ability to do so in the future. Whilst Mr. Studd's report might have indicated otherwise, the Sub-Committee has to take account of the fact that his visit occurred whilst the review application was pending and thus at a time when the Premises could anticipate additional scrutiny. It did not, however, suffice to allay the Sub-Committee's concerns as to Mr. Gasior's willingness or ability to comply with the requirements of his licence as well as a failure to properly appreciate the nature of the particular area in which the Premises were situated. The Sub-Committee did consider the possibility of a suspension; however, it was not satisfied that this would suffice to promote the licensing objectives. It had no faith in Mr. Gasior's management of the Premises or that the suspension would be effective to address the problems



in the long-term. The Sub-Committee had also considered a reduction in the hours, notwithstanding that no party suggested this as an option. Again, however, given that a recurrent theme of Mr. Gasior's account was misunderstanding what he could and could not do, and given the lack of confidence that the Sub-Committee could place in him, this too was not considered appropriate.

The final sentence of paragraph 11.23 of the Statutory Guidance states that *"...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."*

Paragraph 11.26, with respect to crime prevention, makes clear that *"It is important to recognise that certain criminal activity 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 of 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...in the interests of the wider community and not those of the individual licence holder."*

This was not a case where the problems had occurred despite Mr. Gasior's best efforts, or those of his staff, and in full compliance with the licence. The Sub-Committee considered that the lack of action by the Premises in allowing such activity to take place openly, such as NOx use and drug possession, was so serious and risked undermining the licensing objectives to such an extent that the only appropriate and **proportionate decision in all the circumstances was to revoke the premises licence.**

#### **4.3 Supplementary Information 4.1 and 4.2 Wicked Fish, Queens Yard, White Post Lane, London, E9 5EN**

See decisions for 4.1 and 4.2.

#### **5. EXTENSION OF DECISION DEADLINE: LICENSING ACT 2003**

No extension of deadlines were agreed at this meeting. (Note – a second meeting of the sub committee at 6.00pm on 31 August agreed extensions to deadlines for a number of applications. See decisions of Licensing Sub Committee, 31 August 2023, 6.00pm.)

The meeting ended at 5.30 p.m.

Chair, Councillor Peter Golds  
Licensing Sub Committee