

LONDON BOROUGH OF TOWER HAMLETS

RECORD OF THE DECISIONS OF THE LICENSING SUB COMMITTEE

HELD AT 6.32 P.M. ON TUESDAY, 12 NOVEMBER 2024

COUNCIL CHAMBER - TOWN HALL, WHITECHAPEL

Members Present in Person:

Councillor Shahaveer Shubo (Chair)
Hussain
Councillor Leelu Ahmed
Councillor Abdi Mohamed

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)

The minutes of the meetings held on 19th and 24th September 2024 were agreed and approved as a correct record.

4. ITEMS FOR CONSIDERATION

4.1 Application for a New Premise Licence for, Z & H One Rice Ltd 46 Brick Lane London E1 6RF

This application was deferred to the Licensing Sub Committee to be held on 12th December 2024.

4.2 Application for a Variation of a Premises Licence for (Bourbon / Kisses from Nonna), 387 Roman Road, London E3 5QR

The Sub-Committee considered an application by 387 Roman Road Ltd. to vary the premises licence held in respect of Bourbon/Kisses from Nonna, situated at 387 Roman Road, London, E3 5QR ("the Premises"). The application sought to vary the licence to authorise the sale by retail of alcohol (on and off-sales) from 23:00 hours to midnight on Fridays and Saturdays, to add the provision of late night refreshment and regulated entertainment

(recorded music) on those nights for the same times and to vary the times for licensable activities on New Year's Eve from 11:00 hours to midnight.

The application attracted representations against it from the Environmental Health Service and three local residents. One representation in support from a local resident was also received.

The Sub-Committee heard from Mr. Greeno on behalf of the applicant. He addressed the various representations in turn. He explained that his client had not agreed the proposed noise conditions from the Environmental Health Service as the second condition, which effectively prohibited noise and vibration from being a public nuisance, as being too vague and covered by existing legislation. He noted that the representation did not suggest that there had been any history of noise problems from the Premises.

Mr. Greeno asserted that Amit Patel's representation was vexatious. He told the Sub-Committee that Mr. Patel is the son of the landlord of the property where the Premises are located. He had tried to get the business rates reviewed on the basis that the Premises were a bar rather than a restaurant. That landlord would therefore rely upon a finding that the Premises were a bar to try to alter the rates valuation.

The representation from Clementine Cornwall asserted that music could be heard from the Premises and she was concerned about the extension as far as music was concerned. Mr. Greeno told the Sub-Committee that live music was performed once a week and finished at 22:30 hours. Recorded music was played at a background level only and to provide atmosphere. He did not consider that noise would transmit as described.

The final representation was from Karin Schumacher, who gave her address as 360 Roman Road. That was Daring House and it was not possible to ascertain where she lived in relation to the Premises. In addition, she said the extension "may" cause problems, not that it would be likely to do so.

Mr. Gibson, the owner of the Premises, explained that they operated as an American-style diner.

Mr. Olere addressed the Sub-Committee by reading out his colleague's representation.

Finally, Mr. Prebble addressed the Sub-Committee in support of the Premises. His representation referred only to the prevention of crime and disorder and the protection of children from harm. He began to stray into other areas and was informed by the Legal Adviser that he could only talk to the matters raised in his representation. He told the Sub-Committee that there was no crime associated with the Premises as they operated as a restaurant. There was no reason why granting the extension would change that. He was not able to explain why the protection of children from harm was relevant.

Mr. Greeno accepted that he could not prove that Mr. Patel's representation was vexatious but that he had never come across a representation drafted in the way that it was. There were also questions about the crowds appearing to be outside the Premises at various times. Mr. Greeno pointed out that some of these were taken when the Premises were in fact open. With others it was

not possible to determine whether the person outside was a patron or simply someone walking by.

Mr. Greeno also explained why his client had stopped engaging with the police. He told the Sub-Committee that the proposed condition needed to be proportionate and had to relate to the variation. He asserted it was not possible to impose a condition that affected the existing authorisation. The police had sought the use of SIA-staff from 21:00 hours every night, even though the variation was only for two nights from 23:00 hours. There was no evidence of the need for this condition and it was disproportionate.

Dispersal was discussed and the applicant explained that they do not presently serve to 23:00 hours but wind down thirty minutes before. Noise assessments had not been carried out. Mr. Greeno explained that a customer was a noise engineer who did acoustic assessments for other authorities and had advised that the noise was not a problem. There would be no increase in the noise levels. When asked by the Legal Adviser why regulated entertainment was sought if music would be at background level only, Mr. Greeno explained that it was likely that the person completing the application at the time had not entirely understood the deregulation provisions. His client was amenable to withdrawing the application insofar as regulated entertainment was concerned.

This application engages the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. The persons making representations against the application did not attend, but the Sub-Committee had regard to their written representations. It seems appropriate to first explain what issues the Sub-Committee disregarded or did not accept.

The Sub-Committee did not agree that Mr. Patel's representation was vexatious. That determination is delegated to officers and, in any event, the S.182 Guidance provides (at paragraph 9.5) that:

"A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate."

It was not clear whether Mr. Patel was the landlord's son and had an ulterior motive and such an assertion ought properly to have been raised in advance of the hearing so that Mr. Patel could have had the opportunity to respond to that. Even if it were true, however, the representation clearly addressed matters relevant to the licensing objectives, such as allegations of noise and dispersal. The Sub-Committee was satisfied that the representation was not vexatious.

The Sub-Committee does not need to determine what the Premises are; it is concerned with the licensable activity being carried on, not what the applicant or someone else may say the premises are. In the licensing context, terms such as bars or nightclubs are a convenient descriptive shorthand and cannot be taken to having a specific legal meaning that they might have in a different context, such as planning. Had the Sub-Committee found it necessary to determine the nature of the operation at the Premises, it would not bind any other decision-maker deciding that under different legislation. However, the Sub-Committee did not need to make that determination and it does not do so.

The suggestion that Ms. Schumacher's representation was or might be invalid because she used the word "may" rather than "likely" was disregarded. Ms. Schumacher could not be expected to approach her representation in the way that a lawyer would. Her representation was clearly relevant. Further, the vicinity test was no longer relevant and so her location within that block was not strictly relevant.

Given the withdrawal of regulated entertainment, the Sub-Committee did not need to consider further the allegation of noise disturbance. There was no evidence of noise breakout from the Premises and it was not clear that a sufficient number of people were affected by noise from the Premises. It noted and disregarded the assertion that a customer of the Premises had advised that the noise was not a problem. That was anonymous hearsay and, whilst that can be admitted, the Sub-Committee has to consider how probative it is and what reliance can be placed on it. In the absence of any context and without knowing who made this statement, the Sub-Committee did not consider that it could properly attach any weight to that assertion.

However, the Sub-Committee noted that there appeared to be no evidence of complaints being made to the Council about noise nuisance and would have expected, if there were, that these would have been referred to in the representation from Environmental Health. Only Mr. Patel and Ms. Cornwall referred to music noise. It was also not entirely clear where Ms. Cornwall lived in relation to the Premises and how she could ascertain that the source of music noise was the Premises and not some other location. Ms. Schumacher referred to patron noise but it is of note that she did not suggest that the current operation of the Premises caused issues.

The Sub-Committee carefully considered the photographs provided by Mr. Patel but could not be satisfied on the balance of probabilities that they generally showed what he asserted to be the case, such as patrons standing outside or the Premises operating and carrying on licensable activity beyond permitted hours. Moreover, some of the photographs were taken several months apart, which does not suggest the persistence that Mr. Patel asserted.

The Sub-Committee noted the reasons why the applicant had stopped engaging with the Police. It is not in fact correct that the Sub-Committee can only impose conditions that go to the variation itself. Section 35(4) of the Licensing Act 2003 provides that the steps the Sub-Committee can take which it considers to be appropriate for the promotion of the licensing objectives are

to modify the conditions of the premises licence (which includes varying, removing or adding conditions) and to reject the application in whole or in part. There is no qualification on what conditions could be imposed if the application is granted in whole or in part. Nor does the S.182 Guidance purport to qualify the steps that can be taken in this regard. It was not helpful for the applicant to cease engaging with the police in the way that they did. The applicant could very easily have explained to the police why they were taking the stance that they were and the refusal to do so is not what the Sub-Committee would expect of a responsible licence holder.

Nonetheless, the Sub-Committee was not satisfied that the impact on the licensing objectives would be such as to justify refusing the application. The Premises are not in a cumulative impact zone and so those making representations must satisfy the Sub-Committee that there is likely to be an adverse impact on the licensing objectives and which could not be mitigated by the imposition of conditions. The Sub-Committee considered very carefully whether it ought to impose a condition requiring the use of SIA-staff and, if so, from what time. However, the police had not set out in their email to the applicant why this was thought appropriate and proportionate, especially from 21:00 hours, and there was nothing in any of the representations to suggest that this required. However, the Sub-Committee did consider that this needed to be kept under close review and has decided to impose a condition to that effect. The Sub-Committee did consider, however, that the grant of later hours required a written dispersal policy to be in place. The Sub-Committee also noted the lack of any drinking-up time and considers it appropriate to impose a condition prohibiting patrons from remaining on the Premises beyond twenty minutes after the cessation of licensable activity, which would assist with swift and effective dispersal.

Accordingly, the Sub Committee unanimously;

RESOLVED

That the application for a variation of the premises licence for Bourbon/Kisses from Nonna, 387 Roman Road, London, E3 5QR be **GRANTED subject to the following conditions:**

Sale by retail of alcohol (on and off-sales)

Sunday to Thursday	11:00 hours to 23:00 hours
Friday and Saturday	11:00 hours to 00:00 hours

Provision of late night refreshment (indoors)

Friday and Saturday	11:00 hours to 00:00 hours
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Hours the premises are open to the public

Sunday to Thursday	11:00 hours to 23:30 hours
Friday and Saturday	11:00 to 00:30 hours

Non-standard timings

New Year's Eve	11:00 hours to 00:00 hours
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Hours the premises are open to the public – Non-standard timings

New Year's Eve 11:00 hours to 00:30 hours

Additional conditions

1. Patrons shall not be permitted to remain on the premises beyond thirty minutes following the cessation of licensable activity.
2. The premises licence holder shall implement, put in place and maintain a written dispersal policy setting out how patrons will be directed to disperse away from the area in an orderly manner and with the minimum of disruption. This policy shall be agreed with the Licensing Authority. Any updates to the policy shall be agreed with the Licensing Authority. A copy of the policy shall be kept on the premises and shown to the police or an authorised officer of the Council on request. A copy of the policy shall be provided to the police or an authorised officer of the Council within three days of any request for the policy.
3. The premises licence holder shall regularly assess the need for SIA-staff to be employed at the premises. Such reviews shall be carried out at least once every six months and written records kept on the premises for a period of at least one year. Such records are to be shown to the police or an authorised officer of the Council on request. A copy of the records shall be provided to the police or an authorised officer of the Council within three days of any request for the records.

5. EXTENSION OF DECISION DEADLINE: LICENSING ACT 2003

The following application decision deadlines were extended to 31st January 2025;

- Float, 129 Bethnal Green Road, London E2 7DG
- Welcome Co-Op Unit 2 68 Smeed Road E3 2TF
- Welcome Co-Op Unit 1 Riverstone Heights 4 Reed Ave E3 3ZA
- Harvest, 103 Brick Lane, London E1 6SE
- Popular Pizza, 536 Commercial Road, London, E1 0HY
- Adana Turkish with Fusion, 267 Bethnal Green Rd, London, E2 6AH
- China Ark Supermarket - 84-86 Mile End Road, London, E1 4UN
- Cable Street Mini supermarket, 403 Cable Street, London, E1W 3DP

The meeting ended at 8.00 p.m.

Chair, Councillor Shahaveer Shubo Hussain
Licensing Sub Committee