

LONDON BOROUGH OF TOWER HAMLETS**MINUTES OF THE LICENSING SUB COMMITTEE****HELD AT 6.30 P.M. ON THURSDAY, 15 JULY 2021****MP701,7TH FLOOR, TOWN HALL, MULBERRY PLACE, 5 CLOVE CRESCENT,
LONDON, E14 2BG****Members Present:**

Councillor Shah Ameen (Chair)

Councillor Mohammed Ahabab Hossain

Councillor Mohammed Pappu

Officers Present:

Luke Wilson	– (Legal Services)
Kathy Driver	– (Principal Licensing Officer)
Lekan Olomo	– (Health & Safety Officer)
Phil Brewer	– Environmental Protection (Noise) Officer
Ibrahim Hussain	– Licensing Officer
Farhana Zia	– (Democratic Services Officer, Committees, Governance)

Representing applicants	Item Number	Role
Charles Denny	4.1	Applicant's Agent
Kathy Driver	4.2	Licensing Authority
Phil Brewer	4.2	Environmental Health
Lekan Olomo	4.2	Health and Safety Team

Representing objectors	Item Number	Role
Kathy Driver	4.1	Licensing Authority

1. DECLARATIONS OF INTEREST

There were no declarations of interests made.

2. RULES OF PROCEDURE

The rules of procedure were noted.

3. MINUTES OF THE PREVIOUS MEETING(S)

The minutes from the 30th March, 13th and 27th April 2021 were agreed to be an accurate record of the meetings.

4. ITEMS FOR CONSIDERATION

4.1 Licensing Act 2003 Application for a premises licence variation for 3AKE 204 Brick Lane, London E1 6SA

At the request of the Chair, Mr Ibrahim Hussain, Licensing Officer, introduced the report which detailed the application for a variation of the premises licence for 3AKE, 204 Brick Lane, London E1 6SA. It was noted that an objection had been received on behalf of the Licensing Authority.

At the request of the Chair, Mr Charles Denny, the Applicant's agent, presented his submission. He referred members to page 113 of the agenda and an email that he had written to Ms Kathy Driver, Principal Licensing Officer, with proposed conditions to promote the four licensing objectives. He said that his client, Mr Ganyu Zhao, was an experienced Licence Holder and Designated Premises Supervisor (DPS), and had previously owned a restaurant in Soho, within Westminster City Council's cumulative impact zone. He confirmed that Mr Zhao was now trading at 204 Brick Lane. The restaurant had 48 covers and had benefitted from the temporary alcohol licensing provisions under the Business and Planning Act 2020. Mr Zhao had applied for a variation of the licence to include the off sale of alcohol as part of the delivery service of the business.

Mr Denny said that his client recognised that the premises was in the Brick Lane Cumulative Impact Zone (CIZ), however, he submitted that the application fulfilled the criteria of being an exceptional circumstance under the Council's Statement of Licensing policy. He said that the restaurant had 48 covers, with 36 at dining tables and 12 around the bar and front window. The premises was a high-end restaurant offering Japanese sushi and Asian fusion food, which would be accompanied by Sake wines and premium bottled beers. He said that the restaurant was not alcohol-led and would be operating within the framework hours. He said that the variation sought related to the off sales of alcohol as part of the restaurant's delivery service. Mr Denny referred to the six proposed conditions and said that these would help mitigate the concerns raised by the Licensing Authority as well as uphold the licensing objectives.

The Sub-Committee then heard from Ms Kathy Driver, Principal Licensing Officer, who said that the original application was bereft of information. She appreciated the conditions put forward by Mr Denny, but believed the issue remained that the premises fell within the CIZ, which was saturated with premises providing off sales of alcohol. Problems with anti-social behaviour and noise nuisance were a concern to the Licensing Authority as well as noise nuisance from delivery drivers causing disturbance to local residents.

In response to questions from members, the following was noted:

- The restaurant is a high-end Japanese restaurant and does not attract high off-sale demand compared with other typical take-away outlets. There are never more than two delivery drivers present to collect food. To prevent possible nuisance by drivers waiting at the premises, Mr Denny stated that the Applicant intended to ask any third driver present to do a circuit lap of the area to ensure there is no build up of people, bikes and noise.
- The type of food being sold would not be eaten on the street corners and therefore will not attract anti-social behaviour. The prices for a bottle of wine, beer or sake would be prohibitive to street consumption.
- When asked whether the Applicant would accept a condition that the off sale of alcohol must be ancillary to a meal, Mr Denny said this would be a backward step. He said this would not be in line with the on-sale part of the business where some customers come to the restaurant to enjoy a glass of sake rice wine without a substantial meal, to relax and unwind. Mr Denny said his client would accept such a condition if the Sub-Committee imposed this.
- Mr Denny noted that no residents had made objections to the licence.
- When asked whether the concerns of the Licensing Authority been addressed by the proposed conditions put forward by the Applicant, Ms Driver said that she was obliged to object as the premises was within the CIZ. She said that concerns remained that should the licence transfer to another holder, the licensing objectives could be undermined. Mr Denny responded by stating that the Council has a robust review process should this eventuality ever arise.
- The Licensing Officer confirmed that no complaints had been received against the premises.

Concluding remarks were made by all the parties.

The Licensing Objectives

In considering the application, Members were required to consider the same in accordance with the Licensing Act 2003 (as amended), the Licensing Objectives, the Home Office Guidance and the Council's Statement of Licensing Policy and in particular to have regard to the promotion of the four licensing objectives:

1. The Prevention of Crime and Disorder;
2. Public Safety;
3. The Prevention of Public Nuisance; and
4. The Protection of Children from Harm.

Consideration

Each application must be considered on its own merits. The Chair confirmed that the Sub-Committee had carefully considered all the evidence before them

and the oral representations at the meeting virtually made by the Applicant's agent and the Licencing Authority who was objecting to the variation.

The Sub-Committee noted the Applicant was seeking to vary the licence to include the off sale of alcohol as part of its takeaway business. The Applicant had recently been using the temporary alcohol licensing provisions under the Business and Planning Act 2020.

The Sub-Committee noted the premises is in the Brick Lane Cumulative Impact Zone (CIZ). The cumulative impact policy creates a rebuttable presumption that where relevant representations are received by one or more of the responsible authorities and/or other persons objecting to the application, the application will be refused.

The Sub-Committee noted that, under the Council's Statement of Licensing Policy, the Applicant can rebut the above presumption if it can demonstrate exceptional circumstances and that the granting of the application would not add to the cumulative issues already experienced within the CIZ.

The Sub-Committee noted the representations made by the Licensing Authority relating to the licensing objective of the prevention of noise nuisance. However, the Sub-Committee also noted the Applicant's representation that the impact of the premises licence if granted, would be mitigated by the proposed conditions as set out at page 115 of the agenda. It was noted that the application had been amended, and the hours for the off sale of alcohol were within the framework hours. The Sub-Committee was therefore satisfied that there would be no addition to the cumulative impact in the area.

The Sub-Committee was satisfied that exceptional circumstances existed in that it was a small premises, which was not alcohol led, intended to be operated during framework hours. The Sub-Committee decided to impose an additional condition that off-sale alcohol would only be sold ancillary to a substantial meal. This would ensure that its off-sale business was not alcohol led and the risk of public nuisance and anti-social behaviour would be minimised.

The Sub-Committee was satisfied that the licensing objectives would be promoted by the granting of the application, and that the conditions imposed in relation to off-sales would effectively mitigate the risk of public nuisance and help alleviate the concerns raised by the Responsible Authority.

Therefore, Members made a decision and the decision was unanimous. Members granted the application with conditions.

Accordingly, the Sub Committee unanimously

RESOLVED

That the application for a Premises Licence variation for 3ake, 204 Brick Lane, London E1 6SA be **GRANTED** with conditions.

Sale of Alcohol (Off Sales only)

Monday to Saturday from 10:00 hours to 23:00 hours

Sunday 12:00 hours to 22:30 hours

Conditions

1. Alcohol will only be sold for consumption off the premises in sealed containers, whatever the circumstances of the sale. This will include partly consumed bottles of wine or other alcoholic beverages sold for consumption on the premises.
2. An incident log will be maintained to record all incidents of crime and disorder occurring at the point of delivery, including when alcohol is delivered to a premises. The log will also record all refusals at the point of delivery as a result of acceptable Proof of Age ID not being shown to the driver, or the person being drunk, or appearing to be drunk. This log will be available for inspection at the premises by the police or authorised officer on request.
3. The premises licence holder will ensure that an age verification policy will apply not only for sales for consumption on the premises but also all off sales, including deliveries, whereby all delivery riders will be required to ask any customer to whom alcohol is delivered who appears to be under 25, to produce identification in the form of their passport, their photo driving licence, or other photo ID with an immediately recognisable photograph of the customer, their date of birth and a holographic mark. A training card will be shown to every rider when collecting an order including alcohol that demonstrates acceptable ID as described above and will sign a log to verify his/her understanding of 3AKE's age verification policy.
4. A warning will be displayed on the restaurant's digital platforms on which an order for alcohol can be placed, informing customers that they must be aged 18 or over in order to proceed, and advising that valid photographic ID must be shown on request when the delivery is made, and the alcohol will be withheld if the rider is not satisfied with the ID shown, or if no ID is provided, when requested.
5. The Licensing Authority will be notified of all digital platforms advertising alcohol for sale by 3AKE restaurant for consumption off the premises, and any changes made to their content on an ongoing basis.
6. Riders will not be permitted to congregate outside the premises or the immediate vicinity, smoke, raise their voices, play audible music whilst waiting for their order, or operate their bikes in any way that could constitute a noise nuisance. A reception desk is located just inside the entrance, and any employee manning the reception desk will be tasked with managing all delivery collections besides carrying out regular checks to ensure no nuisance or obstruction is being caused outside the premises by customers or riders.
7. Delivery of alcohol will be to residential addresses or places of work only.
8. Off-sale alcohol must only be sold ancillary to a substantial meal unless, the off-sale of alcohol is for online orders of sake and/or Japanese whisky for delivery only.

4.2 Licensing Act 2003 Application to Review the Premises Licence for 76 Brick Lane, London E1 6RL

At the request of the Chair, Mr Ibrahim Hussain, Licensing Officer, introduced the report which detailed the application for a review of the premises licence for 76 Brick Lane, London E1 6RL. It was noted that the review had been initiated by the Metropolitan Police and was supported by the Licensing Authority, Environmental Health and the Health and Safety Team.

The Sub-Committee noted the Applicant was seeking the revocation of the Licence. The Sub-Committee carefully considered the written evidence of PC Mark Perry, for the Metropolitan Police, who was not present for the meeting as he was appearing at a concurrent Tower Hamlets Licensing Sub-Committee meeting.

Ms Kathy Driver, Principal Licensing Officer, explained that following incidences reported to the Police over the period November 2020 to January 2021, it became apparent the premises was operating in breach of the Covid-19 restrictions and laws. Reports of an illegal party and advertising for a DJ had led to fines being issued against Mr Abraham Mahmood who had been operating the premises as "Kyice's Kitchen". As part of the Police investigation, it was established that the Premises Licence Holder was Mr Sultan Miah and the Designated Premises Supervisor (DPS) was Mr Akhtar Miah.

Although attempts had been made to contact the Licence Holder and the DPS, no meaningful communication had been received from them. The annual fees for 2018 and 2019 had not been paid, which effectively suspended the licence. However, fees had been paid for 2020 via the online system by those associated with 'Kyice's Kitchen'. Ms Driver stated that it was apparent the Licence Holder was not involved with the business or the premises and therefore should have either surrendered the licence or consented to the transfer of the licence to a new owner. However, both these options had not been pursued despite several letters of communication to the Licence Holder. She said that the Licensing Authority was seeking a revocation of the Licence, as there was a risk that the licence could be reactivated should the outstanding licence fees be paid.

The Sub-Committee then heard from Mr Phil Brewer, Environmental Health Officer, who referred Members to the written submission of his colleague, Ms Nicola Cadzow. He said that the Environmental Health Team was supportive of the Police's request for review and revocation of the licence in light of the complaints received from members of the public about noise nuisance arising at the premises. He stated that it was clear that noise generated during the illegal party and breach of Covid-19 restrictions had caused disturbance to neighbours.

Mr Lekan Olomo, from the Health and Safety Team, then addressed the Sub-Committee. He said that he had visited the premises on the 19th of December 2020 with Nazir Ali and found there was approximately twenty to twenty-five people inside the premises, partying with food and drink, whilst music was

playing. Mr Olomo said that this was in clear breach of the Business Restriction Regulations, as per the Covid-19 laws and regulations. He said a fixed penalty notice was served on the premises on the 24th December with a fine of £2000.00, following the initial breach and fixed penalty which had been issued by the Police. Mr Olomo said he supported the Police's application for review and revocation of the Licence.

In response to questions from members, the following was noted:

- Several attempts had been made by the Licensing Authority to contact the License Holder. Letters and reminders had been sent in relation to the annual fees. A solicitor from a historic record was also contacted to see if communication could be established with the Licence Holder. Despite these attempts, the Licence Holder failed to respond.
- In the event of the licence not being revoked, the licence for the premises would remain suspended until such time as the annual fees were paid. This would mean the licence could be reactivated. The new licensee could effectively operate the business as a food premises without a licence until 11:00 p.m. if there was no sale of alcohol involved.
- The Police made the initial attendance at the premises following the reports of an illegal party. It was evident that the premises had breached the lockdown regulations and as such the Police and the Responsible Authorities had taken action to fine the person responsible for the party as well as try and make contact with the Licence Holder. The Responsible Authorities were seeking a revocation of the licence based on the evidence presented to the Sub-Committee.

Concluding remarks were made by the parties.

The Licensing Objectives

In considering the application, Members were required to consider the same in accordance with the Licensing Act 2003 (as amended), the Licensing Objectives, the Home Office Guidance and the Council's Statement of Licensing Policy and in particular to have regard to the promotion of the four licensing objectives:

1. The Prevention of Crime and Disorder;
2. Public Safety;
3. The Prevention of Public Nuisance; and
4. The Protection of Children from Harm.

Consideration

Each application must be considered on its own merits. The Chair confirmed that the Sub-Committee had carefully considered all the evidence before them and the oral representations at the meeting virtually made by the supporters

of the review, namely the Licensing Authority, Environmental Health and the Health & Safety Team.

The Sub-Committee noted the premises was in the Brick Lane Cumulative Impact Zone and that had in recent times it had been operated by Mr Abraham Mahmood as 'Kyice's Kitchen'. From the evidence provided, it was clear the Covid-19 restrictions and laws had been breached and that the licensing objectives had been undermined. The Sub-Committee noted that whilst attempts had been made to contact the director of Licence Holder, Mr Sultan Miah, and the Designated Premises Supervisor (DPS), Mr Akthar Miah, no meaningful response or communication had been received from them.

Evidence from the Licencing Authority showed that annual fees for years 2018 and 2019 had not been paid. Although fees had been paid for 2020, linked to an email address associated with Kyice's Kitchen, the fees for 2018 and 2019 remained outstanding. Accordingly, the licence remained suspended and the premises should not have been carrying out licensable activities. Correspondence, dated 12 November 2020, had been sent to the premises, the Premises Licence Holder and the DPS but no response was received.

The Sub-Committee noted that the Licence Holder and Designated Premises Supervisor had allowed the Premises to operate without a valid licence in breach of the relevant laws and contrary to the licensing objectives. Despite attempts by the Licensing Authority to engage with the Licence Holder, no efforts had been made by to co-operate or address the issues caused by the Premises. The Sub-Committee was not satisfied that licensing conditions, suspension or removal of the Designated Premises Supervisor would adequately address the issues or promote the licensing objectives. The Sub-Committee concluded that the licence holder was not a suitable person to hold a premises licence and that revocation was the only appropriate remedy to promote the licensing objectives.

Therefore, Members made a decision and the decision was unanimous. Members agreed to GRANT the review and REVOKE the licence held by Blue Tiger Limited.

Accordingly, the Sub Committee unanimously

RESOLVED

That the application for review of the Premises Beefy and Birds (Kyice's Kitchen) 76 Brick Lane, London E1 6RL be granted and the Licence be revoked.

5. EXTENSION OF DECISION DEADLINE: LICENSING ACT 2003

There were no applications which required an extension to the decision deadline.

The meeting ended at 7.43 p.m.

Chair, Councillor Shah Ameen
Licensing Sub Committee