LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE LICENSING SUB COMMITTEE

HELD AT 6.30 P.M. ON TUESDAY, 23 NOVEMBER 2021

THE COUNCIL CHAMBER, TOWN HALL, MULBERRY PLACE, 5 CLOVE CRESCENT, LONDON, E14 2BG

Members Present:

Councillor Peter Golds (Chair)

Councillor Victoria Obaze
Councillor Amina Ali

Other Councillors Present:

Councillor Rachel Blake

Officers Present:

Jonathan Melnick	–	(Principal Lawyer-Enforcement)
Lavine Miller-Johnson	–	(Licensing Officer)
Simmi Yesmin	–	(Democratic Services Officer, Committees, Governance)

Representing applicants	**Item Number**	**Role**
Alfred Hart	4.1	(Applicant)
Niall McCann	4.2	(Legal Representative)
Jeremy Liebster	4.2	(Applicant)

Representing objectors	**Item Number**	**Role**
Leo Charalambides	4.2	(Legal Representative)
Sue Hughes	4.2	(Resident)
Heather Corben	4.2	(Resident)
Michael Whitshire	4.2	(Resident)

Apologies

None

1. DECLARATIONS OF INTEREST

Councillor Amina Ali declared an interest on item 4.1, Application for a variation of the premises licence for Milk Float, Sweet Water Trading Mooring, Hackney Wick, London E9 5EN on the basis that the premises was in her ward. However, she confirmed that she had not discussed the application with any interested parties prior to the meeting.

2. RULES OF PROCEDURE

The rules of procedure were noted.

3. MINUTES OF THE PREVIOUS MEETING(S)

The minutes of the meetings held on 28th September and 26th October 2021 were agreed and approved as a correct record.

4. ITEMS FOR CONSIDERATION

4.1 Application for variation of a Premises Licence for Milk Float Sweet Trade Water Mooring Hackney Wick London E9 5EN

At the request of the Chair, Ms Lavine Miller-Johnson, Licensing Officer, introduced the report which detailed the application for a variation of the premises licence for Milk Float, Sweet Water Trading Mooring, Hackney Wick, London E9 5EN. It was noted that objections had been made by a local ward councillor and on behalf of the London Legacy Development Corporation (LLDC). However, it was noted that the issues of concerns raised by the LLDC had now been addressed and therefore their objection had been withdrawn prior to the hearing.

The Chair stated that any reference to personal home addresses or personal details would be disregarded and any reference would be excluded from the minutes.

At the request of the Chair, Mr Alfie Hatt, Applicant, briefly explained that prior to making the application, the premises had been trading off sales of alcohol successfully for the six months prior to that under the temporary permissions granted to all pubs and bars in the wake of COVID 19. Mr Hatt explained that he had consulted with PC Mark Perry, Metropolitan Police, prior to submitting the application and in line with his advice, the following conditions had been stipulated: that all takeaway sales of alcohol to be sold in sealed biodegradable containers; no takeaway alcohol shall be consumed in the immediate vicinity of the premises. To support this there wase signage in place, all the staff had been briefed on this and the private security firm engaged by the applicant was also aware to stop anyone loitering or drinking in the immediate area. As well as this another condition was agreed with the police, namely that no off sales of alcohol to be served one hour either side of or during sporting events at the London Stadium. It was noted that the

application subsequently received no objections from the Metropolitan Police or Environmental Health.

Mr Hatt explained that the two objections initially focused on concerns relating to the grassy bank which was overlooked directly by Omega works and was adjacent to the premises. As a result of gatherings of people on the bank, he had reached out directly to local residents and other stakeholders to discuss ways in which everyone could all work together to monitor and police the grassy bank area and the site in general and as part of that put in place a protocol for strategic escalation of any incidents or gatherings on that area. As a part of this, Mr Hatt committed to cease take-away trade immediately at the first sign of any group gatherings. In addition, he was also in direct communication with a private security firm and had a link to the Olympic Park headquarters, with a protocol in place that if there was any signs of disruption, the premises would immediately stop off sales trade and notify the relevant authorities. Thus, not only were they responding directly but also assisting in the solution to the problem. He said that this policy had been trialled and tested throughout the summer 2021 and had worked well.

It was further noted that in August 2021, LLDC had fenced off the grassy area with the view to putting in place a new planting scheme which had been designed to make that area unsuable by people for gathering. The final landscaping was going to be a real improvement and it will hopefully limit the gatherings of people in that area which was the primary concern of both Cllr Blake and the LLDC. Mr Hatt stated that in advance of this hearing, with the ongoing success of the kind of escalation protocol over the summer and the new landscaping scheme, he had reached out to the objectors and other stakeholders just to make them aware of the upcoming hearing and had asked if there were any remaining concerns. During this time LLDC withdrew its objection and sent a very kind letter of support. He concluded that he had gone to great lengths to observe the licensing process and to consider the concerns of objectors in this application and has offered effective solutions and adopted conditions to mitigate any risks. He said that he remained a responsible and responsive operator with a proven track record that he operates a safe and successful business.

Members then heard from Cllr Rachel Blake. She thanked the applicant for reaching out several times on this matter and acknowledged the applicant's hard work in the area. Cllr Blake said that she was not able to withdraw her objection as she did not think that the management proposals set out in anyway addressed the issues about public safety and possible nuisance. She referred the Sub-Committee to the map of the area contained in the agenda pack and made reference to the unusual area the premises were in. it was noted that there was a growing residential community living just opposite the grassy bank area with future housing development on the way. Cllr Blake highlighted the incidents of anti-social behaviour that had taken place, particularly last summer, which occurred on a weekly basis and were unbearable for local residents. Cllr Blake stated that she recognised the work that the particular premises had in place but was of the view that the nuisance was not containable and that the anti-social behaviour would not stop and therefore the application should not be granted. However, if the Sub-

Committee was minded togrant the application she suggested that additional conditions around reviews and timing of reviews should be considered.

It was noted that the area in question was undergoing proposed planting to reduce some of the risks of anti-social behaviour. However, without those plants it creates just an area for people to congregate where the noise and disruption just goes directly into people's homes opposite the grassy bank and the new homes soon to be built

In response to questions from Members the following was noted;

- That the anti-social behaviour had reduced significantly due to the scheme put in place by LLDC, making it impossible to have large gatherings.
- That the applicant had an active interest in the area being safe and wanted it free from anti-social behaviour.
- Previously people would buy cheap alcohol from off licences nearby and drink in the open space (grassy bank area opposite the premises).
- People used to use the open space as a gathering area due to parks and open spaces being closed during the pandemic. Gatherings over the last year had been largely reduced as more public spaces and venues had reopened.
- That off licences were in closer proximity to the grassy area than the premises itself.
- That an escalation protocol was in place with the LLDC and the applicant was happy to formalise it as a condition.
- This summer the premises had operated successfully, and their customers understood that off sales of alcohol cannot be consumed outside of the immediate vicinity.
- That there was a private security firm in place, there was a very low incident rate but if there were any issues, they could be contacted for immediate response.
- That the premises had, had this arrangement in place for the past 18 months, without any issues or complaints. i.e., ceasing off sales trade at the sign of anti-social behaviour.
- That it was not possible to link problems of anti-social behaviour specifically to the premises.
- That the premises only sold craft beers/ciders and cocktails.

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:

The Prevention of Crime and Disorder;
Public Safety;

The Prevention of Public Nuisance; and
The Protection of Children from Harm.

Consideration

The Sub-Committee considered an application by Moo Canoes Ltd. to vary the premises licence held in respect of The Milk Float, moored at Sweet Water Trade Mooring, London, E9 ("the Premises"). The application sought to permanently permit off-sales of alcohol within the permitted hours. The application attracted one representation, from Cllr. Blake in her capacity as ward councillor. The London Legacy Development Corporation (LLDC), the local planning authority for the area, had made a representation but that was withdrawn in advance of the hearing.

The premises benefit from the temporary permissions attaching to the licence as a result of the Business and Planning Act 2020. Alfie Hatt, on behalf of the applicant, told the Sub-Committee he had discussed the application with PC Mark Perry of the Police Licensing Unit and had agreed some conditions with them. The police had not objected. Those conditions were:

- All off-sales were to be in sealed containers;
- All off-sales would be in biodegradable containers or packaging;
- No alcohol sold for consumption off the premises was to be consumed in the immediate vicinity of the Premises;
- There would be no off-sales of alcohol one hour either side of sporting events at the London Stadium.

Mr. Hatt further told the Sub-Committee that they had private security that were linked to the Olympic Park security control so that if anything untoward should happen, they would be made aware and would cease alcohol sales until those issues were remedied. In relation to the grassed bank area referred to in Cllr. Blake's representation, this had apparently now been fenced off by the LLDC in August and the intention was that this would be planted over and thus would deter crowds from gathering in that area.

He further informed the Sub-Committee that anti-social behaviour (ASB) in the area had reduced and that this had been acknowledged by the LLDC when they withdrew their representation. He indicated that nearby off-licences were selling alcohol more cheaply and that he was unsure what the company was said to be failing to do. He explained that they had an interest in maintaining the area and working with the authorities. He explained when asked the security processes and protocols in place.

Cllr. Blake maintained her written representation. She told the Sub-Committee that that area was an unusual one and that the previous summer anti-social behaviour (ASB) had been a weekly occurrence. She considered that the premises should be subject to periodic reviews and that there was no mention in the conditions of ceasing alcohol sales if the circumstances warranted that. She noted also that new homes were due to be built in the area opposite the grassed area in question and that those homes would be affected by noise.

The Sub-Committee considered that the licensing objectives of the prevention of public nuisance and public safety were engaged. As to the latter, the main concern seemed to be the risk of someone falling into the canal. This seemed to the Sub-Committee to be both unlikely but also an inherent risk given the nature of the area. No other concerns had been raised in this regard nor was the Sub-Committee made aware of any instance where that risk had materialised.

The Sub-Committee considered the likely impact upon the licensing objectives of granting this application. Unlike a new application, which involves a degree of speculation on the Sub-Committee's part, a variation allows the Sub-Committee to consider the past performance of the premises. In that regard, no specific concerns had been realised that linked the Premises to ASB in the area; rather, the concerns seemed to be linked to the area itself and were not caused by or exacerbated by the Premises.

In addition, the Premises had benefited from the temporary variation granted under the Business and Planning Act 2020, which allowed temporary off-sales initially until September 2021 and now to 2022. By the time of the hearing, the Premises had been trading for around a year since that Act came into force (albeit with some interruptions due to lockdowns). If that temporary permission had led to an increase in ASB, or ASB had been directly linked to the Premises, the Sub-Committee would have expected there to have been some evidence of that. Absent such evidence, the Sub-Committee could not be satisfied that there was sufficient evidence to justify refusing the application.

The Sub-Committee was advised that it could not take account of the possible impact on new homes yet to be built. That could not constitute a public nuisance at this stage.

The Sub-Committee did not think it appropriate to time-limit the variation or to subject it to regular reviews. The Premises could benefit in any event from the temporary permission under the Business and Planning Act 2020 and the applicant was entitled to seek a permanent variation. The Licensing Act 2003 already contains a review mechanism and in the event that the Premises operated in a way to undermine the licensing objectives, a review could be sought at any time.

The Sub-Committee considered that it was appropriate and proportionate to grant the application with amendments to existing conditions and additional conditions:

Accordingly, the Sub Committee unanimously;

RESOLVED

That the application for a variation of the premises licence for Milk Float, Sweet Water Trading Mooring, Hackney Wick, London E9 5EN be **GRANTED with conditions.**

Sale of alcohol (on and off sales)

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

Non-Standard timings

New Year's Eve - Sale of alcohol from 10:00 hours to 00:00 hours (midnight) – opening hours of the premises from 10:00 hours to 01:00 hours (the following day)

Amendment to condition

Condition 15 - on the premise licence is amended to read "Off sales of alcohol will be for delivery or collection."

Additional Conditions

1. On any day that a sporting or other major event is being held at the London Stadium, off-sales of alcohol shall cease no earlier than hour one prior to the published event commencement time and shall resume no earlier than one hour after the published event cessation time.

2. Alcohol sold or supplied for consumption off the premises shall be not be consumed along the length of the towpath adjacent to the premises.

4.2 Application for a New Premises Licence for (The Medieval Banquet) Ivory House, St Katherine's Dock, East Smithfield, London E1W 1BP

At the request of the Chair, Ms Lavine Miller-Johnson, Licensing Officer, introduced the report which detailed the application for a new premises licence for The Medieval Banquet, Ivory House, St Katherine's Dock, East Smithfield, London E1W 1BP. It was noted that objections had been made by local residents.

At this juncture, Mr Leo Charalambides, Legal Representative on behalf of the Friends of St Katherines Dock requested to speak and address the Sub-Committee on points of procedural irregularities.

He referred the Sub Committee to the Section 182 guidance around what is relevant vexatious or frivolous on page 175 of the agenda and questioned why this was positioned right at the beginning of the representations that have been made by the local residents. Mr Jonathan Melnick, Principal Enforcement Lawyer confirmed that there was no suggestion that the representations made by the objectors are said to be irrelevant vexatious or frivolous and referred Mr Charalambides to paragraph 6.7 of the report on page 134 of the agenda which confirmed that all the representations in this report has been considered by the relevant officer and was clear that all of the representations met the required test and were clearly relevant representations in respect to this application.

Mr Charalambides then referred to another matter to which he raised an objection to, he explained that the application was submitted on 2nd February 2021, there was no tenant in place at the time and due to the number of representations the application was adjourned sine die until such time as a new tenant was identified. He explained that an application must be heard pursuant to regulation 5 of the Hearing Regulations, within 20 working days of the last date for representations. Further, he asserted that under the Provision of Services Regulations 2009 a hearing could be adjourned only once and it must be to a period that is fixed and made public in advance. He also stated that although the authority had extended a time limit for the application, it must give notice to the parties involved stating the period of the extension and the reasons for it, however his clients were never given a notice. He questioned how the applicant was able to write to the authority and be given such adjournments. Further to these points he urged the Sub-Committee to dismiss the application and invite the applicants to reapply.

Mr Niall McCann, Legal Representative on behalf of the applicant expressed his discontent by the approach taken by Mr Charalambides. He stated that they had tried to work with the residents and adopt a collegiate approach throughout the application process but have been unsuccessful. He said that he had contacted Mr Charalambides, days prior to the meeting, and was waiting to hear back from him with any concerns/queries etc. however he had not heard back until this meeting today. It was noted that these arguments had been made without allowing him sufficient time to prepare for a response or to deal with the matter. He explained that the adjournment was requested on the basis that the application was made as soon as it became apparent that the licence had lapsed and couldn't be retrieved. He said that due to the pandemic there was a delay in getting a hearing date but when a date was given, they were happy to proceed but noted that there were a number of representations which raised concerns that a prospective tenant was not in place. Therefore to help alleviate the concerns of residents, an adjournment was sought subject to them identifying a tenant and it was not because the application had insufficient information as referred to by Mr Charalambides. The application was adjourned, and a tenant had now been identified and therefore the application had been relisted. Mr McCann said it had taken many months to get to this position and in terms of persons who have been disadvantaged, it would be the applicant.

Mr McCann said that as he wasn’t prepared for these arguments, and had he had been he would have done some research and made written submissions, however he referred to two key cases which refer to procedural irregularities – TC projects case, when there was a procedural irregularity because of the number of days’ notice haven't been counted properly, the Judge ruled that even when legislation uses language such as must or shall it doesn’t necessary mean the breaches are fatal, the authority will wish to take into account a number of considerations including as a purpose for legislation being substantially achieved even if not fully achieved, secondly has a member of the public identified have been discouraged from exercising their right to object? in this case the suggestion the application adjourned without agreed notice being a disadvantage when in fact he believed the residents were in a stronger position because there is a potential tenant looking to take

the lease and we can supply the further information if requested. The Funkcy Mojoe case was also referred to, which again ruled that the process should not be frustrated by minor errors. Mr McCann said that if there has been a procedural irregularity in this case, it has been a minor one Mr McCann explained to the Sub-Committee that they had taken a lot of time and effort to get to this stage and therefore suggested that it was appropriate to hear the application today and did not see the relevance of reapplying with the same application and receiving the same objections.

The Chair adjourned the meeting at 8.05pm and retired with Members of the Sub Committee in private to discuss the submissions put forward by both parties. The Chair reconvened the meeting at 815pm.

Mr Melnick, on behalf of the Sub Committee advised both parties that due to a number of legal points having been raised at very short notice, and that the point with regard to the Provision of Services Regulations in particular was likely to need further consideration, it wasin the interest of natural justice to the applicant to have the benefit of the precise way the legal points would be put and to have sufficient time to consider and respond to those. The Sub Committee therefore asked for written submissions to be made on this matter by Mr Charalambides and for them to be sent to the Sub-Committee and Mr. McCann within 14 days starting from tomorrow (8th December) and Mr McCann to respond to the points raised with 14 days thereafter (22nd December). The application would then be heard by a Licensing Sub Committee on 11th January 2022.

At this point both legal advisors conferred with their clients.

At this stage, Mr McCann formally withdraw the application and advised the Sub-Committee that they would reapply and would look to engage with the residents again. It was also agreed that once an application is made and if there is a need for a hearing then this would be scheduled in at the very earliest opportunity due to the history of this application.

The application was withdrawn.

5. EXTENSION OF DECISION DEADLINE: LICENSING ACT 2003

Nil items.

The meeting ended at 8.25 p.m.

Chair, Councillor Peter Golds
Licensing Sub Committee