

Decisions of the Licensing Sub-Committee

5 June 2018

Members Present:-
Cllr John Hart (Chairman)

Cllr Alison Cornelius
Cllr Claire Farrier

Also in attendance
Mr Dan Pattenden – Licensing Officer
Ms Victoria Seifert – HB Public Law
Ms Naomi Kwasa – Governance Officer

1 APPOINTMENT OF CHAIRMAN

RESOLVED that Councillor John Hart be appointed as Chairman.

2 ABSENCE OF MEMBERS (IF ANY)

None.

3 DECLARATION OF MEMBERS' DISCLOSABLE PECUNIARY INTERESTS AND NON-PECUNIARY INTERESTS (IF ANY)

None.

4 LICENSING SUB-COMMITTEE HEARING PROCEDURE

The Chairman explained the procedure that would be followed at the meeting.

5 REVIEW OF PREMISES LICENCE – WALLACE BAR, 1023 FINCHLEY, LONDON, NW11 7ES

The Sub-Committee heard detailed submissions from Licencing as the Responsible Authority, and the Licencing Officer. They also considered representations from the Licensee, Mr Masoud Yasini Ardekani.

6 MOTION TO EXCLUDE THE PRESS AND PUBLIC

RESOLVED that the parties be excluded from the meeting, together with the press and public, in accordance with Regulation 14(2) of the Licensing Act 2003 (Hearings and regulations 2005)

7 DELIBERATION BY THE SUB-COMMITTEE IN PRIVATE SESSION

The Sub-Committee deliberated in private session, accompanied by the Officer from HB Public Law and the Governance Officer.

8 RE-ADMISSION OF THE PRESS AND PUBLIC: ANNOUNCEMENT OF THE DECISION OF THE SUB-COMMITTEE

This is an application for a review of the premises licence in respect of The Wallace Bar, 1023 Finchley Road, London, NW11 7ES (hereinafter referred to as “the Premises”) pursuant to s.51 of the Licensing Act 2003.

An objection was received from one responsible authority: the Licensing Department of the London Borough of Barnet in relation to the Prevention of Public Nuisance.

There have also been two representations from neighbours, one from Rachel Scott Halls and one from H. Leven and B.A. Leven, these representations relate to the Prevention of Public Nuisance.

These premises have had a chequered past. There were persistent complaints from residents about noise emanating from the Premises; noise abatement notices were served and there have been attendances by Environmental Health that detected a statutory noise nuisance. The Sub-Committee notes that the Premises licence was revoked on 9 November 2016 following a review at which various breaches of the licence conditions were cited. That decision was subject to an Appeal to the Magistrate’s Court by the former licensee which was subsequently withdrawn on 19 December 2017.

The Sub-Committee also notes that on 22 August 2017 they considered an application for a new premises licence. At the time the Sub-Committee refused to grant the new premises licence on the basis that they did not have any faith in the Applicant being able to uphold the Licensing Objectives. They concluded that the matters to which they had given weight outweighed the proposed conditions put forward by the Applicant and no licence would be granted. That decision was also subject to an Appeal to the Magistrate’s Court by the current DPS Mr Ardekani. That appeal was settled on 19 December 2017 on the basis that the premises would be subject to numerous additional licensing conditions including the following:

- Condition 5.1 - At all times when the premises are open there shall be at least one person who is capable of operating the CCTV system if required to do so by the Police or authorised officers of the London Borough of Barnet.
- Condition 9 - A direct telephone number for the manager at the premises shall be publicly available at all times the premises are open. The telephone number is to be made available to residents and businesses in the vicinity.
- Condition 11 - This condition relates to activities during deregulated hours and further hours permitted by the licence:
 - a) No live music inside or outside of the premises at any time.

- b) No recorded music inside or outside of the premises at any time.
- c) There will only be background music, which is at a level for ambience and not for entertainment.

The Sub-Committee have had regard to the written and oral representations of the responsible licensing authority. The Sub-Committee have had regard to the written representations of Rachel Scott Halls and note that she has complained about hearing music on 3 and 4 February 2018 in breach of the licensing conditions and again on 17 March 2018 when she heard music between 8pm and 11pm again in breach of the conditions. She also stated that she had attempted to contact the Wallace through a number provided on Facebook but had been hung up on thrice. They also considered the written representations of H. Leven and B.A. Leven,

At the panel hearing, the licensing officer Mariesa Connolly read out her report and there was oral evidence from Mr Dan Pattenden on behalf of the Responsible Licensing Authority. Mr Ardekani, the DPS represented himself and gave oral evidence.

Mr Pattenden on behalf of the Responsible Authority stated that they had received complaints of loud music being played twice on 3 and 4 February and 17 March 2018 and people dancing to the music, in breach of Condition 11 of the licensing conditions agreed in December 2017.

When the premises were visited on 20 March 2018, there was no one able to access the CCTV in breach of Condition 5.1.

Furthermore when the DPS, Mr Ardekani was phoned on 20 March 2018, he stated that the music was not "that loud" on 17 March 2018

When Mr Ardekani was visited by licensing officers on 22 March 2018, he stated that the CCTV system was password locked and the person who could help him was away. In respect of 17 March 2018 he admitted there was music and he admitted that if the licensing authority reviewed the CCTV footage they would likely decide to review the licence.

Mr Pattenden also informed the sub-committee that the premises had the most restrictive licensing conditions in the borough and there were no other conditions which could be attached to the licence. He was concerned that there had been a significant breach of the licensing conditions in his view through the playing of any music at all. This was also a criminal offence in breach of the Licensing Act 2003. Although the other breaches were relatively minor and normally would have resulted in a warning, he had made it clear to Mr Ardekani prior to agreeing the additional licensing conditions before the magistrates that if he was unclear about any of the conditions he was happy to explain them to him.

Mr Ardekani gave evidence that he subsequently had disconnected the speakers at the premises and the only music now being played was from the TV. He stated that he tried

to comply with his licensing conditions and there had only been one incident of music being played in March 2018. However, he later acknowledged that there had been complaints in February 2018 which had arisen due to celebrations at Iranian New Year. He explained that he had had problems with the CCTV cameras at the premises and conceded that on 17 March 2018 the CCTV had not been working, but he had only become aware of that fact subsequently when he had tried to get the footage for the Responsible Authority. He had assumed that that CCTV recorded everything but stated that prior to discovering that it was not working following the incident on 17 March 2018, he had never checked whether the equipment was working. He stated that he was not aware that he had an obligation to do this. He stated that the CCTV was now working and regularly inspected. When questioned by the Sub-Committee as to whether the previous problems with the CCTV had been recorded in the incident log book, he stated that they hadn't.

He admitted that he had been present at the premises on 17 March 2018 when the further incident of noise nuisance had occurred. This was St Patrick's Day. He explained that he had 20-25 customers so the music was louder than usual. When questioned he was confused as who had turned the music down and Mr Pattenden interjected to explain that according to his notes of his conversation with Mr Ardekani, he had told him that he had asked the customers to turn the music down. He stated that he it was his mistake and he had not appreciated that the music was so loud.

When questioned about the problems that the neighbour had telephoning the premises, he stated that the Facebook page had been set up by a previous member of staff. There was no website for the premises. He admitted that the residents had not been informed of the premises' telephone number.

The Sub-committee noted that there had been a significant reduction in the number of complaints and none of the complainants had attended compared to previous hearings in respect of these premises.

The Sub-committee has decided that it does not have any confidence or faith that Mr Ardekani was able to uphold the Licensing Objectives. They had carefully considered all the alternatives open to them including whether it was possible to attach any additional conditions and/or temporarily suspend the licence, but reluctantly concluded that there was nothing else that could be added and Mr Ardekani himself did not offer any additional condition. Therefore it has decided to revoke the premises licence for the following reasons:

- Mr Ardekani had had the benefit of legal representation from Kings Solicitors when he had agreed the conditions before the Magistrates Court on 19 December 2017.
- His legal representatives would have explained those conditions to him at the time of the hearing and the consequences of breach.
- Mr Pattenden at the time that these conditions were agreed made it clear to him that this was his last opportunity to operate the licence.

- The conditions agreed on 19 December 2017 are the strictest licensing conditions in the borough.
- Despite agreeing to these conditions Mr Ardekani did not appear to fully comprehend them. This was evidenced by the fact that when asked by the licensing officer about music being played on 17 March 2018, he stated that it was too loud, not seeming to appreciate that any music being played at all was in breach of his licensing conditions or that he had committed a prosecutory breach of the Licensing Act 2003.
- The Sub-committee were concerned that Mr Ardekani still does not understand several of his licensing conditions, in particular:
 - The necessity of recording any minor faults with the CCTV system in the incident log book in breach of Condition 6e.
 - Ensuring that a direct telephone number for the manager is available for members of the public at all times the premises are open in breach of Condition 9.

Right to appeal

Any party aggrieved with the decision of the Licensing Panel on one or more of the grounds set out in Schedule 5 to the Licensing Act 2003 may appeal to the Magistrates' Court within 21 days of notification of this decision.

9 ANY OTHER ITEM(S) THE CHAIRMAN DECIDES ARE URGENT

None.

The meeting finished at 5.15pm