

Decisions of the Licensing Sub-Committee

24 September 2019

Members Present:-

Councillor Wendy Prentice
Councillor Alison Cornelius
Councillor Lachhya Gurung

1. APPOINTMENT OF CHAIRMAN

RESOLVED that Councillor Wendy Prentice be appointed as Chairman.

2. DECLARATION OF MEMBERS' DISCLOSABLE PECUNIARY INTERESTS AND NON PECUNIARY INTERESTS (IF ANY)

None.

3. LICENSING SUB-COMMITTEE HEARING PROCEDURE

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

4. REPORT OF THE TRADING STANDARDS AND LICENSING MANAGER

The Committee considered an application for review of Premises Licence made under section 51 of the Licensing Act 2003 in relation to Mama Africa 25-27 Watford Way, London NW4 3JH ("the Premises"). The application was brought by PC Wilcock, Licensing Officer at South Harrow Police Station on behalf of The Metropolitan Police ("the Applicant").

5. 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).

6. 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.

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

Decision on application for review of Premises Licence - Mama Africa

This is an application for review of Premises Licence made under section 51 of the Licensing Act 2003 in relation to Mama Africa 25-27 Watford Way, London NW4 3JH ("the Premises"). The application was brought by PC Wilcock, Licensing Officer at South Harrow Police Station on behalf of The Metropolitan Police ("the Applicant").

Application to Adjourn

The Sub-Committee first dealt with the Licensee's request for an adjournment of the hearing. The Licensee alleged that the Local Authority had failed to serve upon him a copy of the hearing notice and other relevant documentation.

Ms Hammond, the Local Authority's Licensing Officer confirmed that a copy of the notice of hearing together with relevant documents was posted on 04 September 2019, to the address which the Licensee had supplied to the Local Authority as his residential address. Ms Hammond produced a copy of the letter sent to the Licensee and this was considered by the Licensee and his solicitor. Following this, the Licensee confirmed the address on the letter to be his previous address which he had vacated three and a half years ago. He admitted that he had not notified the Local Authority of his change of address but said he would do so as soon as possible.

The Sub-Committee considered the facts presented as well as representations made by both parties and came to a decision that it was not appropriate to adjourn the hearing on the grounds of public interest. A copy of the agenda was handed to the Licensee and the Sub-Committee made a decision to proceed with the hearing.

The Review

Following receipt of the application for review of Premises Licence, from the Metropolitan Police, the Licensing team received a letter from the Licensee in objection to the application. Three valid representations were also received from members of the public in support of the Licensee.

The application relates to the licensing objectives of Prevention of Crime and Disorder and Public Safety.

The Sub-Committee heard from Elisabeth Hammond who summarised the application.

The Sub-Committee also heard from PC Wilcock who presented the application on behalf of the Metropolitan Police.

PC Wilcock orally emphasised the written representations made in her report which included:

- (1) Repeated incidents of violence at the Premises, the most recent being that which took place on 21 Jul 2019 at 03:58. CCTV recording could not be obtained from the venue at the time as none of the staff had access to or could operate the system and the owner was out of the country for the weekend;
- (2) Historically, the Police have had numerous issues in carrying out any investigations where a crime has taken place on the premises;
- (3) The Premises had remained open beyond the permitted hours;
- (4) The Police have been unable to retrieve CCTV footage to assist in bringing offenders to justice;
- (5) The Police have met with the Licensee in the past to discuss issues raised and discussions seems to have been disregarded, having a negative impact on the Licensing objectives, in particular, the Prevention of Crime and Disorder and Public Safety;
- (6) The Police acknowledge that there are gaps in time between the incidents but state that this is due to the Premises completely closed for long periods of time;
- (7) The application lists a number of previous incidents which include:
 - (a) Saturday 14 February 2015 (01:45hrs – 02:00hrs)
 - (b) Saturday 06 June 2015 (02:00hrs – 02:10hrs)
 - (c) Friday 06 November 2016 (02:30hrs -03:30hrs)
 - (d) 04 August 2018 (02:45- 03:10)- loud music heard from venue across Watford Way
 - (e) Saturday 01 September 2018 (03:35hrs -03:40hrs)
 - (f) 07 September 2018 – two of the kitchen staff with no right to work in the UK escorted from the Premises;
 - (g) Saturday 08 June 2019 (00:38hrs-00:55hrs);
 - (h) 21 July 2019 (03:45hrs -05:13hrs).

Written representations made by a local resident, Mr Con Brosnan in support of the application for review of the Premises Licence include the following:

- (1) That the premises is a source of disturbances to local residents due to persistent noise from music on Friday and Saturday nights until 03:10 or 03:15am;
- (2) The patrons leaving the premises in the early hours of the morning are very noisy, they congregate on the side walk shouting, laughing, banging car doors and revving engines;
- (3) The refuse bins from the restaurant are placed in the service road at the back and regularly overflow with rotten and filthy refuse scattered around the service road, attracting rat infestation and causing a terrible smell at all times;
- (4) Cooking oil in large tins is left open and discarded in the service road.
- (5) Attempts have been made to resolve the matter with the Premises management but the problem persists.

The Licensee orally emphasised written representation in his letter objecting to the application for review lodged by the Police. His written representations include the following:

- (1) Representations made by the police amounts to misrepresentation of facts to imply that the incidents highlighted would have occurred more often but for the closure of the Premises for long periods. The Licensee submitted that the Premises has been in continuous operation for thirteen years and open to the public every day of the week apart from September 2018 when it was shut for a period of three weeks;
- (2) That the first incident occurred nine years after the Premises was open, it happened outside the Premises and had no connection with the Premises. He stated that there are a few bars around the area and he did provide the Police with CCTV footage;
- (3) Incidents of 06 June 2015 and 06 November 2015 involve the same individual (victim of 14 February 2015) who reported his possession stolen because he had been banned from the Premises;
- (4) That his patrons are responsible professionals;
- (5) That he had apologised to the victim for the incident of 21 July 2019 and had offered support to overcome the experience;
- (6) That his Premises Licence was not on display on one occasion due to the paperwork being worn out but he produced a back-up copy to the Police;
- (7) The Licensee stated that he has now increased the working hours of security staff and propose to open the Premises to members only after 10pm to make it a safe zone in line with licensing objectives.
- (8) In relation to opening outside the operating hours, he stated that patrons from other clubs in the area had gained access to the Premises due to inadequate security staff. One of these clubs is now shut permanently.

The Licensee denied the allegations made against him by the Police. He also denied that all the incidents listed in the application except for that of 21 July 2019, took place on the Premises as alleged. During the hearing, the Licensee admitted to having the customers on the Premises outside permitted hours and stated that it can be difficult to get customers to leave when they are intoxicated. He denied employing staff who had no right to work in the country. He also denied being involved in a matter relating to a claim for asylum as alleged by the Police.

Written representations made in favour of the Licensee by his customers were all similar in terms of content. All three customers stated that they have been customers at the premises for a number of years respectively, they find the Premises to be a safe and friendly environment and they have never witnessed any incidents they would consider unsafe. In response to a question from a Sub-Committee member, the Licensee confirmed that he did prepare the statement and got his customers to sign as a petition.

The Sub-Committee carefully considered all relevant information including:

- Written and oral representations by all the parties;
- The Licensing Act 2003 and the steps that are appropriate to promote the licensing objectives;

- The guidance issued under section 182 of the Licensing Act 2003 (2018 being the most recent);
- Barnet Council's Licensing Policy;
- Human Rights Act 1998
- The considerations in s.17 of the Crime and Disorder Act 1998.

The Sub-Committee considered whether the Premises would be a source of Crime and Disorder in the area either by the conduct of its customers or by noise and whether the Licensing Objectives of Prevention of Crime and Disorder and Public Safety might be undermined.

The Sub-Committee considered steps proposed by the Licensee which include increasing the working hours of security staff, opening its doors to members only after 10pm as stated in the Licensee's written representation and the proposal from Mr Da Rocha-Afodu (Licensee's Solicitor) to offer training to employees of the Licensee.

The guidance to the Licensing Act makes it clear that in respect of licensing objective regarding Crime and Disorder, the Police are the main providers of information. It is noted that the Police had raised concerns regarding the historical and current situation in the area as it affects the Licensing Objectives.

The panel found as follows:

Having considered all the information attached to the meeting agenda, representations by all parties and photos, the Sub-Committee considered its options under 11.19 to 11.23 of the guidance and determined that the Licensing objectives of Prevention of Crime and Disorder and Public Safety had been undermined. The Sub-Committee arrived at the following decision:

- 1) To suspend the Premises Licence in relation to all licensable activities for a period of three months.
- 2) The Sub-Committee concluded that the following conditions should be added to the Licence.
 - a) The Licensee shall comply with all reasonable crime prevention and/or public safety measures that may be required by the Licensing Authority and/or the Environmental Health Officer and/or the Metropolitan Police and which are consistent with the premises operating schedule.
 - b) An incident book to record all incidents relating to Crime and Disorder is to be kept on the Premises and is to be made instantly available for inspection at the request of responsible authorities. All staff must be aware of the location of the incident book.
 - c) The CCTV system is to be maintained and operated in good order and to the satisfaction of the Metropolitan Police's reasonable requests. The medium upon which the images are recorded will be clearly identifiable, stored securely and retained for a period of not less than 31 days and will be made available to Police and Licensing Authority Officers immediately upon request.
 - d) CCTV footage must be provided in an immediately viewable format and must include any software, etc. which is required to view the footage. Any discs, portable drives or other storage media onto which the footage is transferred must be provided by the premises.

- e) A member of staff who is trained to operate the CCTV system and supply the footage must be present at the premises at all times when licensable activities are taking place.
- f) The Designated Premises Supervisor or person authorised by him must ensure that the CCTV system is checked at least once every week by a suitably trained member of staff. This check must include the operation of the cameras, the recording facilities, the facilities for providing footage and the accuracy of the time and date.
- g) All staff must undertake six monthly training with respect to the Licencing Act 2003, the effects of alcohol and the refusal of alcohol to people already under the influence. All training should be recorded and staff updated as required. Logs of training will be provided immediately on request of an officer of the Metropolitan Police or the Licencing Authority.
- h) Automatic noise control device must be fitted to all amplified sound equipment. The device must be set so that the volume of any amplified sound emanating from the premises does not cause a public nuisance. A Compliance Certificate must be supplied to the licensing authority for the installation of the unit before any regulated entertainment is carried out stating the operating parameters of the unit. The installation must be carried out by a competent/ qualified person and submitted to Licencing authority for approval. The devices must be fitted to all power outlets to the premises (i.e to the main distribution unit).
- i) Staff are to exit the Premises through the rear door while the front door is locked to prevent customers from gaining admission to the Premises outside permitted hours;
- j) The Licensee is to ensure that security staff are stationed at the doors of the Premises, one hour before and one hour after the closure time to supervise the dispersal of crowd from the Premises. This to ensure customers leave quickly and to avoid further incidents.

The Sub-Committee was particularly concerned about the presence of customers both in and outside of the Premises beyond the permitted opening hours. The Sub-Committee believes that the incident of 21 July 2019 which occurred between 03:45 and 05:13 (almost three hours outside the permitted opening time for the day) could have been avoided had the Premises been shut at the right time. This was considered in light of the Licensee's admission that customers remain on the Premises outside the permitted opening time and it could be difficult to remove them from the Premises as a result of intoxication. The Sub-Committee also considered representation made by the local resident in respect of noise nuisance resulting from the presence of customers and loud music from the Premises outside permitted opening time.

The Sub-Committee believes that the decision is an appropriate and proportionate response to address the causes of concern that instigated the review. The financial impact of the suspension of licensable activities for a period of three months was carefully considered by the Sub-Committee who concluded that this must be balanced against the effect on local residents of problems which arise from operation at the Premises outside permitted opening hours and the need to ensure that the licensing objectives are not compromised. The Sub-Committee believes that a temporary suspension of licensable activities may serve as a means of deterring the Licensee from allowing the problems that gave rise to the review from happening again. It will also give the Licensee the opportunity to put into place arrangements which will help to prevent the Licensing objectives from being undermined again in the future.

This determination in accordance with section 52(11) of the Licensing Act 2003 does not take effect:

- (a) Until the end of the period given for appealing against the decision, or
- (b) If the decision is appealed against, the disposal of the appeal.

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.

8. ANY OTHER ITEM(S) THE CHAIRMAN DECIDES ARE URGENT

None.

The meeting finished at 1.30pm