

THE LONDON BOROUGH OF CAMDEN

At a hearing of **LICENSING PANEL C** held on **THURSDAY, 23RD JANUARY, 2025** at 7.00 pm in a remote meeting via Microsoft Teams.

MEMBERS OF THE PANEL PRESENT

Councillors Matthew Kirk (Chair) and Sylvia McNamara

MEMBERS OF THE PANEL ABSENT

Councillors Jonathan Simpson and Nina De Ayala Parker

The minutes should be read in conjunction with the agenda for the hearing. They are subject to approval and signature at the next hearing of Licensing Panel C and any corrections approved at that hearing will be recorded in those minutes.

MINUTES

8. ELECTION OF CHAIR FOR THIS MEETING ONLY

RESOLVED –

THAT Councillor Matthew Kirk be elected Chair of Licensing Panel C for this meeting only.

1. GUIDANCE ON REMOTE MEETINGS HELD UNDER THE LICENSING ACT 2003 AND ASSOCIATED REGULATIONS

RESOLVED –

THAT the guidance be agreed.

2. APOLOGIES

Apologies for absence were received from Councillor Jonathan Simpson who was unwell and substituted by Councillor Sylvia McNamara.

The Panel wished Councillor Simpson a speedy recovery from his illness.

3. DECLARATIONS BY MEMBERS OF STATUTORY DISCLOSABLE PECUNIARY INTERESTS, COMPULSORY REGISTERABLE NON-PECUNIARY INTERESTS AND VOLUNTARY REGISTERABLE NON-PECUNIARY INTERESTS IN MATTERS ON THIS AGENDA

There were none.

4. ANNOUNCEMENTS

Webcasting

The Chair announced that the meeting was being broadcast live to the internet and would be capable of repeated viewing and copies of the recording could be made available to those that requested them. Those participating in the meeting were deemed to be consenting to being filmed.

Supplementary agenda and circulated document

Supplementary agenda 1 was published yesterday containing

- A statement from the applicant's legal representative setting out the reasons for the review of the premises Licence.
- Additional representation from an interested party – Youri Ananikian
- Late representations from the Licence Holder and his Acoustic Expert.

Supplementary Agenda 2 was published today

- Contained late information, from the second Licence holder Alessandra Breda regarding the operation of the premises.

The Chair advised that the Panel had discussed all the additional information received after the agenda had been published and were minded to accept all the late representations unless there was any objection from the parties to the hearing.

In the absence of any objections the Panel accepted all the additional information.

5. NOTIFICATION OF ANY ITEMS OF BUSINESS THAT THE CHAIR DECIDES TO TAKE AS URGENT

There was none.

6. SICAN 26-28 WHITFIELD STREET, LONDON W1T 2RG

Consideration was given to a report of the Executive Director Supporting Communities detailing an application to review a premises licence under Section 51 of the Licensing Act 2003.

Sarah Williams, Licensing Officer, summarised the report explaining that the application to review the licence had been lodged by a local resident, with 58 other representations received in support of the application to review the licence, including from the Police, Licensing Authority, the Home Office, a resident association, 53 local residents and a business. These representations were on pages 87-238 of the main agenda. The applicant and those supporting the application to review the Licence believed that the licensing objectives, the prevention of public nuisance, the prevention of crime and disorder and public safety were not being upheld.

She informed the hearing that the applicant had submitted comprehensive grounds for review set out in the review statement on pages 54-57 of the main agenda and pages 3-8 of Supplementary Agenda 1 as well as links to videos of noise and disturbance which they say were caused by the premises. The applicant had highlighted 4 key issues of concern in the review statement these were the operation of the premises. The dispersal of patrons at closing time, the attitude of the licence holder, and the applicant and local residents had proposed adding conditions to the licence. These included reducing opening hours to framework hours, the off sale of alcohol to cease at 11.00pm and the on sale of alcohol to cease half an hour before closing. The removal of recorded music as a licensable activity and for 6 existing conditions – 15 to 18, 20 and 21 to be removed and 16 additional conditions to be added.

There were 91 representations objecting to the application to review the premises licence and were in support of the venue these can be found on pages 241 to 339 of the main agenda. The Licence holder's legal representative had provided an evidence bundle, and acoustic report which could be found on pages 11 -206 of Supplementary Agenda 1. The Licence holder had also provided videos which had been circulated to Panel members and the applicant. A representation had been received from the landlord of the premises who indicated that they were aware of the review and were investigating the concerns raised, these could be found on pages 239 to 240 of the main agenda.

A further representation was received from the second licence holder which could be found in Supplementary Agenda 2 pages 3-4.

It was noted that all 4 of the licensing objectives were engaged by the application, the hours policy was engaged by the existing premises licence in relation to the time of licensable activities.

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The Licensing Officer notified the hearing that any determination of the Panel would not have effect until the end of the period given for appealing against the decision, or if the decision was appealed against until the decision was disposed of.

The Chair informed the hearing that the Panel had seen all the videos referred to by the Licensing officer and clarified from the clerk that although the landlord of the premises had indicated he would be attending the hearing, they were not in attendance.

Mr Michael Feeney, the applicant's barrister, outlined the application for review calling on 2 witnesses (Mr Tristan Penna, whose representation was on pages 211-213 of the main agenda and Amir Aziz) who were local residents and had experienced noise nuisance, anti-social behaviour and disturbance coming from the venue and its patrons.

Mr Penna and Mr Aziz informed the hearing of the noise nuisance, anti-social behaviour and disturbance they had both constantly experienced from the venue and its patrons late at night and into the early hours of the morning on Fridays, Saturday and Sunday, commenting that despite complaining to the venue and requesting the management to control their patrons behaviour and disturbance occurring from the premises, it had been to no avail. The persistent late-night disturbance from the venue had continued from when the Sican venue was opened 2 years ago except for several weeks in November when the venue was closed due to mice infestation.

Mr Michael Feeney made the following key points:

There was significant and compelling evidence that the premises had been undermining the licensing objectives for a significant period of time well over a year. Evidence of this had been provided by residents and corroborated by the Police, Licensing Authority and Environmental Health Responsible Authorities.

The noise report produced by the licence holder's acoustic expert was a snapshot based on a single visit on a single night and was not an accurate picture of how the premises had been operating over a sustained period of time. The report also entirely ignored the source of the complaints which was drunk customers shouting and screaming outside the premises which was the worst type of noise cutting through as it was intermittent and disruptive and was not masked by background traffic as appeared to have been suggested by the acoustic expert.

Although the Licence holder appeared to put the blame for the poor management and issues arising from the premises on the ex-partner and promising that things would change, the evidence contradicted this. The Licence holder's ex-partner had written in to indicate that they had not been involved with the premises since August 2024 and had been on maternity leave since February 2024.

The Designated Premise Supervisor (DPS) had been the same for the entire period. This put in serious doubt the licence holders claim that they had not been involved

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with the premises and that things would change. The buck stopped with the licence holder who was responsible for promoting the licensing objectives.

There had been extensive engagement with the licence holder in an effort to secure improvements, details of the engagement from the responsible authorities and residents were set out in the written submissions. The Licence holder had made promises but nothing had changed. This was borne out by evidence in the supplementary agenda from interested party Mr Ananikan who reported noise nuisance coming from the venue last week Saturday.

The applicant was asking the Panel:

To reduce the hours of the premises to Council framework hours – Monday to Thursday 11.30pm, Friday and Saturday midnight, and Sunday 10.30pm

For the deletion of certain conditions which were dependent on the hours changing. If the hours were reduced those conditions were no longer required.

To add a condition that would ensure the premises operated as a restaurant and to stop the unlimited drinking and the premises operating as a bar.

To add a condition prohibiting bottomless brunches to stop the drink promotions.

The applicant was not asking for a suspension or revocation of the licence provided that they would accept the proposed conditions offered. The applicant and residents were asking for the right balance, the presence of a suitably conditioned licenced premises run in a responsible way.

Responding to questions Mr Feeney advised that:

- The applicant and residents had tried to take a proportionate approach and asked that conditions reducing the opening hours to framework hours and ensuring the premises operated as a restaurant was what was being requested rather than revocation of the licence.
- Mr Penna (witness) had been woken at 12.13 am early Saturday morning and later Saturday night 11.30pm by screaming and shouting.

PC Christopher Malone (Police responsible authority) speaking in support of the application for review, summarised their representation (pages 100-103), highlighting that the premises was not upholding the Licencing objectives, the prevention of public nuisance and prevention of crime and disorder having received several complaints from residents about anti-social behaviour of people that visited this premises since 2023. Although they supported the residents, they would recommend revocation of the licence for serious crime and disorder issues not just by the patrons but also the management of the premises. Employing people who had no right to

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work in the U.K and who had been arrested for working at the premises. The premises had been fined a substantial amount which had yet to be paid.

In response to a question about when the fine for employing people with no right to work in the UK should have been paid, PC Malone said he was not sure but the amount was still outstanding since September 2024.

Esther Jones, Licensing Authority responsible authority speaking in support of the application for review, summarised their representation (pages 87-98) which also included a supporting statement from the Council's Environmental Health and Pollution team, highlighting that the premises was not upholding the Licencing objectives, the prevention of public nuisance, public safety and prevention of crime and disorder. She noted that although the premises appeared to be working with the licensing authority this had not stopped the flow of complaints from residents to the licensing authority and the Council's Environmental Health team even after the review application had been submitted.

In addition, food officers from the Council had carried out an inspection of the premises which led to closure due to mice infestation. It appeared that the premises had not taken adequate remedial action to eradicate and keep the infestation away from the premises.

The licensing Authority were asking for the premises be shut for a period of one month to treat any infestation, revamp its operations and put in place measures that would ensure that the premises did not engage with any of the four licensing objectives. Also, supporting the Police, the Licensing Authority would also request that revocation of the licence be considered.

Responding to questions Ms Esther Jones advised:

- In relation to whether the mice infestation at the premises was due to the building site next door to the premises, building sites were not traditionally a source for mice infestation. The mice infestation was found in the licence holders' premises.
- 10 complaints had been received from residents since the review application was submitted in October 2024.

Interested Party Sade Ewurama who had made a representation objecting to the premises licence review said she would like to withdraw her representation.

Mr Josef Canon, barrister speaking on behalf of the Premises Licence Holder, addressed the Panel. He provided the following information:

- There was no need to revoke or suspend the licence. There appeared to be a campaign of exaggeration and pinning of incidents to Sican where it was not justified.

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- Although there may have been some incidents but to say that all these incidents occurred at Sican was not right.
- Sican was a food and drink establishment selling high end South American, Japanese hybrid food. It was a limited company with two directors who used to be together as business and life partners but were no longer together and had an acrimonious split.
- The premises was a block away from Tottenham Court Road, a block away from Goodge Street in the heart of Fitzrovia. It was not a residential area, it was in the West End and not a quiet area.
- It was an area that generated lots of noise, with the late-night economy and many licensed premises with a lot of people travelling through and around the area.
- The bottomless brunch concept was a popular idea that offered limited exposure to spending. It was a pre-sold food and drink experience where customers paid £70 for a two-hour session. Customers could not stay beyond 2 hours they were served an 8-course high end meal and could order drinks from a set menu of drinks.
- The impression given was that the drinks were unlimited because that was what customers were attracted to, however the reality was that if customers drank and ate more than the cost base there was no benefit to the company and the drinks were not bottomless. Drinking more in the session produced no more revenue but increased the cost base. The venue does not let this happen.
- When Sican opened Mr Mascitti (Licence holder) was abroad managing his other premises while Ms Breda (second licence holder) was left in overall charge of this premises. Although she was not in day-to-day charge, she was the director to whom the management of Sican reported to.
- When the relationship between the 2 directors started to fall apart, Mr Mascitti returned to the UK in the late summer 2024 largely because of the immigration raid and the realisation that the relationship had broken down beyond repair.
- The majority of the issues reported in terms of noise and disturbance were pre the late summer of 2024.
- With regards to the immigration issues the operational and directional control of hiring and firing was the responsibility of Ms Breda and to Mr Mascitti's dismay he discovered that she had hired workers without carrying out proper checks.

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- Mr Mascitti on discovering the situation immediately took steps to rectify the situation, immediately dismissing these employees and employing a consultancy firm to put proper procedures in place so that this would never happen again.
- Other steps taken included the hiring of the acoustic expert who had also provided a dispersal policy and a noise management plan which could be included as conditions of the licence.
- These new measures put in were now working as attested to by Crabtree and Colville Residents Group in their letter on page 45 of Supplementary Agenda 1, which stated that “management of the Sican were dispersing people away from the premises to Goodge Street and were telling people who stood outside the premises smoking to do so quietly, but it was all a game, as they were doing it so as not to get shut down at the review hearing”. However, this was being done by the management because it was the right thing to do as advised by the acoustic expert and was the best evidence to indicate the measures that had been implemented since Mr Mascitti’s return.
- In relation to the infestation problem, it was surprising to hear the representation from the Licensing Authority Responsible Authority suggesting that Mr Mascitti was not being honest. Mr Mascitti’s understanding from Pest Control professionals was that when work refurbishment started on previously empty sites, it drove mice away.
- There was an infestation, there was a prohibition notice served, the premises closed voluntarily before it was required to be done formally, they were then allowed to reopen because the problem was dealt with and had not resurfaced. There was no evidence to support the view that the issue was ongoing.
- In relation to the main issue of noise from customers leaving the Sican premises. Mr Mascitti was concerned that some of these incidents were being attributed to Sican customers where in fact these were not Sican customers at all.
- They were attributable to the late-night economy and the general atmosphere in that area of London. For example, the late-night disturbance in the early hours of Saturday morning and Saturday night last week mentioned by Mr Penna and attributed to Sican could not have come from the premises as there were no customers leaving the premises at that time in the morning, the venue was closed. The same applied to Mr Aziz’s testimony that he was disturbed at 3.00- 4.00am, the Sican licence allowed opening until 1.00am on Thursday to Saturday, there was no way Sican customers were waking him up two to three hours after it had closed.

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- The noise could have come from elsewhere but it was not from the Sican. Also, in the Police statement on page 100 of the main agenda there were incidents where noise and loud music was attributed to a local resident rather than the Sican. There were also a number of entries in the Environmental Health Team's representation which were investigated and found not to be attributable to Sican.
- Of the 16 conditions proposed by the applicant, the Licence holder would agree to the majority of them except for the suggested ban on the bottomless brunch as this was not the problem as explained earlier and the proposed restaurant condition was considered to be an anachronism. A little bit of flexibility would be required for the waste disposal issue as the licence holder had no control over when the waste was collected outside on the pavement.
- With regards to door supervisors being on duty on all the nights, there was no evidence that Thursday and Sunday nights were problematic, so a bit of flexibility was also requested for this condition. It was hoped that door supervisors would be required only on Friday and Saturdays which were busy nights.
- There did not seem to be a further request to remove the authorisation on the licence for recorded music in the premises.
- There was not the need to scale the opening hours of the premises back to framework hours. This premises was modelled on 2-hour sittings with the complaints not limited to the last sitting of the day. The complaints were effectively about dispersal and the model meant that people arrived and left in 2-hour shifts.
- The hours of operation of a business were its lifeblood, particularly in the night and what was being requested by the applicant was the cancellation of a whole sitting for each of the 4 days for which the concept was effective.
- Rather than curtail the hours what was required was better management of the exit and dispersal of customers.
- Neither was there the need to close the premises for a month in order to impose conditions, the premises was operating most of the conditions already and the conditions were not the kind that required a period of closure. The conditions could be implemented almost immediately and the licence holder was willing to do so.
- There was no basis to revoke the licence, since Mr Mascitti's return, he had shown a commitment to making this work and to implement some of the controls suggested by the applicant.

In response to questions Mr Cannon provided the following information:

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- In relation to the immigration offences, there was evidence of illegal employment and illegal workers working at the premises, but there was no evidence of any other illegal activities.
- There was no dispute of the findings of the Home Office with regards to illegal employment, however as soon as Mr Mascitti was made aware he put a stop to the employment practices referred to and it would not happen again.
- With regards to the fine as legal representative he had no information and was waiting for instructions from the licence holder.
- It was accepted and recognised that section 182 of the guidance of the Licensing Act 2003 did state that certain activities such as employing someone disqualified from working in the UK by reason of their immigration status should be treated seriously and revocation of the licence even in the first instance should be considered. However, while not playing this down it was not the most serious end of the scale and if asking about the promotion of the licensing objectives this would not happen again.
- With regards to the bottomless brunches, the licence holder was not saying that patrons came out from the venue sober, it was however controlled consumption and the complaints were not all about Sican customers.
- The documentation included in the bundle such as the dispersal policy and guide to employment in the UK was used to show that a system was now being used at the premises to ensure these issues did not arise again.
- With two-hour sittings there was a peak exit at a particular time, which the premises was providing assurance that it could manage.
- In terms of engagement with residents, the licence holder did want his business to work, he did not want to attract the attention of regulatory authorities and to be the subject of lots of complaints. He had put steps in place to prevent this from happening. He had also tried to engage with residents.
- The concept of the bottomless brunch had already been explained, the flashing light for a business was if a customer was to eat or drink more than they had paid for in advance. The intention of the business was to make a profit and the customer did not consume more than their money's worth.
- Mr Mascitti was out of the country from the start when Sican was operating to September 2024.
- The Licence holder wanted to run the business as it was at the moment rather than run a different model with different hours. The licence holder wanted to do it in a sensible way which promoted the licensing objectives.

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- When the mice infestation was brought to attention of the licence holder everything was done to resolve the issue.

The applicant's legal representative, Mr Feeney made closing submission noting that the applicant was asking for a fundamental change in how the business operates and the operational model but the licence holder was not interested in doing that. What that meant was that there was relatively little difference between the options – and if you were minded to revoke there was more than enough evidence to support this and that was an option that was available to the Panel. This was not some sort of vendetta as the licence holder suggests: it was 58 residents, supported by responsible authorities providing evidence consistent with what the residents were saying. When it was closed during the pest infestation suddenly everything was better. It was significant that when the licence holder's case was 'trust me', we had not heard from the licence holder at all – yet we were being asked to trust him.

PC Malone Police Responsible Authority summarised his submission noting the licence holder was the person responsible yet had sought to lay blame elsewhere. There were serious crimes that had occurred at the venue in addition to causing nuisance and anti-social behaviour to residents. Commenting that the Police could not trust the licence holder to uphold the licensing objectives and asked that the Panel consider revoking the premises licence.

Esther Jones Licensing Authority summarised her submission agreeing with the Police submission, that the Licence be revoked, and emphasising that it was quite wrong to place all the blame for the failures on the licence holder's wife.

In their closing remarks, Mr Cannon representing the Premises Licence holder said that it was unfair to suggest you had not heard from the licence holder: there was a detailed witness statement from him and he had been available for questions throughout, he was here and still available. He had not said that everything was the licence holder's wife's fault but that the immigration issue was her fault. Although there had been some problems at the premises not all the issues of anti-social behaviour and noise nuisance were attributable to Sican. There were measures that the licence holder could put in place to address the concerns raised and the Panel should allow the Licence holder to get on with running his business in a way that was beneficial to everybody. He asked that the Panel consider the proportionate approach – which was to accept all the additional conditions but not the reduction in hours.

Deliberation and Reasons

Panel Members confirmed that they had been able to follow and understand the submissions and discussions in relation to the application for review of a premises licence in respect of Sican.

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In deliberation, the Panel noted the representations made by the applicant Police, Licensing, Home Office Responsible Authorities, and the information provided by the Licence Holder.

The Panel then considered all the options available to them and whether to:

- a) Allow the licence to continue operating as before.
- b) Modify the conditions of the licence.
- c) To suspend the licence for a period not exceeding three months.
- d) To revoke the licence.

Panel Members considered that a number of initiatives had been tried by residents and the responsible authorities in engaging with the premises and licence holder to resolve anti-social behaviour, noise nuisance and dispersal issues. Noting that a review of the licence normally occurred where all other attempts to improve things had not worked.

The Panel noted that the issues with the premises from the evidence provided by residents and responsible authorities had continued for a sustained period, in addition to that was the serious immigration issue of which section 182 of the guidance of the Licensing Act 2003 stated that certain activities such as employing someone disqualified from working in the UK by reason of their immigration status should be treated seriously and revocation of the licence even in the first instance should be considered.

The Panel noted that the residents had not requested revocation as long as the opening hours of the premises could be reduced and the Licence holder agreed to certain conditions, however the licence holder's legal representative had indicated that the business economic model depended on the hours being sustained as they were and there was not the need to employ door supervisors for dispersal of patrons on all the nights the premises was open.

The Panel agreed that the evidence painted a clear picture of a licensed premises that had been operated consistently in an entirely unacceptable fashion from when the licence holder took over the premises. Despite engagement by a number of residents, although there were some others with different views, and the Responsible Authorities in December 2023, March and October 2024, the same problems had persisted, except when the premises was shut for a few weeks.

In addition, it was also noted that the illegal employment of a significant number of staff through a period of years which was serious in itself but pointed to a business that was run completely wrongly and to a licence holder that could not be trusted.

The Panel noted that the business was a partnership in which Mr Mascitti owned the majority of the shares and the buck stopped with him, even then from all the information the problems with the venue preceded marital discord.

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Given all the reasons above and having deliberated on all evidence available to them, the incidents leading up to the review were profoundly serious matters that breached the prevention of crime and disorder and the prevention of public nuisance licensing objectives. The Panel was of the view and agreed that the licence should be revoked.

Therefore, it was

RESOLVED –

- i) THAT the premises licence in respect of Sican be revoked pursuant to Section 53 of the Licensing Act 2003.

7. ANY OTHER BUSINESS THAT THE CHAIR CONSIDERS URGENT

There was none.

The hearing ended at 9.43 pm.

CHAIR

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MINUTES END