

Licensing Sub-Committee

Meeting of Licensing Sub-Committee held on Tuesday, 27 June 2023 at 10.38am in This meeting will be held remotely

MINUTES

Present: Councillor Patsy Cummings (Chair);
Councillors Margaret Bird and Nina Degrad

Also Present: Michael Goddard (Licensing Manager)
Jessica Stockton (Corporate Solicitor and Legal Advisor for the Sub-Committee)
Mr Andy Grimsby (Solicitor for Applicant)
Mr Sajeevan Velauthampillai (Applicant)
Edwin Sear (Metropolitan Police)
Deborah Storey (Metropolitan Police Service)

PART A

37/22 Appointment of Chair

Councillor Nina Degrad nominated Councillor Patsy Cummings
Councillor Margaret Bird seconded the motion.

The Sub-Committee **RESOLVED** to appoint Councillor Patsy Cummings as the Chair of the Sub-Committee.

38/22 Disclosure of Interests

Members were reminded of the requirements regarding Disclosure Pecuniary of Interests. There were no disclosures from the Members.

39/22 Urgent Business (if any)

There were no items of urgent business.

40/22 Licensing Act 2003 - Application for a variation to a premises license at The Spread Eagle, Katharine Street, Croydon, CR0 1NX.

The Licensing Sub-Committee considered the Application for a Variation to a Premises Licence at The Spread Eagle, 39-41 Katharine Street, Croydon, CR0 1NX and the representations received as contained in the report of the

Corporate Director, Sustainable Communities, Regeneration & Economic Recovery.

The Sub-Committee noted as detailed in Appendix A3, that following discussions with the police, the Applicant had included in their application the conditions at Appendix A3 as part of their operating schedule, which conditions will be added to the License should the Sub-Committee be minded to grant the application.

The Sub-Committee also considered the representations made by the Applicant and their Representative at the hearing. The Sub-Committee noted that although the objector was not present, they had the benefit of their written objections in the documentation before the Sub-Committee.

The Sub-Committee noted that the objector had yesterday indicated that he wished to make representations that the hearing be deferred on the basis that he had made a complaint about a council licensing officer who had corresponded with him but who was not present or making representations at the hearing. It was noted that this complaint was going through the corporate complaints process and the objector wanted the hearing deferred until the corporate complaint had been finalised. The other parties to the proceedings confirmed that given the late notice, they had not had an opportunity to consider the documentation which the objector had proposed to introduce and had therefore not had an opportunity to consent or otherwise to the late introduction of information to the proceedings.

The Sub-Committee were mindful that hearings under the Act and regulations were required to be held within a specified period of time and whilst the Sub-Committee was permitted to extend the time limits in certain circumstances, the Sub-committee had to be satisfied that it would be in the public interest to do so. The Sub-Committee also noted that the regulations provide that the authority shall disregard any information given by a party which is not relevant to their application/representations and relevant to the promotion of the licensing objectives.

The Sub-Committee were mindful of the interests of other parties to the proceedings which would be prejudiced if the matter were deferred, especially as they had not had sufficient time to consider the information which the objector wished to reference and had not consented to its introduction at the hearing. The Sub-Committee were also mindful of the fact that the complaint which the objector had made was going through the appropriate process as noted by the objector himself and would be dealt with under that process. Accordingly, the Sub-Committee were not minded to defer consideration of the matter.

The Sub-Committee, having reference to the licensing objectives under the Licensing Act 2003, the statutory guidance issued under Section 182 of the Licensing Act 2003 and the Council Licensing Policy, **RESOLVED** to **GRANT** the application for **Variation** incorporating the agreed conditions as set out in Appendix A3 to the report on the basis that the Sub-Committee were satisfied

that it would be appropriate to promote the licensing objectives to do so.

The reasons of the Sub-Committee were as follows:

- 1 The Sub-Committee noted that the premises are situated on the corner of Katherine and High Street in the town centre.
- 2 The Sub-Committee noted that the Applicant and their representative had attempted to engage with the objector regarding their concerns to ascertain if they could be addressed but that the objector had declined to interact with them to discuss the matter.
- 3 The application for a variation itself (Appendix A2) and the Applicant's representative during the hearing made clear that despite the assertion in the objection, the variation was in respect of on sales only. In addition, whilst outside chairs and tables were governed by a separate licensing regime, the Applicant confirmed that currently patrons are not permitted outside with glasses or glass bottles at any point, even if they go out to smoke and this would remain the case if the variation was permitted.
- 4 In respect of Prevention of Public Nuisance, the Sub-Committee noted the importance of focussing on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable, as is suggested by the Statutory Guidance.
- 5 The Sub-Committee noted that they had not received any objections from trading standards or the Council's noise team raising concerns about potential noise disturbance emanating from the premises but were also reassured by the representations made about the upgrades to the premises during the recent refurbishment to support the prevention of public nuisance objective.
- 6 The Sub-Committee were also aware that whilst the operation of Public Spaces Protection Orders were not within the remit of the Licensing Sub-Committee; statutorily, a prohibition in a public spaces protection order on consuming alcohol does not apply to premises authorised by a premises licence to be used for the supply of alcohol; a place within the curtilage of such a premises or to premises which could have been so used within the 30 minutes before the relevant time.
- 7 The Sub-Committee were aware, and had reference to the Statutory Guidance which provides that, beyond the immediate area surrounding the premises, that public nuisance are matters for the personal responsibility of individuals under the law. An individual who engages in antisocial behaviour is accountable in their own right. However, the Statutory Guidance makes clear that it would be perfectly reasonable for example, for a licensing authority to impose a condition, following

relevant representations, that requires the licence holder to place signs at the exits from the building encouraging patrons to leave quietly. The Sub-Committee noted that the Applicant had already offered, as part of the proposed conditions to have such conditions on the license if granted.

- 8 The Sub-Committee also noted the proposed conditions offered by the applicant in respect of CCTV, challenge 25 and the use of SIA door supervisors on certain days and at certain times. The Sub-Committee noted the Applicant's evidence at the hearing that the Applicant was already voluntarily using SIA door supervisors at the premises for its current operations.
- 9 In respect of the statement by the objector that the "Ask for Angela" scheme was not being used, the Sub-Committee noted that the venue did have the scheme posters displayed – the Applicant confirmed at the hearing that they are located in the Ladies bathroom and pictures of the scheme posters were included in the papers before the Members.

The Sub-Committee wished to thank all participants for the manner in which they engaged with and supported the hearing in providing information to allow the Sub-Committee's consideration.

41/22 **Licensing Act 2003 - Application for a premises licence at 100 Beulah Road, Thornton Heath, CR7 8JF.**

The Licensing Sub-Committee considered the Application for a Premises Licence at 100 Beulah Road, Thornton Heath, CR7 8JF and the representations received as contained in the report of the Corporate Director, Sustainable Communities, Regeneration & Economic Recovery.

The Sub-Committee also considered the representations made by the Applicant and the Police during the hearing.

The Sub-Committee, having reference to the licensing objectives under the Licensing Act 2003, the statutory guidance issued under Section 182 of the Licensing Act 2003 and the Council Licensing Policy, **RESOLVED** to **REFUSE** the application on the basis that the Sub-Committee were satisfied that it would be appropriate to promote the licensing objectives to do so. The Sub-Committee considered that the objectives of the prevention of public nuisance, prevention of crime and disorder and protection of children from harm were most relevant in relation to their consideration of the matter.

The reasons of the Sub-Committee were as follows:

- 1 The Sub-Committee noted that the premises are situated on the Beulah Road directly next to and backing onto Beulah Junior School and Beulah Infant and Nursery School and opposite the premises used by the local scout group. The premises is the last in a small parade of

shops with residential premises above the shops. There are also residential premises on the opposite side of the road to the premises. The premises is a short distance from a bus stop.

- 2 In respect of Prevention of Public Nuisance, the Sub-Committee noted the importance of focussing on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable, as is suggested by the Statutory Guidance.
- 3 The Sub-Committee were aware, and had reference to the Statutory Guidance which provides that, beyond the immediate area surrounding the premises, that public nuisance are matters for the personal responsibility of individuals under the law. An individual who engages in antisocial behaviour is accountable in their own right. However, as detailed below, the Statutory Guidance makes clear that operators should demonstrate knowledge and awareness of the area in which they propose to operate and show how their application will support the licensing objectives.
- 4 The Sub-Committee noted the provisions in the guidance which indicate that Licensing authorities should look to the police as the main source of advice on crime and disorder. In respect of Prevention of Crime and Disorder, the Sub-Committee were aware that any conditions should be targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Whilst it is noted that the Applicant has suggested CCTV for the current premises, as described below, there are concerns by the Police as to the ability of the Applicant to adhere to this given conduct at other premises for which he is Designated Premises Supervisor (DPS).
- 5 The Statutory Guidance indicates that conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The DPS is the key person who will usually be responsible for the day-to-day management of the premises by the premises licence holder, including the prevention of disorder. However, in the current instance, the Premises License Holder is proposed to be the DPS.
- 6 The protection of children from harm objective includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong

language and sexual expletives. In this regard, the Sub-Committee were mindful of the Police evidence that the groups of street drinkers behaved in a particularly offensive manner towards women and girls (as detailed below) and the concern that locating an off-license next to a school would mean that there would no longer be a separation between the area where the issues were most prevalent and the school gates, thereby increasing the risk to the protection of children from harm objective as a result.

- 7 Whilst both the Applicant and the Police made reference to “need” for a premises or particular hours of operation, the Sub-Committee was mindful, as detailed in Statutory Guidance and the Council’s statement of licensing Policy, that “need” concerns the commercial demand for premise of a particular nature and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy.
- 8 The Sub-Committee were made aware, via the papers and the representations before them, that there is a substantial anti-social behaviour problem in the area with gatherings of street drinkers outside the off-license premises in the area. The police indicated as follows:
 - The anti-social behaviour is predominantly on the east side of the road outside existing off licenses and take away outlets and the groups mainly gather outside the off licenses.
 - There are two main groups which are present all year round but are more prevalent and gather in larger groups in the summer months. The first is an older group of males aged 30+ who appear to travel to the area to gather. The second is a younger group of males aged between 15-18 who appear to be from the area.
 - The anti-social behaviour presents a safety risk to residents, especially women and girls who are subject to harassment by the groups of males, the “majority of which is misogynistic, verbal and aimed at women”.
 - The gatherings of males are affecting the quality of life of the local residents and others using or moving through the location with the anti-social behaviour including unreasonable noise (individuals with sound systems and from vehicle sound systems), their behaviour towards women and girls and in respect of the litter created especially empty beer cans and alcohol bottles.
 - Shopkeepers in the area have been subject to intimidation to sell alcohol to the groups who gather to street drink.
 - During last summer the Safer Neighbourhood team (STN) in the area and the Council were sent emails and mobile footage from concerned residents almost every day as a result of the problems.
 - Recently the Thornton Heath SNT had two “AIRSPACES” running at the same time – one for each side of the road. AirSpace is the Metropolitan Police Service system for recording and managing Anti-Social Behaviour incidents.

- As a result of the issues highlighted above as well as other matters, the Council is currently consulting on introducing a Public Spaces Protection Order in Thornton Heath and if introduced this proposed PSPO would cover the area in which the application premises is.
- 9 Whilst the Applicant indicated he was aware of the issues, he did not appear particularly concerned about this and his expressed view was that they would not impact his business as they were further down the road and he would simply ask any people gathering outside his shop to leave. The Sub-Committee were concerned that this indicated a lack of awareness of the area and the problems in the surrounds where the premises was situated which had been highlighted by the Police. The Sub-Committee were also dubious as to the ability of a single shop keeper to relocate groups of street drinkers if they chose to gather when others in the area had been subject to intimidation and the residents were being harassed by the groups. In addition, the application in no way indicated that it was specifically tailored to engage with how these significant issues might impact on the operation of a premises in a manner which would support the Licensing Objectives, suggesting only standard provisions in the operating schedule which might be appropriate for a premises operating in an area without the same level of concerns or one which was not directly next to a junior and infants' school.
- 10 The Sub-Committee were aware, and had regard to the Statutory Guidance which provides that in completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area and must be aware of the expectations of the responsible authorities (such as the police) as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives. Paragraph 8.42 of the Statutory Guidance indicates that Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:
- the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;
 - any risk posed to the local area by the applicants' proposed licensable activities; and
 - any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.
- 11 In light of what is set out above about the police concerns and nature of anti-social behaviour in the area of the premises, the Sub-Committee did not consider that the Applicant had applied his mind to the area in

which the premises would be situated in suggesting how the licensing objectives could be supported through his operating schedule.

- 12 Whilst the applicant, during the hearing, offered to amend his application so that high strength beer and cider (which he defined as more than 7.5%ABV) was not sold at the store and not to sell individual cans of beer/cider, the Police made clear that although high strength beer and cider are often an issue for street drinkers, it was spirits which were mainly consumed by the groups of street drinkers in this area. The Sub-Committee also noted from the police representations that they consider high strength beer and cider to be anything above 6%ABV.
- 13 The Sub-Committee acknowledged, as provided for in both the Statutory Guidance and the Council's Licensing Statement of Policy that all parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. As detailed further below, there have been concerns about the Applicant's ability or willingness to work together in partnership with among others the Police, given their previous interactions with him at other premises in the Borough in respect of which he is the Premises License Holder and/or the Designated Premises Supervisor.
- 14 The Sub-Committee noted that the applicant offered, at the hearing, a reduction in the hours of sale of alcohol to be restricted between 10am and 10pm however the police highlighted that the issues were prevalent during the day and afternoon was when school children would be passing through the area on their way home so that the Police did not consider that such an amendment would assist with supporting the Licensing Objectives in the current circumstances.
- 15 The Sub-Committee were aware that their determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 16 As set out in the Statutory Guidance, the Sub-Committee were mindful that determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that any imposed condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. The licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the

licensing objectives and the track record of the business. In this instance, whilst the Sub-Committee did not have the benefit of details of the track record at this business as the Applicant had only recently taken over this premises, the Applicant is DPS at a number of other premises within the borough and the Police had highlighted, as detailed further below, a number of concerns with compliance with these premises which raise concerns about the Applicant's ability or willingness to successfully operate the business within the ambit of the Licensing Objectives in this area.

- 17 The sale and supply of alcohol, because of its impact on the wider community and on crime and anti-social behaviour, carries with it greater responsibility than the provision of regulated entertainment and late night refreshment. This is why sales of alcohol may not be made under a premises licence unless there is a DPS in respect of the premises (who must hold a personal licence); and every sale must be made or authorised by a personal licence holder. Every premises licence that authorises the sale of alcohol must specify a DPS. This will normally be the person who has been given day to day responsibility for running the premises by the premises licence holder. The DPS must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy. This means that the DPS has personal responsibility for ensuring that staff are not only aware of, but are also applying, the age verification policy. In the current circumstances, the proposed premises license holder is also the proposed DPS.
- 18 Whilst the Sub-Committee were very clear that they were not considering a review or similar in relation to the Applicant's other premises, they did consider that the manner in which the Applicant operated those premises and the consequent concerns which the Police had, did have a bearing on the degree to which the Sub-Committee would be confident in how these proposed premises might be run in light particularly of the challenges and risks prevalent in this area.
- 19 The Police detailed issues with the Applicant's compliance at other premises which included:
 - In another area where street drinkers are prevalent and the Police have instigated a voluntary scheme with off licenses in the area to cease selling high strength and/or single cans of beer/cider the Applicant has not voluntarily chosen to stop selling single cans and/or high strength alcohol, unlike most other off licenses in that area. The Applicant noted to the Sub-Committee that it was not a requirement on his license to do so but then later indicated that it was because the staff there was selling stock which would soon be out of date. The Sub-Committee noted that the photographs from the police indicated that the fridges in that store were fully stocked with high strength beer/cider which were displayed in single cans so

were reluctant to accept that this was due to the need to sell soon to be out of date stock and were of the view that this indicated an unwillingness to work with the police and other off licenses in the area to combat a street drinking issue which would be of concern if the Applicant were to operate the current premises. The Police also noted that they had regularly seen intoxicated persons and street drinkers visiting that shop to purchase high strength beer/cider. It is contrary to the duties placed on premises to sell to those who are intoxicated and the Applicant has offered this as a condition on the current license application in his operating schedule. The Sub-Committee were concerned that this would not be adhered to at this premises if it is not supported at the Applicant's other premises.

- The Applicant has offered to operate "Challenge 25" at this premises in support of the protection of children from harm objective, however the Police cast doubt on the ability of the Applicant (and DPS) to adhere to this as there have been issues with the refusal register being operated successfully at other premises which he is the License Holder and DPS for. This included one premises where the shop assistant present was not only unable to locate a refusals register but did not know what it was required for or its importance in relation to alcohol sales among other things. At another premises visited by the Police, the refusals register (log) was only located after a "frenzied" search and then was covered in dust as it had not been used in some time, the last entry having been made more than a month prior. The Police indicated that it appeared that this log had only been acquired following a previous police visit when the premises was reminded that they needed to keep a record of refusals to sell age restricted products.
- At another of the Applicant's premises, it was found to be operating beyond its authorised hours contrary to the terms of the Premises License and contrary to Section 136 of the Licensing Act and it was necessary for the police to take engagement and enforcement action in that regard.
- At one of the Applicant's other premises, the Police, when conducting a compliance visit, noted that the member of staff in the premises was not able to operate the CCTV and was therefore unable to provide images from the CCTV at police request, contrary to a condition on the Applicants license there. In addition, the refusals register and training logs from staff training were not available on site.
- Although the Sub-Committee were aware that a DPS does not have to physically be present at a premises to authorise sales of alcohol, the Sub-Committee were concerned to hear that the Applicant as DPS at these other premises had not been on any of the premises during any of the Police visits detailed in the police representations. The Sub-Committee were also concerned to hear from the Police that they usually only found a single staff member on the premises when they visited and that they considered that the lack of onsite supervision of these staff members is a likely reason for the

generally poor compliance at individual premises compared to similar but unrelated off licenses around the borough.

- 20 The Sub-Committee noted the Police view that granting a premises license to permit the sale of alcohol at this premises “will move anti-social behaviour and problematic groups to outside the shop. This will risk potential clashes between parents/carers and children and the street drinkers, whilst currently they are separated by a safe distance to the nearest off license”
- 21 When having regard to what would be appropriate for the promotion of the Licensing Objectives, the Sub-Committee considered whether it would support the objectives to impose additional conditions or take the step of declining to name the Applicant as DPS on the premises License or both such measures short of refusal.
- 22 The Sub-Committee gave consideration to whether or not it could impose additional conditions on the license to deal with the concerns. In light of the issues raised by the Police in respect of compliance at other premises where the Applicant is DPS, the Sub-Committee were not satisfied that it would promote or support the licensing objectives to do so in the current circumstances and given the risk profile detailed by the Police, including the proximity of the local junior and infant school. As noted above, the Police had also cast doubt on the ability of conditions offered by the Applicant to not only be enforced but also, if they were enforced, to successfully deal with the concerns.
- 23 In respect of whether or not it would be appropriate to refuse to specify the Applicant as DPS for the premises as an alternative to refusal, the Sub-Committee were mindful that the Applicant would still be the premises license holder and would be responsible for management of the premises and appointment of a replacement DPS. The Sub-Committee were not confident, given the operation of other premises for which he was DPS, that there would be sufficient separation between the premises license holder and DPS such that a different DPS would ensure that the Licensing Objectives would be supported in the current circumstances at this locale. This concern of the Sub-Committee was exacerbated by the fact that during the hearing, the Applicant did not appear to consider that the problems described by the Police either in this area or at his other premises were particularly serious or give proper consideration to the impact this premises could have on existing issues.

The Sub-Committee wished to thank all participants for the manner in which they engaged with and supported the hearing in providing information to allow the Sub-Committee’s consideration.

The meeting ended at 12.15 pm

Signed:

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Date:

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