



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (4)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (4)** held on **Thursday 4th March, 2021**, This will be a virtual meeting.

Members Present: Councillors Karen Scarborough (Chairman), Louise Hyams and Rita Begum

1. MEMBERSHIP

There were no changes to the Membership of the Sub-Committee.

For the purposes of this meeting, the Chairman proposed that Councillor Louise Hyams be appointed Substitute Chairman. Councillor Rita Begum seconded the nomination and Councillor Hyams was duly elected Substitute Chairman.

2. DECLARATIONS OF INTEREST

There were no Declarations of Interest.

1. 10.00 AM: SUSSEX FISH BAR, GROUND FRONT, 20 LONDON STREET, LONDON W2 1HL

WCC LICENSING SUB-COMMITTEE NO. 4 ("The Committee")

Thursday 4 March 2021

Membership: Councillor Karen Scarborough (Chairman) Councillor Louise Hyams and Councillor Rita Begum

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Aaron Hardy
Committee Officer: Cameron Maclean
Presenting Officer: Michelle Steward

Application for variation of a Premises Licence – Sussex Fish Bar, 20 London Street, London W2 1HL – 20/10970/LIPV

FULL DECISION

Premises

Sussex Fish Bar, 20 London Street, London W2 1HL

Applicant

Mr Ajmal Daulatzai

Cumulative Impact Area?

N/A

Special Consideration Zone

N/A

Ward

Hyde Park

Summary of Application

The Sub-Committee considered an application for a Variation of a Premises Licence for the Sussex Fish Bar, 20 London Street, London W2 1HL. The applicant operated a restaurant and takeaway service from the Premises and had applied to vary the existing Premises Licence to extend the hours he could offer Late-Night Refreshment (LNR) from 23:00 hours (the time a licence for LNR is required) to 04:00 hours. The applicant currently had a Premises Licence that permitted the sale of LNR until 01:00 hours.

Activities and Hours applied for

The application was for a variation of a premises licence as follows –

The applicant seeks to vary the existing premises licence to extend the hours of late-night refreshment to 04:00 hours Monday to Sunday. The hours from 01:00 hours to 04:00 hours would be for deliveries only.

Late night refreshment

Monday to Sunday: 23:00 hours to 04:00 hours

Hours premises are open to the public

Monday to Sunday: 23:00 hours to 04:00 hours

Representations Received

- Metropolitan Police (PC Adam Deweltz) (withdrawn)
- Environmental Health Service (Maxwell Koduah)
- South East Bayswater Residents' Association (SEBRA)

Summary of issues raised by objectors

- EHS expressed concern that the provision of late-night refreshment and the hours requested may have the likely effect of causing an increase in Public Nuisance and may affect Public Safety within the area. EHS noted that conditions have been proposed by EHS and agreed with the applicant;
- SEBRA objected on the grounds that the likely effect of the application will be to harm the licensing objectives, particularly 'prevention of public nuisance' and potentially 'crime & disorder – noting noise nuisance from delivery vehicles, delivery motorbikes and scooters and engine fumes

Policy Position

Under Policy HRS1, applications for hours outside the core hours set out in Clause C will be considered on their merits, subject to other relevant policies, and with particular regard to the matters set out in Policy HRS1.

Under Policy FFP1, applications outside the West End Cumulative Zones will generally be granted subject to the matters set out in Policy FFP1(A).

DECISION AND REASONS

Ms Michelle Steward, Senior Licensing Officer, presented the report that was before the Sub-Committee. She noted that representations had been received from the Environmental Health Service (EHS); the Metropolitan Police Service (MPS) (subsequently withdrawn after agreement on proposed conditions with the applicant); and Mr John Zamit of the Southeast Bayswater Residents' Association (SEBRA).

Ms Steward noted that Mr Richard Brown of Citizens Advice Westminster, Licensing Project, representing SEBRA, had provided a written submission which was contained in the Additional Information Pack that was before the Sub-Committee.

In conclusion, Ms Steward stated that the Premises, which were located in Hyde Park Ward, were not within a Cumulative Impact Area (CIA).

Mr Robert Jordan, solicitor acting on behalf of the applicant, stated that the applicant was seeking to extend the sale of Late-Night Refreshment (LNR) by way of delivery only from 24:00 hours to 04:00 hours. He stated that the Premises would remain open to the public until 01:00 hours so that persons who were in the restaurant before 24:00 hours would have time to consume their meal on the premises.

[It was stated in the report of the Director of Public Protection & Licensing that it was proposed that between 01:00 hours and 04:00 hours, the provision of LNR would be by delivery meals only].

Mr Jordan stated that the applicant had agreed proposed conditions with both the EHS and the MPS. He then invited the applicant, Mr Ajmal Daulatzai, to address the Sub-Committee.

Mr Ajmal Daulatzai (Applicant)

Mr Daulatzai gave a brief presentation to the Members of the Sub-Committee in which he stated he had been operating from the Premises for 19 years without incident and/or complaint and that his application was simply to allow him to provide LNR by delivery only from midnight to 4 AM. He confirmed that it was the intention that the Premises would remain open until 1 AM to allow customers who were already on the Premises to finish their meals, last customer entry to the Premises being 12 midnight.

He stated that it was not anticipated that the Premises would be particularly busy with delivery meals. As the deliveries would be made by riders using pushbikes or (hybrid) motorcycles from companies such as Deliveroo, they would not be known to staff working at the Premises and would, therefore, collect the order from the Premises before departing to deliver the order. Consequently, any noise nuisance would be kept to a minimum and was likely to decrease as delivery companies increased their use of electric vehicles. In addition, there was significant parking space outside the Premises. Consequently, drivers would not be causing an obstruction on the highway when collecting deliveries.

Mr Daulatzai noted that there was already a lot of traffic on the road outside his Premises, including late-night taxis and buses. Therefore, his proposed use of delivery drivers would not add to existing traffic noise or nuisance. In addition, there had been no objections to the proposed Premises Licence variation from either residents or local businesses, including local hotels which had rooms above the Premises.

Mr Daulatzai then described the way in which orders for LNR would be placed online and how delivery drivers would operate in collecting and delivering meals from the Premises, including ringing a bell to gain entry to the Premises to collect the order. It had also been agreed with the Responsible Authorities that, should the variation be granted, there would be a condition attached to the Premises Licence prohibiting delivery drivers from congregating outside the Premises.

Mr Daulatzai stated that he and his Members of Staff, in the way in which they operated the Premises, sought to promote the Licensing Objectives and there were policies in place to ensure the promotion of the Licensing Objectives, including a Child Protection policy.

Mr Daulatzai also stated that, if residents ever had any concerns about the late-night operation, they could always contact him about their concerns. Deliveries would be made within a three-mile radius and there would be three Members of Staff on the Premises after midnight. The Front of Shop Member of Staff would be responsible for monitoring the delivery drivers and, if necessary, asking them not to cause any noise nuisance.

In conclusion, Mr Daulatzai said it was anticipated that, after midnight, there would be about three or four delivery orders per hour which, after deducting staff costs, would make a significant difference to the viability of the business during the current coronavirus pandemic.

Mr Jordan: Concluding Comments

Mr Jordan stated that it was unlikely that residents or other businesses would be disturbed, should the application be granted. He stated that he had attempted to speak to Mr Zamit of SEBRA, who may not have been aware, at the time, of the conditions that had been agreed between the applicant and the Responsible Authorities.

Mr Jordan then summarised how the Premises would operate should the application to vary the Premises Licence be granted, noting that there was little evidence in the representations that had been received to suggest that noise nuisance would be an issue should the application be granted. Furthermore, the fact that, apart from SEBRA, there were no other objections to the application from residents, suggested that there was very little opposition to this application.

In concluding his presentation, Mr Jordan noted the effect of the coronavirus pandemic on the business and that granting the application would allow the business to remain viable.

In response to a number of questions by Members, Mr Jordan and Mr Daulatzai provided the following information.

(a) As there may only be three or four Delivery Orders an hour, the Delivery Drivers would pick up deliveries from any number of Premises. Therefore, it would not be in their interest to congregate outside the applicant's Premises waiting for orders when they could be collecting and delivering from other Premises.

(b) People ordering delivery meals would usually receive a text to say the driver had arrived obviating the need for the driver to ring the customer's doorbell on arrival and causing a nuisance. Also, orders would be prepaid and, therefore, there was no need for the Driver to be paid at the point of delivery.

(c) The Premises sold mostly Fish & Chips, but Burgers and Chicken Meals were also available.

(d) If the Sub-Committee was minded to grant the application but to reduce the operating hours, the applicant would be willing to accept the reduced hours as any extension to the existing hours would improve the financial viability of the business.

(e) The applicant proposed monitoring the operation of the Premises with regard to complaints about noise nuisance and to provide residents with a contact telephone number and other means by which they could register any concerns about noise nuisance.

Mr Maxwell Koduah, of Environmental Health Service, confirmed that there was no record of complaints in relation to these Premises regarding public nuisance or public safety.

He stated that the concerns of the EHS related to possible noise nuisance caused by delivery drivers arriving at and leaving the Premises. To address these concerns, agreement had been reached with the applicant on Proposed Conditions No's 13 to 16 as set out on Page 29 of the Agenda Pack.

Referring to the first Bullet Point in the representations made by the Metropolitan Police Service (MPS) on Page 7 of the Agenda Pack, Mr Koduah noted that the sentence –

“The licence holder will positively encourage delivery riders/drivers to use quieter vehicles that are less likely to cause a nuisance, such as bicycles.”

was in keeping with the discussions that had taken place with the applicant.

Accordingly, if the applicant was willing to give an undertaking to encourage the use of quieter vehicles, and given the proposed conditions that had been agreed with the applicant, Mr Koduah stated that the EHS had no further observations to make on the application.

In response to questions by Members of the Sub-Committee, Mr Koduah, Mr Jordan, and Mr Daulatzai provided the following information.

- (a) Because the Delivery Drivers were third parties, it was not possible to impose conditions upon them that would be easily enforceable.
- (b) It was possible to encourage a dialogue between the applicant and delivery drivers regarding the types of vehicles they used. In addition, it was possible to provide feedback to companies such as Uber Eats and Deliveroo thereby providing some means of influencing the operation and behaviour of delivery drivers.
- (c) The applicant would be willing to put a notice on the door requiring delivery drivers waiting to collect orders to wait inside, and not outside, the Premises.

Mr John Zamit, of SEBRA, referred to the representations submitted by SEBRA which was set out on Pages 7 & 8 of the Agenda Pack. He stated that SEBRA's concerns were similar to the concerns it had expressed on a similar application at No. 26 London Street, which had been refused.

He stated that there had been some consultation with the Applicant's legal representative, but that had not progressed subsequent to proposed conditions having been agreed between the Applicant and the Responsible Authorities.

Mr Zamit described the residential and commercial nature of the area, noting that most of the businesses closed in line with the Council's core hours and that the area became very quiet late at night. He then described the noise nuisance caused by delivery drivers using cars and motorbikes.

Mr Zamit went on to say that it was SEBRA's view that the Premises already had a generous licence and that he did not understand how the business argument presented by the applicant, given the small number of orders that were anticipated during the extended opening hours, could make the business more financially viable. He suggested that, for this business model to work, there would need to be a lot more customers placing orders during the extended opening times.

In conclusion, Mr Zamit stated that he hoped that the country was now emerging from the coronavirus pandemic and that the business would be able to sustain itself on its existing hours.

Conclusion

The Sub Committee considered an application for a variation of a premises licence under the Licensing Act 2003 ("The Act"). The Premises is currently operating as a restaurant with a take-away facility within the Hyde Park Ward. The Applicant sought to extend the hours of late-night refreshment to 04:00 Monday to Sunday. The hours from 01:00 to 04:00 will be for deliveries only. The Premises has been licensed since 2008 and is not within any area of Cumulative Impact. The primary driver behind the application was to increase the financial viability of the business.

The Sub Committee noted that the applicant had operated the Premises for 19 years without incident and without any complaints having been received by the local authority about the way in which the Premises was managed.

Furthermore, the Sub Committee noted that the Responsible Authorities were satisfied that the proposed conditions agreed with the applicant were sufficient to meet any concerns they may have had about the application to vary the Premises Licence and the only representation received opposing the application had been from SEBRA; there were no representations from local residents or local businesses opposing the application.

However, whilst the Sub Committee concluded that the applicant had no incidents recorded against the premises and that there was only one objection, the Sub Committee considered that extending the hours of late night refreshment until 04:00 hours would be out-of-keeping with the area and undermine the licensing objectives. The Sub Committee were grateful to the applicant for indicating during the course of the hearing that they would be willing to accept the reduced hours as any extension to the existing hours would improve the financial viability of the business. Accordingly, the Sub Committee considered it appropriate to extend the hours of late night refreshment until 02:00 hours in order to ensure that the licensing objectives are promoted. Furthermore, the Sub Committee considered that they should not extend the hours the premises would be open to the public given this was not needed in order to allow for late night refreshment to be done by delivery, as was the stated intention of this variation application. The Sub Committee considered that extending the opening hours would have a disproportionate impact on local residents.

In reaching this decision, the Sub Committee had regard to the fact that the applicant was conversant with the Licensing Objectives and had undertaken to provide appropriate staff training and to promote the Licensing Objective of the Prevention of

Public Nuisance by actively encouraging delivery drivers to use pushbikes or electric vehicles.

Having carefully considered the committee papers and the submissions made by all of the parties, both orally and in writing, **the Committee has decided**, after taking into account all of the individual circumstances of this case and the promotion of the four licensing objectives: -

1. To grant permission for Late Night Refreshment (Indoors and Outdoors) Monday to Sunday 23:00 to 02:00 hours subject to the restriction below at paragraph 4.
2. To grant permission for Late Night Refreshment Monday to Sunday 00:00 to 02:00 hours for the purpose of deliveries within the local area.
3. To refuse permission for the Opening Hours Monday to Sunday 11:00 to 04:00 hours. Instead these will remain unchanged Monday to Sunday 11:00 to 01:00 hours that appear currently on the licence.
4. That there shall be no orders taken inside the Premises for the sale of hot food or hot drink Monday to Sunday between 00:00 to 01:00 hours.
5. To add conditions in the terms specified below.
6. That the varied licence is subject to any relevant mandatory conditions.
7. That the existing conditions on the licence shall apply in all respects except in so far as they are varied by this Decision.
8. That the varied licence is subject to the following additional conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

Conditions imposed by the Committee after a hearing

9. Late night refreshment from the hours of 00:00 to 02:00 will be by delivery service only and to a bona fide address.
10. The premises will encourage delivery riders/drivers to use their vehicles in a responsible manner so as not to cause a nuisance to any residents or generally outside the licenced premises; not to leave engines running when the vehicles are parked; and not to obstruct the highway.
11. After 00:00 Monday to Sunday, customers shall not be permitted on the premises and after midnight each day there shall be no sales of hot food or hot drink to persons actually attending the premises for consumption either on or off the premises otherwise than by delivery only to a bona fide address.
12. Vehicles used for delivery must switch off their engines when waiting outside of the Premises for the collection of food for delivery.

13. Drivers shall wait inside the premises between deliveries and for deliveries.
14. A notice shall be displayed by the front door stating the premises opening hours and that all orders after midnight must be phoned through and are by home delivery only.
15. The licence holder shall keep on the premises at all times a record of complaints which shall be made available for immediate inspection by the Responsible Authorities on demand.

If problems are experienced, then an application for a review of the Premises licence can be made.

This is the Full Decision of the Licensing Sub Committee which takes effect forthwith.

**The Licensing Sub-Committee
4 March 2021**

2. 1.00 PM: 74 QUEENSWAY, LONDON W2 3RL

WCC LICENSING SUB-COMMITTEE NO. 4 ("The Committee")

Thursday 4 March 2021

Membership: Councillor Karen Scarborough (Chairman) Councillor Louise Hyams and Councillor Rita Begum

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Kerry Simpkin
Committee Officer: Cameron Maclean
Presenting Officer: Michelle Steward

Application for a Gambling Premises Licence in respect of 74 Queensway, London W2 3RL – 20/10035/LIGN

FULL DECISION

Premises

74 Queensway, London W2 3RL

Applicant

Future Leisure Ltd

Cumulative Impact Area?

Bayswater

Special Consideration Zone

N/A

Ward

Lancaster Gate

Summary of Application

The application was for a new Gambling Premises Licence under the Gambling Act 2005 ("the Act"). The Premises had the benefit of a Gambling Act Premises Licence when it was previously a William Hill Betting Shop.

The Premises plans to operate as an Adult Gaming Centre ("AGC"). AGC premises licences allow the holder of the licence to make gaming machines available for use on the Premises. Persons operating an AGC must hold a gaming machines general operating licence from the Gambling Commission and must seek a premises licence from the licensing authority.

An AGC premises licence granted after the 13th July 2011 may make available for use a number of category B gaming machines not exceeding 20% of the total number of gaming machines which are available for use on the premises and any number of category C or D machines. There are no default operating hours for an AGC however the applicant has applied for Monday to Sunday 07:00 to 22:00. The Premises are in Lancaster Gate Ward and in the Bayswater Cumulative Impact Area.

Activities and Hours applied for

The Applicant has sought the following trading hours:

- Monday to Sunday 07:00 to 22:00 hours

Representations Received

- Metropolitan Police Service (PC Bryan Lewis)
- Licensing Authority (Angela Seaward)
- South East Bayswater Residents' Association
- Poplar Place and Caroline Place neighbourhood watch
- Bark Place, Orme Court, Orme Lane, St Petersburg Mews, St Petersburg Place neighbourhood watch
- Queensway Resident Association
- Councillor Susie Burbridge
- Councillor Emily Payne
- Councillor Maggie Carman

Summary of issues raised by objectors

- MPS believe the application would undermine the licensing objectives in that there are insufficient licence conditions and it may increase crime and disorder in the local area;
- Licensing Authority have concerns relating to the application as minimal information has been provided that would show how this premises, if granted would promote the following licensing objectives;
- SEBRA noted that whilst there were differences between this application and application ref 20/03575/LIGN which was refused, in their view the application should be refused because it was not 'reasonably consistent' with the licensing objectives in that it would not prevent gambling from being a source of crime or disorder, would not ensure that gambling is conducted in a fair and open way and would not protect children and other vulnerable persons from being harmed or exploited by gambling;
- Poplar Place and Caroline Place neighbourhood watch stated the application would only add to the problems of the area;
- QRA stated that they have seen nothing within the application that allays the concerns of the residential community and the detrimental effect that the application would cause to a local amenity already under considerable stress.

Policy Position

There is no policy to refuse this application and so the matter will be determined on merit based upon the promotion of the licensing objectives. Policies OBJ1, OBJ2, OBJ3, AGC1 and LOC1 apply under the City Council's Licensing Principles for Gambling.

DECISION AND REASONS

Ms Michelle Steward, Presenting Officer, explained it was an application for a new adult gaming centre ('AGC') at 74 Queensway, London W2 3RL. Ms Steward stated that representations had been received in relation to the application. The Metropolitan Police withdrew their representation following agreement of conditions. The premises is within the Lancaster Gate ward and within the Bayswater CIA.

Mr Philip Kolvin QC, appearing on behalf of the applicant, stated that Gavin Tressider, the applicant's representative, has an impeccable record as an operator. The Premises have been in gambling use for over 50 years as a betting shop with no known issues. The application is to switch from one gambling use to another. He stated it would be by far the smallest AGC in Westminster with the most conditions and shortest hours. It would be double-staffed at all times, ensuring the licensing objectives were protected.

Mr Kolvin stated he would deal with (a) the previous refusal, (b) the case, and (c) the representations.

The Previous Refusal

Mr Kolvin explained that following the refusal Mr Tressider decided to engage with local people and responsible authorities rather than appeal. That process has shaped this application. Mr Kolvin stated that there were 14 differences between this application and the previous one:

1. Mr Tressider has engaged with local people and authorities before and since making the application;
2. The applicant has prepared a detailed risk assessment incorporating the issues from the last hearing;
3. The applicant has proposed a list of 28 conditions and agreed a further 8 conditions with the MPS. Mr Kolvin stated that no other AGC in Westminster has any conditions;
4. The applicant has proposed 9 hours a day bringing the premises into line with the betting office on site;
5. The applicant has double-staffed the premises ensuring a high degree of protection and supervision at all times;
6. The applicant has placed a customer service point by the door to supervise entry;
7. A CCTV spotter screen has been placed by the door;
8. It has been proposed that all players entering are registered before they can play;
9. A long witness statement has been submitted explaining how the licensing objectives will be promoted;
10. Evidence has been submitted from an experienced consultant stating that AGCs are not generators of crime and underage gambling;
11. Evidence has been submitted from a previous borough commander which states that the premises will not add to local crime;
12. The applicant has engaged with an experienced operator to ensure that the objectives are promoted;
13. Graphic evidence has been produced of all the applicant's trading locations that show they do not suffer regulatory concerns;
14. The MPS do not object. Mr Kolvin said this was a hard-earned but significant change.

The Case

Mr Kolvin stated he would make 8 points:

1. The applicant is one of the most experienced operators in the business. He is licensed by the Commission so neither his suitability nor the fairness or openness of his business are in question;
2. The applicant only uses highly experienced managers and all of his staff are trained to promote the licensing objectives. All staff will have worked at least 6 months in one of the applicant's other venues, as required by the MPS;
3. That the premises will promote the licensing objectives will be ensured in 6 ways:
 - a. The applicant visits each of his premises weekly;
 - b. The applicant has contracted an individual to provide additional support, oversight and local knowledge;

- c. There will be shop audits by the compliance manager;
 - d. There will be test purchasing through the trade association;
 - e. There will be mystery shopping; and,
 - f. There will be weekly security risk assessments.
4. The applicant has never suffered a regulatory intervention or adverse test purchasing result;
 5. Crime and Disorder – Mr Kolvin stated that the Premises simply do not generate crime and disorder. The demographic is 50/50 male/female, surroundings are comfortable, staff are on the carpet talking to customers. There will be low customer numbers. Alcohol is neither served nor permitted, there is no loitering or disorder outside of AGCs but, in any event, there is CCTV outside. Mr Kolvin submitted there is no greater crime or disorder from an AGC than a newsagent or the previous gambling shop use. Mr Kolvin noted there was independent evidence for this and the MPS had not objected on the basis of crime and disorder. Mr Kolvin stated it was not meaningful to point to higher crime rates in Queensway as a reason for not granting this application, he noted that the West End had 9 times more crime than average but this did not mean that no gambling shops should be allowed there. The real question is whether the proposal will exacerbate crime and, in his submission, there was no evidence that it would;
 6. Children – There will not be any. There is no exterior advertising. There is clear challenge 25 signage. The exterior cannot be seen from outside. Test purchasing is conducting. AGCs are not seaside arcades and are not attractive to children. It will not be a problem, and, in any case, police conditions require weekly assessments of SIA requirements so if issues do arise with regards to children then immediate action will be taken;
 7. Vulnerable People – This received detailed consideration in the risk assessment and steps have been taken – for example no leafletting or neon signs will be used. On entry, uniquely in Westminster AGCs, all people will be registered. There will be no alcohol and there will be social responsibility material available. Staff will be extensively trained and, importantly, there will be 2 staff members on the floor at any one time. Mr Kolvin submitted this would mean that there would be greater protection for vulnerable people in this premises than in any other AGC in Westminster. He stated there is no evidence that vulnerable people in the area are trying to use premises in the locality but, in any event, this Premises would have a greater degree of scrutiny. The Premises will be trading 9 few hours a day than other AGCs. Mr Kolvin also noted that the vulnerability score, using Westminster’s own mapping tool, is low;
 8. If the licence is granted the applicant will be subject to extensive legal obligations. Mr Kolvin noted the detailed conditions agreed and proposed.

Representations

Mr Kolvin stated that they had answered questions asked by the Licensing Authority and he hoped they were satisfied with the answers, they had not said that they are not.

With regards to SEBRA, he thanked them for their engagement and noted they had helped shaped the proposal. In relation to the sufficiency of mitigation, Mr Kolvin stated that no authority had sought more, no AGC in Westminster has more

conditions, none of the applicant's other establishments has any such list of conditions attached, and no other AGC in Westminster has such short trading hours.

With regards to Mr Richard Brown's written statement, Mr Kolvin was grateful for his statement that the applicant is a good operator and agreed that the character of the area is irrelevant. Mr Kolvin stated he disagreed as to the relevance of planning, that is dealt with in policy at 10.1, and also about the relevance of nuisance (see Gambling Commission guidance at 5.5). Mr Kolvin also disagreed as to the test that should be applied (guidance 7.5.6) – the primary obligation is to permit where the test is satisfied and here, in his submission, it is. Mr Kolvin agreed the Premises is in a sensitive area, although less sensitive than other areas in Westminster where there have been grants of AGCs, but this is not a cumulative impact policy – there is no presumption against granting but rather an obligation to provide detailed information as to how the objectives will be protected.

In response to questions, Mr Kolvin made the following points:

1. Mr Kolvin noted that it was not the test for an application to not have any objections against it for it to be granted. However, he stated that he thought the objectors have appreciated the level of engagement and they have helped shape the proposal. Although the applicant may not have assuaged all of the local objectors' concerns, they had assuaged the MPS's concerns. The ward officer has stated that whilst he was originally sceptical, he has come around to appreciate it;
2. With regards to homeless and vulnerable people, Mr Kolvin stated his client will be doing much more than other premises can manage. The staff are experienced personnel who will liaise with local bodies, including the MPS. There is much greater client-staff engagement than in other premises;
3. Mr Kolvin stated that the objective of protecting vulnerable people is at the forefront of the gambling operation. The first line of the applicant's training is that one problem gambler is one too many. Welcoming one would make them in breach of their licence and mean they would lose their licence;
4. In relation to hostels, Mr Kolvin stated that the applicant will liaise with local authorities so that those facilities will know what his client offers. Mr Kolvin noted that no premises in the area had been brought to review in the last 50 years and his client was going to bring in greater measures than all the other establishments in the area;
5. Mr Kolvin stated that the sensitivity score of the Premises is 17.8 which is actually low, and half the level scored for Edgware Road and Harrow Road as examples, where Westminster recently granted licences with conditions quite similar to those proposed for this Premises. Mr Kolvin stated that the policy was not to refuse applications in sensitive areas – rather, they are recognised and then appropriate measures are put in to respond to that sensitivity, as done in the 36 conditions proposed;
6. Mr Kolvin pointed to the 14 differences between this application and the previously refused one. He brought attention to the detailed conditions, the placing of the customer service point next to the door, CCTV provision, bringing in an experienced operator in Queensway, and also that the MPS are not objecting on this occasion;

7. Mr Kolvin stated there was no reason why this particular site was inappropriate for an AGC – William Hill had operated without complaint for 53 years.

Ms Karyn Abbott, Senior Licensing Officer, stated that the Licensing Authority had made representations in accordance with Policy AGC1 which states that –

'Applications will be determined, subject to relevant criteria in policies OBJ1, OBJ2, OBJ3 and other policies within the Statement of Licensing Principles for Gambling'.

Ms Abbott noted Policy LOC1, which states that –

'a sensitive location is defined as any premises which is within close proximity or on a main route to a school, educational institution, hostel or other sensitive locations where there is the potential for exposing children, young people or other vulnerable persons to gambling'.

Ms Abbott stated that the proposed location of this new adult gaming centre must be considered as part of this application due to the local area profile and its potential to impact upon the promotion of the 3 gambling objectives.

The Premises is located between two fast food premises that attracts children and vulnerable people. It is opposite a public house and a school is 320 metres away. Careful consideration of the location is relevant to this application.

Ms Abbott noted Policy OBJ1, which states that –

"To prevent gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime, the Licensing Authority will apply the following criteria and take into account the following considerations, where relevant, in determining applications"

Ms Abbott noted that a number of conditions had been proposed, including those agreed with the MPS. These were welcomed by the licensing authority.

Ms Abbott stated that the applicant had provided answers to the licensing authority's questions on vulnerability and children.

Ms Abbott noted Policy OBJ2, which states that –

"To ensure that gambling is conducted in a fair and open way, the Licensing Authority will apply the following criteria and take into account the following considerations, where relevant, in determining applications"

Ms Abbott noted that extensive documentation had been submitted by the applicant and that the applicant had a number of other gambling premises.

Ms Abbott noted Policy OBJ3, which states that –

“To protect children and other vulnerable persons from being harmed or exploited by gambling, the Licensing Authority will apply the following criteria and take into account the following considerations, where relevant, in determining applications”

Ms Abbott noted that the applicant had agreed with the definition of vulnerable person in paragraph 13.4 of Westminster’s policy.

Ms Abbott stated that the Sub-Committee had to be satisfied, taking all relevant factors into account, that the application has met all the requirements of Policy AGC1, as outlined above.

In response to questions, Ms Abbott stated that:

1. She was satisfied with the conditions that have been proposed by the applicant. The application comes down to the location and Policy LOC1, and it was up to the Sub-Committee to determine whether they have met that criteria;
2. She noted there were extensive conditions compared to the last application, but it was for the Sub-Committee to determine whether to grant.

Mr John Zamit, speaking on behalf of SEBRA, referred to their 10-page written submission. He stated that Queensway is a unique area, noting things such as the types of housing, shops, the floating population. Mr Zamit said that nothing that Mr Kolvin said made him change his mind, in his view it was similar to the last application. In his view, these Premises are not suitable for what has been applied for. He asked the Sub-Committee to refuse the application as it is not good for Queensway.

Mr William Kennedy, speaking on behalf of the Queensway Residents’ Association, stated that he had lived and worked in the Queensway streetscape for over 50 years. Anti-social behaviour in the vicinity can have a negative impact on their efforts to keep the streetscape safe.

Mr Kennedy asked a number of questions of Mr Kolvin, relating to the registration requirements for visitors to the Premises and Mr Kolvin’s statement that there were no complaints about William Hill given Mr Kennedy had seen on a number of occasions the result of machines on the site not doing what the customer wanted.

Councillor Susie Burbridge stated that she was representing the interests of Lancaster Gate and its residents. She stated that on her understanding the applicant had not yet visited the hostels in the area. She supported the comments of SEBRA and the QRA.

She stated that she objected to the application due to the harm it may cause to vulnerable people housed nearby and due to it being on a main route to schools. In her view this type of venue will make more difficult the task of managing people in the area. She emphasised the sensitivity of the location, confirmed by the objections in front of the Sub-Committee, as well as the number of vulnerable people living next door to the premises. She stated that there were more hostels in this area than any other area in Westminster.

Councillor Burbridge stated that there have been multiple drug raids recently in the area. She relied on this to underline how important it was to get this application correct and represent the interests of the local residents who are very concerned. She said that rough-sleeping and begging are a common issue in the area, and it should not be exacerbated further. She stated that she was not against the entertainment but instead expressed concern about because of the sensitivity of the area.

Councillor Burbridge stated that if the Sub-Committee were minded to grant the application, they needed to address security concerns, particularly with staff numbers, staff on doors and the use of SIA staff.

Councillor Maggie Carman stated that she was on the Sub-Committee last year which refused the application. In her view, whilst there were differences a licence should not be granted. She stated that this was a sensitive area. There is a higher incidence of crime in this area compared to other parts of Westminster. She stated that the machines proposed in the Premises are addictive.

Mr David Parton stated he is a local resident and he strongly urged the Sub-Committee to reject the application. In his view, the new conditions suggested by the applicant do not address the reason why the Sub Committee rejected the previous application.

Mr Parton emphasised the finding of the previous Sub-Committee, that Queensway has a high concentration of gambling stores and a casino already, with at least 3 more betting stores within a 60 second walk. Queensway is a sensitive area with vulnerable people and children. There are no addiction and recovery services in the area. Queensway is a crime hotspot – taken from the last risk assessment when the night-time economy was still open. As a result of this, he stated that the previous Sub Committee made a stark conclusion that Queensway is a hotspot for crime and antisocial behaviour that suffers unique problems due to its location.

Mr Parton stated that the applicant has since agreed conditions which have resulted in the MPS removing their objection. In his view, CCTV and reduced hours of operation are sufficient to promote the licensing objectives. From his experience of living on this street, the sheer quantity of crime despite pre-existing array of CCTV along the street shows that CCTV will have a negligible impact on crime and disorder. He noted that he and his flatmate have been victims of hate crime and assaults that have not been prevented by CCTV.

Mr Parton stated that the Sub-Committee at the previous hearing found that the conditions agreed with the MPS would not have the desired effect of promoting the licensing objectives. As a result of this, he had approached the applicant directly with suggested conditions, including hiring an SIA door guard which was rejected by the applicant even though other premises in the immediate vicinity employ door guards. Mr Parton said that the applicant's offer to provide multiple senior staff was insufficient to promote the licensing objectives.

Mr Parton stated that the other conditions offered by the applicant were feeble and did not allay his concerns.

In response to a question from the Legal Advisor to the Sub-Committee concerning the issue of vulnerable people using the Premises Mr Kolvin stated that dealing with vulnerable people is dealt with extensively in the Gambling Commission's licence conditions and codes of practice which then requires the operator to develop policies and procedures for dealing with vulnerable people which have to be shared with the Gambling Commission. These were provided to the Gambling Commission in 2019 and they were satisfied with them. These have to be adapted to the area by a local area risk assessment. Mr Kolvin stated that the risk for the area was quite low but, nonetheless, the applicant has flexed its procedures accordingly. Mr Kolvin explained the approach to vulnerable people set out by the applicant. In short, he stated that the measures and procedures the applicant would be adopted would go far beyond any in either Queensway or Westminster.

Mr Gavin Tressider, the applicant, further explained how staff would deal with vulnerable people.

Mr Kolvin explained that the applicant, unlike Tesco, does not experience crime and disorder and so does not see the need for security staff. However, they will have staff on the floor. The applicant's experience is that SIA staff are not needed. In Mr Kolvin's experience, SIA staff outside of gambling premises are extremely rare. He noted grants of licences on Edgware Road and Harrow Road which did not have SIA staff imposed. Mr Kolvin did note the MPS had requested a weekly risk assessment which, if there was an issue that showed that double-staffing the premises was not enough, then the applicant would be re-visiting the use of SIA. In his view, it was not necessary to employ SIA staff which was the test for gambling licence conditions.

Mr Kolvin stated that gambling legislation is permissive in nature and the role of the operator is to make judgments about vulnerability and intervene when the customer isn't making sensible decisions. On this basis, the question isn't how much the customer is spending but instead whether they are showing signs that they are vulnerable.

Conclusion

The Sub-Committee noted that an application for a licence at this Premises had been refused last year, as noted by all parties at the hearing. However, the Sub Committee realises that it must consider each application on its own merits. The Sub-Committee appreciated that the Applicant had acted proactively and positively in making this application. Although the Metropolitan Police had initially objected to the application on the basis that it would undermine the Licensing Objectives, this had been withdrawn following discussions between the applicant and the Metropolitan Police which resulted in the suggestion of further conditions. The Sub-Committee placed weight on the fact that the MPS, as the expert body on crime and disorder, had withdrawn their objection to the application.

Similarly, the Sub-Committee were mindful of the fact that the applicant had addressed many of the concerns raised by the Licensing Authority's representation in their submissions.

The Sub-Committee carefully considered the evidence by Ward Councillors and local residents and understands the many concerns residents face living within the area. In this instance, the Sub-Committee had to consider the evidence before it and whether the three licensing objectives are reasonably consistent with the application so as to permit the use of the Premises for Gambling. Section 1 of the Act states:

- (a) Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
- (b) Ensuring that gambling is conducted in a fair and open way, and
- (c) Protecting children and other vulnerable persons from being harmed or exploited by gambling.

Section 153 of the Gambling Act 2005 states that:

“In exercising their functions under this Part, a licensing authority shall aim to permit the use of premises for gambling insofar as the authority thinks it:

(a) in accordance with any relevant code of practice [issued by the gambling commission]

(b) in accordance with any relevant guidance issued by the Commission

(c) reasonably consistent with the licensing objectives (subject to (a) and (b)) (

d) in accordance with the [authority’s statement of licensing policy] (subject to (a) to (c)).”

This is a mandatory test, and the obligation to “aim to permit” where (a) – (d) are satisfied is described by the Gambling Commission in its guidance as “the licensing authority’s primary obligation”. The Gambling Commission’s Guidance says:

“Licensing authorities should not turn down applications for premises licences where relevant objections can be dealt with through use of conditions.” Conditions should only be added where it is necessary to do so, and even then, such conditions need to be proportionate to the circumstances requiring a response, relevant, directly related, fair and reasonable.

The Sub-Committee were mindful of this effective “presumption” in favour of granting the premises licence insofar as it can be properly regarded, noting the express provisions of section 153 under the Act.

Policy AGC1 requires applications to be determined subject to relevant criteria in policies OBJ1, OBJ2, OBJ3 and other policies within the Statement of Licensing Principles for Gambling’.

Policy OBJ1 requires consideration of whether the Premises will contribute towards crime and disorder in the area and whether the applicant has demonstrated that they had, or intended to, implement sufficient controls to prevent gambling from being a source of and/or associated with crime and disorder. The Sub-Committee concluded that, whilst this is a sensitive location with higher crime rates and vulnerable people, the application would not contribute towards gambling being a source of crime or disorder. In reaching this conclusion, the Sub-Committee had regard to the extensive conditions proposed by the applicant and the fact that the Police had withdrawn their objection following the proposal of conditions.

Policy OBJ2 requires regard to be had to specified criteria to ensure that gambling is conducted in a fair and open way. The Sub-Committee concluded that the Premises licence would allow gambling to be conducted in a fair and open way.

The Sub-Committee noted the Licensing Authority had no concerns over this policy as well as the extensive conditions proposed.

Policy OBJ3 requires children and vulnerable persons to be protected. Whilst this area is a sensitive one, and does have high numbers of vulnerable people and children present, the Sub-Committee considered that the applicant’s proposal would protect children and other vulnerable persons from being harmed or exploited by

gambling. The Sub-Committee were particularly mindful of the applicant's code of policies and procedures which were provided to the Gambling Commission in 2019 and satisfied the Gambling Commission. As explained by the applicant during the hearing, these are adapted to the area by a local area risk assessment and the Sub Committee considered that the applicant had flexed its procedures accordingly to satisfy Policy OBJ3. The Sub-Committee were mindful of the fact that the measures and procedures the applicant would adopt would go far beyond any measures currently in place in either Queensway or Westminster

The Sub-Committee concluded that whilst this was a sensitive location, and the previous application had been refused on this basis, the applicant had engaged extensively with local residents and responsible authorities to ensure that the Premises would promote the licensing objectives. In this instance, the Sub Committee considered the extensive and detailed conditions provided, resulting in no objection from the MPS, alongside the reduced opening hours would ensure that the licensing objectives were promoted, thereby meeting the requirements of Policy LOC1 and AGC1.

The Sub-Committee did not consider it appropriate to have a condition requiring SIA staff on the door. Whilst the Sub Committee were mindful of the experiences of objectors, the Sub Committee noted that the applicant does not experience crime and disorder and so does not need security staff. Furthermore, there will be staff on the floor of the premises. The Sub-Committee noted that the MPS had requested a weekly risk assessment which, if there was an issue that showed that double-staffing the premises was not enough, then the applicant would be re-visiting the use of SIA. The Sub-Committee were therefore of the view that it was not necessary to employ SIA staff which was the test for gambling licence conditions.

The Sub-Committee appreciates and accepts that residents' and the local ward councillors held very strong views when it came to consideration of the application. However, that being said, the applicant had demonstrated that the obstacles faced in the local area could be overcome by implementing the various policies it will have in place at the Premises and the conditions imposed on the Premises Licence to ensure the licensing objectives are upheld. The Sub-Committee notes that the Decision to grant the application will not prove popular amongst some of the parties that had objected. The Sub-Committee deliberated over the decision for some time being mindful of the residents' and local Councillors objections but on merit and based on the evidence before it the Sub-Committee concluded that it would not be appropriate to refuse the application in all the circumstances of the case.

The Sub-Committee was satisfied that the test as set out in the provisions of the Act had been met. The Sub-Committee as a matter of good practice applied the principles it should follow under section 153 of the Act and the Gambling Commission's Licence Conditions and Codes of Practice as well as the City Council's Statement of Principles for Gambling Policy when considering the application.

Having carefully considered the committee papers and the submissions made by all parties, both orally and in writing, **the Sub-Committee had decided**, after taking into account all of the individual circumstances of this case and the requirements of section 153 of the Act which includes consideration of the three licensing objectives:

1. To grant permission for **an Adult Gaming Centre Premises Licence authorising the Premises to be used for the provision of facilities for gaming machine use, as permitted under the Act Monday to Sunday 07:00 to 22:00 hours.**
2. To grant permission for **the Hours the Premises are open to the Public Monday to Sunday 07:00 to 22:00 hours.**
3. That the Licence is subject to any relevant mandatory conditions.
4. That the Licence is subject to the following additional conditions imposed by the Committee which are considered appropriate and proportionate to comply with Section 153 of the Act. It is the Committee's view that the Conditions imposed on the Licence and the various established policies and procedure in place by the Applicant and provided to the Committee in advance of the hearing, to include the promotion of responsible gambling and its day to day management of the running of the Premises would mitigate the concerns raised by the Licensing Authority, Ward Councillors and local residents in addition to the high level of regulation the Premises are already subjected to by the Gambling Commission.

Conditions imposed by the Committee after a hearing

5. The licence holder will contact SEBRA and any residents who would like to be contacted quarterly to discuss the operation of the AGC and any issues.
6. The licence holder will contact the local police and local councillors quarterly to discuss the operation of the premises and any issues.
7. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.
8. A comprehensive CCTV system shall be installed and maintained on the premises as required by the Metropolitan Police Licensing Team. CCTV should cover the following:
 - a) All entry and exit points to and from the premises enabling frontal identification of every person entering under any light conditions
 - b) The areas of the premises to which the public have access (excluding toilets)
 - c) Gaming machines and the counter area
9. The CCTV shall continue to record activities 24 hours a day for 31 days.
10. CCTV shall be made available for the police viewing at any time with minimum delays when requested.
11. The premises shall display notices near the entrance of the venue stating that CCTV is in operation.

12. A 'spotter monitor' shall be placed inside the premises near the front door showing CCTV images of customers entering, exiting and whilst on the premises.
13. The Licence holder shall maintain a bound and paginated 'Challenge 25 Refusals' register at the premises. The register shall be produced to the police or licensing authority forthwith on request.
14. Prominent signage and notices advertising the Challenge 25 will be displayed showing the operation of such policy.
15. Third party testing on age restricted sales systems purchasing shall take place at least twice a year and the results shall be provided to the Licensing Authority upon request.
16. A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
17. A magnetic locking device, commonly referred to as a Maglock will be installed and maintained on the main entrance/exit to the premises which will be operable by staff.
18. Staff will receive a notification when the front door opens.
19. There shall be 2 members of staff present at all times the premises are open to the public.
20. The Licence holder shall implement a policy of banning any customers who engage in crime or disorder within or outside the premises.
21. The licence holder will refuse entry to customers who appear to be under the influence of alcohol or drugs.
22. Customers will be registered by the premises prior to customers playing the machines.
23. The licence holder shall ensure that all seating within the premises are either secured to the floor or are weighted to prevent lifting.
24. The licence holder shall install and maintain an intruder alarm on the premises.
25. The premises shall install and maintain fixed panic buttons and in addition portable panic buttons will be worn by staff.
26. The licence holder will ensure that customer toilets are checked every hour for evidence of drug taking. Toilet checks are to be documented stating the time and member of staff who made the checks. Toilets will remain locked at all times with access being provided by staff.

27. Prominent GamCare documentation will be displayed at the premises and other notices promoting responsible gambling.
28. The licence holder shall: provide training on the specific local risks to the licensing objectives that have been identified for these premises as part of the staff induction training programme. periodically provide refresher training to all of its staff working at these premises on the specific local risks to the licensing objectives. Participation in this training shall be formally recorded on each member of staffs training records which, if requested will be presented to the Licensing Authority as soon as practicable.
29. New and seasonal staff must attend induction training and receive refresher training every six months.
30. Staff will also undergo drug and alcohol awareness training to include Homeless and Street Drinking.
31. The Licence holder shall take all reasonable steps to prevent street drinking of alcohol directly outside the premises and to ban from the premises those who do so.
32. The Licence holder shall place a notice visible from the exterior of the premises stating that customers drinking alcohol outside the premises is not permitted and those who do so will be banned from the premises.
33. An incident log shall be kept for the premises and made available on request to an authorised officer of the City Council or the Police which will record the following;
 - a. All crimes reported to the venue;
 - b. Any complaints received regarding crime and disorder;
 - c. Any incidents of disorder;
 - d. Any faults in the CCTV system; and
 - e. Any visit by a relevant authority or emergency service.
34. There shall be no cash point or ATM facilities on the premises

If problems are experienced, then an application for a review of the Premises licence can be made.

This is the Full Decision of the Licensing Sub Committee which takes effect forthwith.

The Licensing Sub-Committee 4 March 2021

The Meeting ended at 2.50 pm

SUSSEX FISH BAR: SUMMARY DECISION

WCC LICENSING SUB-COMMITTEE NO. 4 ("The Committee")

Thursday 4 March 2020

Membership: Councillor Karen Scarborough (Chairman) Councillor Louise Hyams and Councillor Rita Begum

APPLICATION FOR A NEW PREMISES LICENCE IN RESPECT OF SUSSEX FISH BAR, 20 LONDON STREET, LONDON W2 1HL [20/10970/LIPV]

Summary

The Committee has determined an application for a Variation of Premises Licence under the Licensing Act 2003 ("The Act"). The Premises is currently operating as a restaurant with a take-away facility within the Hyde Park Ward. The Applicant seeks to extend the hours of late-night refreshment to 04:00 Monday to Sunday. The hours from 01:00 to 04:00 will be for deliveries only. The Premises has been licensed since 2008 and is not within any area of Cumulative Impact. The Committee noted that the Applicant had been trading from the Premises for some 19 years free from complaint.

Applicant

Mr Ajmal Daulatzai

SUMMARY DECISION

The Committee decided that the Applicant had provided valid reasons as to why the granting of the application would promote the licensing objectives.

Having carefully considered the committee papers and the submissions made by all of the parties, both orally and in writing, **the Committee has decided**, after taking into account all of the individual circumstances of this case and the promotion of the four licensing objectives: -

1. To grant permission for Late Night Refreshment (Indoors and Outdoors) Monday to Sunday 23:00 to 02:00 hours subject to the restriction below at paragraph 4.
2. To grant permission for Late Night Refreshment Monday to Sunday 00:00 to 02:00 hours for the purpose of deliveries within the local area.
3. To refuse permission for the Opening Hours Monday to Sunday 11:00 to 04:00 hours. Instead, these will remain unchanged Monday to Sunday 11:00 to 01:00 hours that appear currently on the licence.
4. That there shall be no orders taken inside the Premises for the sale of hot food or hot drink Monday to Sunday between 00:00 to 01:00 hours.
5. To add conditions in the terms specified below.
6. That the varied licence is subject to any relevant mandatory conditions.
7. That the existing conditions on the licence shall apply in all respects except in so far as they are varied by this Decision.

8. That the varied licence is subject to the following additional conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

CONDITIONS IMPOSED BY THE COMMITTEE AFTER A HEARING

9. Late night refreshment from the hours of 00:00 to 02:00 will be by delivery service only and to a bona fide address.
10. The premises will encourage delivery riders/drivers to use their vehicles in a responsible manner so as not to cause a nuisance to any residents or generally outside the licenced premises; not to leave engines running when the vehicles are parked; and not to obstruct the highway.
11. After 00:00 Monday to Sunday, customers shall not be permitted on the premises and after midnight each day there shall be no sales of hot food or hot drink to persons actually attending the premises for consumption either on or off the premises otherwise than by delivery only to a bona fide address.
12. Vehicles used for delivery must switch off their engines when waiting outside of the Premises for the collection of food for delivery.
13. Drivers shall wait inside the premises between deliveries and for deliveries.
14. A notice shall be displayed by the front door stating the premises opening hours and that all orders after midnight must be phoned through and are by home delivery only.
15. The licence holder shall keep on the premises at all times a record of complaints which shall be made available for immediate inspection by the Responsible Authorities on demand.

If problems are experienced, then an application for a review of the Premises licence can be made.

This is the Summary Decision reached by the Licensing Sub-Committee. The Fully Reasoned Decision will be sent to all parties as soon as possible.

The date for appealing the decision will not start until the Full Reasoned Decision has been sent to the Parties.

**Licensing Sub-Committee
4 March 2021**

**WCC LICENSING SUB-COMMITTEE NO. 4
("The Committee")**

Thursday, 4 March 2021

Membership: Councillor Karen Scarborough (Chairman) Councillor Louise Hyams and Councillor Rita Begum

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Aaron Hardy
Committee Officer: Cameron Maclean
Presenting Officer: Michelle Steward

**APPLICATION FOR VARIATION OF A PREMISES LICENCE – SUSSEX FISH BAR,
20 LONDON STREET, LONDON W2 1HL – 20/10970/LIPV**

FULL DECISION

Premises

Sussex Fish Bar, 20 London Street, London W2 1HL

Applicant

Mr Ajmal Daulatzai

Cumulative Impact Area?

N/A

Special Consideration Zone

N/A

Ward

Hyde Park

Summary of Application

The Sub-Committee considered an application for a Variation of a Premises Licence for the Sussex Fish Bar, 20 London Street, London W2 1HL. The applicant operated a restaurant and takeaway service from the Premises and had applied to vary the existing Premises Licence to extend the hours he could offer Late-Night Refreshment (LNR) from 23:00 hours (the time a licence for LNR is required) to 04:00 hours. The applicant currently had a Premises Licence that permitted the sale of LNR until 01:00 hours.

Activities And Hours Applied For

The application was for a variation of a premises licence as follows –

The applicant seeks to vary the existing premises licence to extend the hours of late-night refreshment to 04:00 hours Monday to Sunday. The hours from 01:00 hours to 04:00 hours would be for deliveries only.

Late night refreshment

Monday to Sunday: 23:00 hours to 04:00 hours

Hours Premises Are Open to The Public

Monday to Sunday: 23:00 hours to 04:00 hours

Representations Received

- Metropolitan Police (PC Adam Deweltz) (withdrawn)
- Environmental Health Service (Maxwell Koduah)
- South East Bayswater Residents' Association (SEBRA)

Summary of issues raised by objectors

- EHS expressed concern that the provision of late-night refreshment and the hours requested may have the likely effect of causing an increase in Public Nuisance and may affect Public Safety within the area. EHS noted that conditions have been proposed by EHS and agreed with the applicant;
- SEBRA objected on the grounds that the likely effect of the application will be to harm the licensing objectives, particularly 'prevention of public nuisance' and potentially 'crime & disorder – noting noise nuisance from delivery vehicles, delivery motorbikes and scooters and engine fumes

Policy Position

Under Policy HRS1, applications for hours outside the core hours set out in Clause C will be considered on their merits, subject to other relevant policies, and with particular regard to the matters set out in Policy HRS1.

Under Policy FFP1, applications outside the West End Cumulative Zones will generally be granted subject to the matters set out in Policy FFP1(A).

DECISION AND REASONS

Ms Michelle Steward, Senior Licensing Officer, presented the report that was before the Sub-Committee. She noted that representations had been received from the Environmental Health Service (EHS); the Metropolitan Police Service (MPS) (subsequently withdrawn after agreement on proposed conditions with the applicant); and Mr John Zamit of the Southeast Bayswater Residents' Association (SEBRA).

Ms Steward noted that Mr Richard Brown of Citizens Advice Westminster, Licensing Project, representing SEBRA, had provided a written submission which was contained in the Additional Information Pack that was before the Sub-Committee.

In conclusion, Ms Steward stated that the Premises, which were located in Hyde Park Ward, were not within a Cumulative Impact Area (CIA).

Mr Robert Jordan, solicitor acting on behalf of the applicant, stated that the applicant was seeking to extend the sale of Late-Night Refreshment (LNR) by way of delivery only from 24:00 hours to 04:00 hours. He stated that the Premises would remain open to the public until 01:00 hours so that persons who were in the restaurant before 24:00 hours would have time to consume their meal on the premises.

[It was stated in the report of the Director of Public Protection & Licensing that it was proposed that between 01:00 hours and 04:00 hours, the provision of LNR would be by delivery meals only].

Mr Jordan stated that the applicant had agreed proposed conditions with both the EHS and the MPS. He then invited the applicant, Mr Ajmal Daulatzai, to address the Sub-Committee.

Mr Ajmal Daulatzai (Applicant)

Mr Daulatzai gave a brief presentation to the Members of the Sub-Committee in which he stated he had been operating from the Premises for 19 years without incident and/or complaint and that his application was simply to allow him to provide LNR by delivery only from midnight to 4 AM. He confirmed that it was the intention that the Premises would remain open until 1 AM to allow customers who were already on the Premises to finish their meals, last customer entry to the Premises being 12 midnight.

He stated that it was not anticipated that the Premises would be particularly busy with delivery meals. As the deliveries would be made by riders using pushbikes or (hybrid) motorcycles from companies such as Deliveroo, they would not be known to staff working at the Premises and would, therefore, collect the order from the Premises before departing to deliver the order. Consequently, any noise nuisance would be kept to a minimum and was likely to decrease as delivery companies increased their use of electric vehicles. In addition, there was significant parking space outside the Premises. Consequently, drivers would not be causing an obstruction on the highway when collecting deliveries.

Mr Daulatzai noted that there was already a lot of traffic on the road outside his Premises, including late-night taxis and buses. Therefore, his proposed use of delivery drivers would not add to existing traffic noise or nuisance. In addition, there had been no objections to the proposed Premises Licence variation from either residents or local businesses, including local hotels which had rooms above the Premises.

Mr Daulatzai then described the way in which orders for LNR would be placed online and how delivery drivers would operate in collecting and delivering meals from the Premises, including ringing a bell to gain entry to the Premises to collect the order. It had also been agreed with the Responsible Authorities that, should the variation be granted, there would be a condition attached to the Premises Licence prohibiting delivery drivers from congregating outside the Premises.

Mr Daulatzai stated that he and his Members of Staff, in the way in which they operated the Premises, sought to promote the Licensing Objectives and there were policies in place to ensure the promotion of the Licensing Objectives, including a Child Protection policy.

Mr Daulatzai also stated that, if residents ever had any concerns about the late-night operation, they could always contact him about their concerns. Deliveries would be made within a three-mile radius and there would be three Members of Staff on the Premises after midnight. The Front of Shop Member of Staff would be responsible for monitoring the delivery drivers and, if necessary, asking them not to cause any noise nuisance.

In conclusion, Mr Daulatzai said it was anticipated that, after midnight, there would be about three or four delivery orders per hour which, after deducting staff costs, would

make a significant difference to the viability of the business during the current coronavirus pandemic.

Mr Jordan: Concluding Comments

Mr Jordan stated that it was unlikely that residents or other businesses would be disturbed, should the application be granted. He stated that he had attempted to speak to Mr Zamit of SEBRA, who may not have been aware, at the time, of the conditions that had been agreed between the applicant and the Responsible Authorities.

Mr Jordan then summarised how the Premises would operate should the application to vary the Premises Licence be granted, noting that there was little evidence in the representations that had been received to suggest that noise nuisance would be an issue should the application be granted. Furthermore, the fact that, apart from SEBRA, there were no other objections to the application from residents, suggested that there was very little opposition to this application.

In concluding his presentation, Mr Jordan noted the effect of the coronavirus pandemic on the business and that granting the application would allow the business to remain viable.

In response to a number of questions by Members, Mr Jordan and Mr Daulatzai provided the following information.

- (a) As there may only be three or four Delivery Orders an hour, the Delivery Drivers would pick up deliveries from any number of Premises. Therefore, it would not be in their interest to congregate outside the applicant's Premises waiting for orders when they could be collecting and delivering from other Premises.
- (b) People ordering delivery meals would usually receive a text to say the driver had arrived obviating the need for the driver to ring the customer's doorbell on arrival and causing a nuisance. Also, orders would be prepaid and, therefore, there was no need for the Driver to be paid at the point of delivery.
- (c) The Premises sold mostly Fish & Chips, but Burgers and Chicken Meals were also available.
- (d) If the Sub-Committee was minded to grant the application but to reduce the operating hours, the applicant would be willing to accept the reduced hours as any extension to the existing hours would improve the financial viability of the business.
- (e) The applicant proposed monitoring the operation of the Premises with regard to complaints about noise nuisance and to provide residents with a contact telephone number and other means by which they could register any concerns about noise nuisance.

Mr Maxwell Koduah, of Environmental Health Service, confirmed that there was no record of complaints in relation to these Premises regarding public nuisance or public safety.

He stated that the concerns of the EHS related to possible noise nuisance caused by delivery drivers arriving at and leaving the Premises. To address these concerns, agreement had been reached with the applicant on Proposed Conditions No's 13 to 16 as set out on Page 29 of the Agenda Pack.

Referring to the first Bullet Point in the representations made by the Metropolitan Police Service (MPS) on Page 7 of the Agenda Pack, Mr Koduah noted that the sentence –

“The licence holder will positively encourage delivery riders/drivers to use quieter vehicles that are less likely to cause a nuisance, such as bicycles.”

was in keeping with the discussions that had taken place with the applicant.

Accordingly, if the applicant was willing to give an undertaking to encourage the use of quieter vehicles, and given the proposed conditions that had been agreed with the applicant, Mr Koduah stated that the EHS had no further observations to make on the application.

In response to questions by Members of the Sub-Committee, Mr Koduah, Mr Jordan, and Mr Daulatzai provided the following information.

- (a) Because the Delivery Drivers were third parties, it was not possible to impose conditions upon them that would be easily enforceable.
- (b) It was possible to encourage a dialogue between the applicant and delivery drivers regarding the types of vehicles they used. In addition, it was possible to provide feedback to companies such as Uber Eats and Deliveroo thereby providing some means of influencing the operation and behaviour of delivery drivers.
- (c) The applicant would be willing to put a notice on the door requiring delivery drivers waiting to collect orders to wait inside, and not outside, the Premises.

Mr John Zamit, of SEBRA, referred to the representations submitted by SEBRA which was set out on Pages 7 & 8 of the Agenda Pack. He stated that SEBRA’s concerns were similar to the concerns it had expressed on a similar application at No. 26 London Street, which had been refused.

He stated that there had been some consultation with the Applicant’s legal representative, but that had not progressed subsequent to proposed conditions having been agreed between the Applicant and the Responsible Authorities.

Mr Zamit described the residential and commercial nature of the area, noting that most of the businesses closed in line with the Council’s core hours and that the area became very quiet late at night. He then described the noise nuisance caused by delivery drivers using cars and motorbikes.

Mr Zamit went on to say that it was SEBRA’s view that the Premises already had a generous licence and that he did not understand how the business argument presented by the applicant, given the small number of orders that were anticipated during the extended opening hours, could make the business more financially viable. He suggested that, for this business model to work, there would need to be a lot more customers placing orders during the extended opening times.

In conclusion, Mr Zamit stated that he hoped that the country was now emerging from the coronavirus pandemic and that the business would be able to sustain itself on its existing hours.

Conclusion

The Sub Committee considered an application for a variation of a premises licence under the Licensing Act 2003 (“The Act”). The Premises is currently operating as a restaurant with a take-away facility within the Hyde Park Ward. The Applicant sought

to extend the hours of late-night refreshment to 04:00 Monday to Sunday. The hours from 01:00 to 04:00 will be for deliveries only. The Premises has been licensed since 2008 and is not within any area of Cumulative Impact. The primary driver behind the application was to increase the financial viability of the business.

The Sub Committee noted that the applicant had operated the Premises for 19 years without incident and without any complaints having been received by the local authority about the way in which the Premises was managed.

Furthermore, the Sub Committee noted that the Responsible Authorities were satisfied that the proposed conditions agreed with the applicant were sufficient to meet any concerns they may have had about the application to vary the Premises Licence and the only representation received opposing the application had been from SEBRA; there were no representations from local residents or local businesses opposing the application.

However, whilst the Sub Committee concluded that the applicant had no incidents recorded against the premises and that there was only one objection, the Sub Committee considered that extending the hours of late-night refreshment until 04:00 hours would be out-of-keeping with the area and undermine the licensing objectives. The Sub Committee were grateful to the applicant for indicating during the course of the hearing that they would be willing to accept the reduced hours as any extension to the existing hours would improve the financial viability of the business. Accordingly, the Sub Committee considered it appropriate to extend the hours of late-night refreshment until 02:00 hours in order to ensure that the licensing objectives are promoted. Furthermore, the Sub Committee considered that they should not extend the hours the premises would be open to the public given this was not needed in order to allow for late night refreshment to be done by delivery, as was the stated intention of this variation application. The Sub Committee considered that extending the opening hours would have a disproportionate impact on local residents.

In reaching this decision, the Sub Committee had regard to the fact that the applicant was conversant with the Licensing Objectives and had undertaken to provide appropriate staff training and to promote the Licensing Objective of the Prevention of Public Nuisance by actively encouraging delivery drivers to use pushbikes or electric vehicles.

Having carefully considered the committee papers and the submissions made by all of the parties, both orally and in writing, **the Committee has decided**, after taking into account all of the individual circumstances of this case and the promotion of the four licensing objectives: -

1. To grant permission for Late Night Refreshment (Indoors and Outdoors)
Monday to Sunday: 23:00 to 02:00 hours, subject to the restriction below at Paragraph 4
2. To grant permission for Late Night Refreshment
Monday to Sunday: 00:00 to 02:00 hours, for the purpose of deliveries within the local area.
3. To refuse permission for the Opening Hours
Monday to Sunday: 11:00 to 04:00 hours.

Instead, these will remain unchanged Monday to Sunday 11:00 to 01:00 hours that appear currently on the licence.

4. That there shall be no orders taken inside the Premises for the sale of hot food or hot drink Monday to Sunday between 00:00 to 01:00 hours.
5. To add conditions in the terms specified below.
6. That the varied licence is subject to any relevant mandatory conditions.
7. That the existing conditions on the licence shall apply in all respects except in so far as they are varied by this Decision.
8. That the varied licence is subject to the following additional conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

CONDITIONS IMPOSED BY THE COMMITTEE AFTER A HEARING

9. Late night refreshment from the hours of 00:00 to 02:00 will be by delivery service only and to a bona fide address.
10. The premises will encourage delivery riders/drivers to use their vehicles in a responsible manner so as not to cause a nuisance to any residents or generally outside the licenced premises; not to leave engines running when the vehicles are parked; and not to obstruct the highway.
11. After 00:00 Monday to Sunday, customers shall not be permitted on the premises and after midnight each day there shall be no sales of hot food or hot drink to persons actually attending the premises for consumption either on or off the premises otherwise than by delivery only to a bona fide address.
12. Vehicles used for delivery must switch off their engines when waiting outside of the Premises for the collection of food for delivery.
13. Drivers shall wait inside the premises between deliveries and for deliveries.
14. A notice shall be displayed by the front door stating the premises opening hours and that all orders after midnight must be phoned through and are by home delivery only.
15. The licence holder shall keep on the premises at all times a record of complaints which shall be made available for immediate inspection by the Responsible Authorities on demand.

If problems are experienced, then an application for a review of the Premises licence can be made.

This is the Full Decision of the Licensing Sub Committee which takes effect forthwith.

**The Licensing Sub-Committee
4 March 2021**

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