



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (2)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (2)** held on **Thursday 28th September, 2023**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Maggie Carman (Chair) and Tim Mitchell

1. MEMBERSHIP

1.1 It was noted that there were no changes to the membership.

2. DECLARATIONS OF INTEREST

2.1 Councillor Iman Less declared a prejudicial interest and withdrew from the meeting.

1. MONAK, 63 ABBEY ROAD, NW8 0AE

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO.2 **("The Committee")**

Full Review Decision **Thursday 28 September 2023**

Membership: Councillor Maggie Carman (Chairman) Councillor Tim Mitchell

Officer Support: Legal Advisor – Michael Feeney
Committee Officer – Sarah Craddock
Presenting Officer – Roxsana Haq

Application for a Review of a Premises Licence – Monak 63 Abbey Road
London NW8 0AE 23/04009/LIREVP

List of persons:

Premises Licence Holder

The Premises Licence Holder (PLH) is Olives and Cream Ltd. The PLH did not attend the hearing.

Metropolitan Police Service ('The Applicant')

PC Steve Muldoon
Counsel: Stephanie Bruce-Smith

The Licensing Authority

Kevin Jackaman
Anthony Jones, City Inspector

Environmental Health Service

Sally Fabbricatore

Planning Enforcement Team

Stephen Pavett. Mr Pavett did not attend the hearing.

Interested Parties

Richard Brown on behalf of 31 residents and the St John's Wood Society

Andy Grimsey (Popleston Allen), Paul Milner (Director) and Toby Pullen (Head of Property Management) on behalf of Max Barney Pub Company Ltd

Cllr Sargent (Abbey Road Ward)

One anonymous supporter appeared at the hearing remotely

Cumulative Impact Area

Not applicable

Ward

Abbey Road

Summary of Application

This is an application for a Review of a Premises Licence in respect of Monak 63 Abbey Road London NW8 0AE ("The Premises") under the Licensing Act 2003 ("The Act"). The Premises is currently closed but previously operated as a restaurant and bar, with outdoor seating available.

The licence holder is Olives and Cream Ltd under licence 23/04143/LIDPSR. During the consultation period for the review application, the Designated Premises

Supervisor ('DPS') applied to remove himself from the licence. The Premises are within the Abbey Road Ward. There is a resident count of 258.

An incident where gunshots were fired at the Premises occurred in May 2022. Police attended the scene to find shot gun pellets and viewed the CCTV footage. It was determined that a group of customers that had not booked a table but arrived to have dinner may have been connected in some way to the shooting incident. At the time a number of recommendations were given by the Police to the premises to implement. One of the recommendations was to add a number of conditions to the premises licence by way of a minor variation. However, no application was made.

On 28 April 2023 a group of six males attended the premises in possession of large machetes. These males then lit what are described as "molotov" cocktails and firebombed the premises. The venue suffered extensive fire damage.

Repeated attempts were made by the Police to meet the PLH. A meeting took place with the DPS, who suggested that he was the person to speak with and not the PLH. Eventually the Police spoke with the PLH who seemed unaware of his responsibilities and how to keep customers safe.

As a result, the Metropolitan Police Service have no confidence that the PLH will be able promote the licensing objectives or that this is likely to change in the future. The PLH did not submit any representations and did not attend the hearing.

Representations

The application has received a representation in support of the review from the Licensing Authority on 10 July 2023 on the grounds that the premises is failing to promote the licensing objectives. This can be found at Appendix D.1 of the Agenda Report.

The Licensing Authority have also provided submissions showing a history of complaints and potential breaches of licence conditions received in respect of the premises. These appear at Appendix E.1 of the Agenda Report.

The application received a representation in support of the review from the Environmental Health Service on 11 July 2023 on the grounds that the premises is failing to promote the licensing objectives and can be found at Appendix D.2 of the Agenda Report.

The application received a representation in support of the review from the Planning Enforcement Team on 03 July 2023 on the grounds that the premises is failing to promote the licensing objectives and can be found at Appendix D.3 of the Agenda Report.

A total of 59 interested parties have submitted their representations with 57 of those supporting the application for revocation of the premises licence.

Two interested parties stated that they wish for the licence to be retained with the licence holders removed. One of the interested parties that initially requested that the premises licence not be revoked (Max Barney Pub Company Ltd, the freeholder of the Premises) has since submitted a representation saying they do not oppose

revocation of the licence. All interested party representations can be seen at Appendix D.4 of the Agenda Report.

Activities and Hours

The Premises currently benefits from the following:-

Playing of Recorded Music

Unrestricted

Late Night Refreshment

Monday to Saturday: 23:00 to 00:30

Sunday: 23:00 to 23:30

Sale by Retail of Alcohol

Monday to Saturday: 10:00 to 00:00

Sunday: 10:00 to 11:00

Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit

Unrestricted

Opening Hours

Monday to Saturday: 07:00 to 00:30

Sunday: 07:00 to 23:30

Hearing:

1. The Chairman introduced the Members of the Sub-Committee and outlined the procedure to the Parties in attendance.
2. Ms Haq, Presenting Officer, outlined the application to the Sub-Committee. She advised that this was an application for a review of an existing Premises Licence which had been submitted by the Metropolitan Police Service on the grounds of the Prevention of Crime and Disorder, Public Safety, the Prevention of Public Nuisance and the Protection of Children from Harm. She advised that the representations as summarised above had been received.
3. The Premises are situated in the Abbey Road Ward but not located in the West End Cumulative Impact Zone.

Metropolitan Police Service

4. Ms Bruce-Smith submitted that there had been two serious incidents within 12 months at the same premises. The MPS considered that the seriousness of the two incidents would have merited a summary review, but since the Premises

were burnt to the ground and were unable to re-open, the MPS decided to bring a review under the normal procedure. Ms Bruce-Smith said that the facts spoke for themselves but she wished to highlight a few points.

5. Both incidents were serious. In May 2022 there was a drive-by shooting and on 28 April 2023 a group of males entered the Premises, setting fire to the venue with Molotov cocktails. These were both incidents where members of the public could have been killed or injured and it was only by chance that no such injuries had occurred. After the first incident the MPS took a stepped approach on the basis that it was an isolated incident. The second incident, however, clearly suggested some connection with the Premises and the potential for further serious incidents. It was unheard of for there to be a drive-by shooting at any premises, and it was almost unheard of there to be people entering the premises and setting fire to it. To have both within 12 months in the Premises was extremely concerning. Ms Bruce-Smith referred to PC Muldoon's statement, where PC Muldoon said that the absence of any known reason or target for both of these incidents also raises concerns.
6. Ms Bruce-Smith also submitted that the response from the DPS and PLH meant that the Sub-Committee could not be confident that the licensing objectives would be upheld, as neither the DPS nor the PLH have been engaging. Since 15 May there had been no contact at all, and the PLH was not present at the hearing. The PLH initially insisted that they had nothing to do with the licence, and both the PLH and the DPS admit that they do not know how to keep the Premises safe. The MPS were therefore seeking revocation because it was not clear how the PLH would be able to promote the licensing objectives, and the MPS did not consider that adequate conditions could be added to achieve this.
7. In response to questions from the Sub-Committee, PC Muldoon said he had nothing further to add. There had been a lack of engagement from the PLH and the DPS, and the two incidents were among the most serious PC Muldoon had ever encountered.
8. In summing-up, Ms Bruce-Smith wanted to reassure residents that the MPS had taken the view that a review was necessary immediately after the firebombing took place. It was only that there was a process to be followed in order to bring a review and this took a bit of time. Ms Bruce-Smith in response to questions from the Sub-Committee repeated that if the Premises had not burnt down, the MPS would have brought a summary review given the seriousness of the incident. As the Premises had burnt down and were not able to re-open, the MPS took the view that it was a better use of public resources and made more sense to bring a normal review.

Environmental Health Services

9. Ms Fabbricatore explained that EHS was in support of the review application. With regards to public nuisance, EHS had received numerous complaints concerning the Premises from numerous residents. These complaints consisted of noise from crowds and car engines revving. Monitoring visits had been undertaken by City Inspectors. They had not witnessed any statutory nuisance,

but that is not to say that there are no problems from the Premises. Ms Fabbriatore advised that it would be most helpful to hear from the City Inspector. Ms Fabbriatore also explained that in the end she had not submitted a list of incidents because this would have repeated the evidence provided by the City Inspector.

Max Barney Pub Company Ltd

10. Mr Grimsey said that the freeholder's position had changed slightly during the course of the application. Once the freeholder had seen the residents' representations the freeholder changed its view and no longer opposed revocation of the licence. Mr Grimsey advised that the freeholder owned many other licensed properties and had never had any issues like this before. Mr Grimsey said this case was appalling and represented a fundamental undermining of the licensing objectives. The freeholder did not want anything to do with the licence and just wanted to draw a line under it.
11. Mr Grimsey said that the freeholder had been unaware of any issues until the firebomb attack because they had not been told about them. Mr Grimsey advised that the freeholder had learnt a lot and would engage with residents' representatives and local authorities to ensure there would be a responsible operator running the Premises in the future. For now, the freeholder wholly supported the application and revocation.
12. Mr Milner said he had nothing to add and that it was a sorry state of affairs. Mr Milner said he had been completely taken aback by the residents' submissions and as a result of those submissions had decided to support the application.
13. Mr Pullen likewise said that he had been shocked to hear the views of residents because the freeholder had not known about the environmental/licensing breaches and the criminalities until they were told about the fire. He supported everything his colleagues had said and was looking forward to the future where the freeholder could work together with the community to bring something that benefitted everyone.
14. In response to questions from the Sub-Committee, Mr Milner explained that the usual background checks had been undertaken on the PLH. Mr Grimsey added that their understanding was that while it had been the same tenant throughout, the ownership of the company had changed during the tenancy and this could potentially be one of the reasons why the running of the Premises had deteriorated.

Cllr Sargent

15. Cllr Sargent explained that she was one of three councillors representing residents in Abbey Road Ward. She said that there had been problems associated with the Premises including ASB, noise complaints and drug use. There had been attempted engagement between the residents and people running the Premises at that time (including involvement from City Inspectors), but the situation became untenable and culminated in the firebombing in May. Cllr Sargent submitted that residents and businesses had had enough and that

an organised petition asking the police for review of the licence got close to 200 signatures. Cllr Sargent concluded that the complete failure of the PLH to engage demonstrated that they were not a responsible licence holder and were not promoting the licensing objectives. Cllr Sargent therefore supported the call for revocation.

16. In response to questions from the Sub-Committee, Cllr Sargent said that in meetings in the past it had felt as if the PLH had been taking a tick-box approach. After these meetings, the problems persisted and in fact escalated so the residents did not feel that the engagement was taken seriously.

Richard Brown on behalf of 31 residents and the St John's Wood Society

17. Mr Brown advised that one or two residents wanted to join remotely for obvious reasons and they might be able to add a little context. Mr Brown said the residents were on the front line of appalling events and he agreed that the threshold for an expedited review had been met. The incidents had caused the residents huge anxiety and fear for their safety. It was testimony to the horror that despite serious misgivings about recrimination, 58 had nonetheless submitted representations. Mr Brown also wanted to put on record his thanks on behalf of the residents for the way in which the Council had facilitated the ability of residents to make their representations anonymously, in accordance with paragraphs 9.26-9.30 of the Home Office Guidance.
18. Mr Brown submitted that the two trigger incidents were enough in and of themselves to revoke the licence but that there were other issues as well. These consisted of planning breaches, loud music, shisha smoke, pollution and the revving of large super-cars. Although there had been a great deal of unease already, nothing could have prepared them for the events of May 2022. Mr Brown referred to page 46 of the Agenda Pack, where one resident described a gunman taking refuge on their porch and coming back from dinner to see the fire earlier this year. Mr Brown said there was nothing that the PLH could have said, but in any event they had said nothing and there had been no engagement. He had never seen a case that was more ripe for revocation.
19. Mr Brown also referred to page 43 of the Agenda Pack, where a resident described problems affecting their sleep and mental health. Mr Brown said that the new position of the freeholder was appreciated, and the benefit of having a well-run premises for the benefit of the community was recognised. However, Mr Brown said that the St John's Wood Society had unsuccessfully tried to notify the freeholder of the public nuisance concerns.
20. In response to questions from the Sub-Committee Mr Brown said (referring to the evidence of the anonymous supporter detailed below) that this evidence provided further ballast to the police's case. The police's case on its own was more than sufficient to justify revocation, but the residents wanted to show that the two incidents were not isolated. The way the Premises were being run had been having a very real effect on residents, such that they had discussed bringing a review themselves. The difficulty was evidencing the transient issues. Mr Brown referred to page 73 of the Agenda Pack, where a long list of incidents had been produced for a 3-4 month period.

Anonymous Supporter

21. In accordance with paragraphs 9.26-9.30 of the Home Office Guidance, one anonymous supporter made their representations anonymously via Microsoft Teams because of fears of intimidation and violence. No objections were made to this.
22. The anonymous supporter said that they were quite anxious to be speaking but were grateful for the anonymity. Rather than repeating what had been said, the supporter stressed the difference in the neighbourhood since the venue had closed. There had been a lack of care and responsibility from the DPS and since the Premises had closed the residents had been able to speak again and able to open their windows again and breathe something other than shisha. The supporter said their anxiety had reduced because previously their children had been approached by cars handing out phone numbers and asking them if they wanted drugs. The anxiety had been horrific and had affected relationships within their family. The supporter said that it was amazing how pretty much immediately after the Premises had closed even the laughing gas cannisters had gone. Previously there had been speeding cars going up and down and neighbours had been treated very aggressively. It had been horrific and the difference after the Premises had closed was very clear.

Licensing Authority

23. Mr Jackaman advised that the licensing authority supported the review due to the extensive number of complaints received and the involvement of the City Inspector team with the Premises. While there was no doubt that there had been numerous issues, where complaints are not at the level where action is taken then further work needed to be done to substantiate them in order to take further action. The licensing authority was not confident that the PLH was going to be able to promote the licensing objectives and supported revocation.
24. Mr Jackaman then introduced Anthony Jones from the City Inspector's team. Mr Jones said City Inspectors had attended the Premises in response to reports. The issues were not found to be at an intervention level where action would be taken, but there had been a lot of complaints made.
25. Mr Jackaman added that there had been discussions between City Inspectors and the PLH, so although he could not say that there had been no engagement, there had been no remarkable reduction in complaints or action taken. This added to the view that the PLH was not willing or able to promote the licensing objectives.
26. In response to questions from the Sub-Committee, Mr Jackaman said that a large number of complaints would bring a premises to the attention of the team which would then do an unannounced site visit and keep the premises under monitoring. In this case there had been visits, but the visits had been overtaken by more serious events.

The Sub-Committee's Decision and Reasons

Review Decision

27. Being mindful of the Home Office Guidance, the Act and having carefully considered the review application, the evidence and the representations made by all the parties, both orally and in writing, the Sub-Committee decided that it was appropriate and proportionate in order to promote the licensing objectives to take the following step: -

- To Revoke the Premises Licence of the above Premises.

Reasons

28. The Sub-Committee recognised that the proceedings set out in the Act for reviewing Premises Licences represent a key protection for the community when problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. The Act provides the Licensing Authority with a range of powers on determining a review that it may exercise where it considers them appropriate for the promotion of the licensing objectives. In deciding which of these powers to invoke, the Licensing Authority should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response. Each case has to be determined on its own merits.
29. The Sub-Committee placed great weight on the evidence of the MPS concerning the seriousness of the two incidents that had occurred within 12 months. It was extremely concerning that a drive-by shooting and a firebombing had both occurred at the Premises within a twelve month period, and such serious criminality represents a fundamental undermining of the licensing objectives.
30. The Sub-Committee also noted that despite the MPS offering advice after the first incident, no action had been taken to vary the Premises Licence to add suggested conditions. The PLH had therefore failed to take actions that would be expected of a responsible operator promoting the licensing objectives.
31. In addition, the Sub-Committee agreed with the MPS that the failure of the PLH to engage following the most recent incident demonstrated that they were unable and unwilling to promote the licensing objectives. The PLH was apparently unaware of their responsibilities, and both the PLH and the DPS had admitted that they were not able to keep the Premises safe. The fact that the PLH had not submitted any representations and had not attended the hearing reinforced the Sub-Committee's view that the PLH was not a responsible operator capable of promoting the licensing objectives.
32. The Sub-Committee also placed great weight on the fact that the review application was supported by the Licensing Authority, EHS, Planning Enforcement, the freeholder and local residents. Nobody at the hearing argued or submitted that the licence should not be revoked. The Sub-

Committee considered that although the two trigger incidents relied on by the MPS had been the most serious incidents, the Premises had long been operated in a way that was likely to undermine the licensing objectives. Local residents had produced extensive evidence of anti-social behaviour and noise nuisance; this was confirmed by EHS and the Licensing Authority, who produced the records of residents making numerous complaints. The supporter at the hearing also gave direct evidence of the anti-social behaviour and public nuisance associated with the Premises. The drive-by shooting and the firebombing coupled with the lack of engagement from the PLH were sufficient in and of themselves to justify revocation, but the Sub-Committee were satisfied that the local community had long been suffering due to the fact that the operation of the Premises had been undermining the licensing objectives.

33. The Sub-Committee considered the other options available to it under section 52 of the Act but did not consider that lesser measures would be appropriate to promote the licensing objectives. The complete failure of the PLH to engage meant that the Sub-Committee had no confidence that the PLH would be able to promote the licensing objectives even if further conditions were added, the hours were reduced or licensable activities were excluded. Further, the DPS had already removed himself from the licence and a suspension of the licence on its own would not address the issues identified by the MPS and all other parties. The PLH had had the opportunity to address issues associated with the Premises after the first incident when the MPS had suggested conditions. The PLH had failed to do so, and although there was some evidence that the PLH had held discussions with City Inspectors, the consensus was that such meetings had not helped improve matters and that local residents had continued to suffer from anti-social behaviour and public nuisance associated with the Premises.
34. In all the circumstances of the case and having carefully considered the application for the full review and the evidence presented by all the parties, both verbally and in writing, the Sub-Committee concluded it was appropriate and proportionate to Revoke the Licence in order to promote the licensing objectives.

The determination of the revocation does not have effect until the end of the period given for appealing against the reasoned decision, or if the decision is appealed against, until the appeal is concluded.

The Applicant for the Review, the Premises Licence Holder and any Party who has made a relevant representation to the review application may appeal against this Decision to Westminster Magistrates Court, 181 Marylebone Road, London, NW1 5BR, within 21 days of receiving this Decision.

The Licensing Sub-Committee
28 September 2023

The Meeting ended at 11.40 am