

**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- Metropolitan Police (PC Adam Deweltz) (withdrawn)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**