

LONDON BOROUGH OF LEWISHAM

MINUTES of the meeting of the LICENSING COMMITTEE, which was open to the press and public held on THURSDAY 24 MAY 2018 in Room 3 Civic Suite, Catford Road, Catford SE6 4RU 7.15pm.

Present

Councillor Stamirowski (Chair), Councillor Elliott (Vice Chair) Councillors, Codd, Feis-Bryce, Hall and Hordijkenko.

Apologies for absence were received from Councillors Howard, Millbank and Wise.

Observing – Councillor Kalu

Exotic Bites 313 New Cross Road SE14 6AS

Mr Habeeb Lawal –Premises Licence Holder

Representation

Dan Power - Crime, Enforcement and Regulation Officer
P.C Nick Gerry – Metropolitan Police

Also Present

Lisa Spall - Crime, Enforcement and Regulation Manager
Petra Der Man - Lawyer

1. Minutes

RESOLVED that the minutes of the meeting of the Licensing Committee held on 9 April 2018 be confirmed and signed as a correct record.

2. Declarations of Interests

None.

3. Exotic Bites 313 New Cross Road SE14 6AS

- 3.1 The Chair welcomed all parties to the meeting and introductions were made. She then invited Ms Spall to introduce the application.

Licensing Officer

- 3.2 Ms Spall said that members were being asked to consider an application for a review of a premises licence for Exotic Bites 313 New Cross Road SE14. The review had been sought by Mr Power, Crime, Enforcement and Regulation (CER) officer in relation to the licensing objective of crime and disorder and public nuisance. She outlined the current licensed hours for the sale of alcohol, regulated entertainment and late night refreshment. She said that there is also seasonable variation for bank holidays; trading can take place on any day preceding the bank holiday between midnight and 3am.

Applicant

- 3.3 Mr Power introduced himself. He said that the CER service were seeking a review of the premises licence in relation to Exotic Bites as a consequence of the premises failing to uphold key licensing objectives, most notably the prevention of Crime and Disorder and the Prevention of Public Nuisance.
- 3.4 Mr Power said that he intended to draw members' attention to the premises locality within an existing Cumulative Impact Zone (CIZ). The existence of a CIZ encapsulates the emergence of licenced premises within a small geographical area which has hindered the safeguarding of key licensing objectives. Therefore, new and existing licensed premises within a CIZ have a greater expectation and responsibility to exhaust all possible measures to trade responsibly within the scope of their premises licences.
- 3.5 The CER Service initially observed Mr Lawal undertaking the provision of licensable activity without prior authorisation. He did not have a premises licence or a TEN at an event on Sunday 28 August 2016. This is evidenced in DP/1 on page 18 of the agenda. Alcohol was being sold and live music played without a licence. In line with Lewisham's enforcement policy with regard to regulatory functions, in an effort to provide compliance going forward, officers assisted Mr Lawal in applying for a premises licence and in applying for TENs to mitigate the potential loss of trade in the interim.
- 3.6 At the time of applying for a premises licence, throughout the 28 day application period, the CER service assisted the applicant by mediating with Goldsmiths University with regard to complaints of noise nuisance from students living in the vicinity of premises. This resulted in the CER service mediating successfully ensuring that a report did not need to be submitted to this Committee. An Annex 2, condition was added 'All music must be turned down to a background level from 2300 hours Sunday – Thursday and 0000 on Friday and Saturday'. This was agreed to prevent noise nuisance for students and to establish the premises as a restaurant.
- 3.7 Despite this agreement, a further visit was made on 3 December 2017 and there were further breaches as evidenced in DP/2 on page 20 of the agenda. At approximately 0300, an hour after permitted hours, a list of offences were observed as evidence on page 21 of the agenda. Subsequent requests by officers for CCTV records were not provided even though it is a condition on the licence. On pages 22-27 of the agenda, there are details of on-going noise complaints received by the University from students living in close proximity to the premises who had been affected by noise nuisance from Exotic Bites. There are complaints about noise emanating from the premises over 3 hours after permitted hours.
- 3.8 On paged 28 and 29 of the agenda, the university confirm that the premises facilitated promotional events on Saturday 6 and Friday 26 January 2018. Additionally, Mr Power has taken the unusual approach in obtaining the consent of several of these complainants to provide their accounts of the effect the persistent flouting of the Licensing Act by the premises licence holder has had on their ability to have quiet enjoyment of their properties. They have allowed officers to use their names and addresses to publicise the adverse effect that the noise nuisance has

had on their lives. Pages 32-33 highlights the students' accounts of their experience. The provision of live music until as late as 0400 occurs almost on a weekly basis. Mr Power said that officers had assisted Mr Lawal in his licence application, mediated with objectors for him, but officers are still receiving complaints of noise nuisance. There is also an annex 2 condition which has been agreed by the premises licence holder prior to the premises application.

- 3.9 Mr Power said that furthermore, the evidence on pages 34-37, adds greater validity to the claims made by the complainants with regard to promoted events occurring on four separate occasions. Bearing in mind that officers visited the premises on 3 December 2017; two months later, between 15 February and 17 March 2018, four promoted events had taken place at the premises.
- 3.10 Mr Lawal was subsequently required to provide CCTV footage in line with Annex 2, condition 1 of the premises licence as evidenced on pages 38-39 of the agenda. This condition was agreed by Mr Lawal prior to the premises licence. Despite this, officers were unable to review the requested footage of the premises CCTV. The Chair asked Mr Power why he thought that there had not been compliance. Mr Power said that he did not think that Mr Power was able to comply.
- 3.11 Mr Power said that subsequent checks showed that CCTV at the premises only retained recordings for 12 days; some way short of the condition requiring such footage for 31 days. On this occasion, despite Mr Lawal being made aware of officers' intended visit, officers noted 7 conditions of the existing premises licence being in breach; including, but not limited to, failure to join Safer London Business Partnerships. This was agreed as a condition as part of Annex 2 18 months previously. In addition, on pages 43-46 on the agenda, there is a list of persistent provision of licensable activity, which is an offence via Section 136 of the Licensing Act 2013 with regard to the sale of alcohol. In his defence, Mr Power said that from time to time, officers will require materials as part of an on-going investigation. Unlike some premises licence holders, Mr Lawal has shared information that he had with the CER service. However till receipts listed, demonstrates sales from August 2017 until 1 January 2018 with sales between the hours of 0229 to 0554.
- 3.12 In conclusion, Mr Power said that Mr Lawal has received the support of the CER service on countless occasions. This has included applications for a premises licence, TENs, a transfer of premises licence and ongoing compliance support. Nonetheless, Mr Lawal has routinely failed to adhere to conditions he initially agreed upon in 2017 at the drafting of the licence application. In addition, there must be consideration of the Cumulative Impact Zone and the constant undermining of the licensing objectives which has adversely affected the lives of local residents and the very reason for having a CIZ. Mr Power then drew members' attention to his recommendations set out on page 15 of the agenda if members considered that Mr Lawal is capable of holding a premises licence. Mr Power said that he would be interested to know how Mr Lawal intended to address these matters.
- 3.13 Councillor Elliott said that on page 13 of the agenda, Mr Power referred to several children being present at the premises during one of his visits. Mr Power said that on 3 December 2017, 2 children were in the basement of the premises at 3am.

Their parents were with them but good practise dictates that there are no children on the premises after 7pm.

Representation

- 3.14 Mr Lawal said that on behalf of Exotic Bites Restaurant, he understands that the need to uphold the licensing objectives is a task which every business owner must strive to achieve. He really appreciates the combined efforts of the Licensing department especially Daniel Power, P.C Nick Gerry and a host of other officers at the licensing department towards the issuance of his premises license. The task of compliance with the provisions of the Licensing objectives as stated in Licensing Act 2003 rests on staff at Exotic Bites. However, he said that it is rather that staff defaulted on this compliance issue through what he described as an act of innocence. He seized the opportunity to appeal to all members of the committee to temper mercy with Justice and give him another chance.
- 3.15 Mr Lawal said that his appeal also goes to P.C Nick Gerry at this crucial time, to give Exotic Bites Restaurant an olive branch. Exotic Bites really do appreciate the role and functions of the Metropolitan Police in the business of ensuring orderliness and peace within the area, and all hands must be on deck to work in harmony both with the Metropolitan Police and the enforcement department of the Licensing Department. He stated categorically that there had never been any violence at Exotic Bites neither have they had any cause to call the Police for any form of intervention.
- 3.16 Mr Lawal said that staff do not serve alcohol after hours, staff have difficulty with patrons who do not want to leave the premises. Patrons are often drunk and difficult to manage. They are told that they must leave and that he could lose his licence but patrons then make threats stating that they will not support future events and take their custom elsewhere.
- 3.17 Mr Lawal said that the issue of opening beyond their trading hours has been addressed and he was proud to bring to the attention of the committee that this practice has finally stopped. He also ensures that the premises licence is displayed correctly. He said that he visited the Goldsmiths University Security Department personally to apologise for any act of unreasonable behaviour in the past and that there would never be a recurrence of such. He asked them whether they had been advised of any complaints recently and they said no. There have not been any new reported cases of noise nuisance since the application to review notice was made.
- 3.18 The Chair said that Mr Lawal was claiming that the reason that there has been sales and serving of food outside licencing hours is because of over satisfied customers who do not want to leave. She asked him whether it is his job, as the owner of the business and the designated supervisor, to make sure that customers leave. Mr Lawal said that he is making customers leave now and he is very strict. He asked Mr Power if he has received any complaints recently and he said he had not received more complaints. The security team from Goldsmiths College come to their establishment to buy takeaway food.
- 3.19 Councillor Elliott said that Mr Lawal claimed that he had been guilty of non-compliance because of innocence and over satisfied customers not wanting to go

home. He asked how this explained the fact that CCTV had not been available when requested by the Police. Mr Lawal said that he had issues with the supplier of the CCTV system at the time that Police asked for a copy of a recording.

- 3.20 Councillor Codd also referred to Mr Lawal's claim of act of innocence. He asked what he meant by that. Mr Lawal said that he was unaware of some of the regulations but is now aware of his responsibilities.
- 3.21 The Chair said that nearly two years ago in August 2016, the CER team visited Mr Lawal with regard to non-compliance of the conditions on their licence. Since then, there have been many reports of serious noise nuisance emanating from Exotic Bites; well past their licensing hours. Officers have visited 5 times and during every visit there were breaches of their licence. She said that she did not understand why Mr Lawal did not take heed to any of these visits and take any necessary action. Breaches of their conditions were always found when officers visited the premises. Mr Lawal said that patrons can behave badly and fight; this can be difficult to manage. The Chair said that she wanted Mr Lawal to answer the claims of loud music emanating from the premises and sales of alcohol well beyond licensed hours.
- 3.22 P.C Gerry said that the only reason why Mr Lawal has a premises licence is because Mr Power discovered that he was trading illegally without a licence. Mr Power and the CER team subsequently helped him to obtain a licence and yet he continued to trade in breach of this licence. P.C Gerry said that he normally agrees with the CER team's recommendations. However, Mr Lawal has been unable to trade within the current conditions. He did not think that adding further conditions would be appropriate and he recommended that Mr Lawal's licence be revoked.
- 3.23 Councillor Elliott said that Mr Lawal claimed that all the conditions on the licence were now being upheld. Mr Lawal confirmed that this is true. Mr Power said that the last time he visited the premises, he advised Mr Lawal of 7 breaches of his licence. Since then he has made small steps with regard to increasing storing CCTV and he has joined the Safer London Business Partnerships. However he did not know whether the music was being turned down to background music during the agreed hours or whether alcohol is only being served with a substantial meal. In addition, the premises is within a CIZ and so it is more important for the licensing objectives to be upheld. He said that it always concerns him when a licensee claims that they have no need to call the Police or have any interaction with them. He was also very concerned that the Police had not been called if staff were having difficulty with customers leaving the premises and this should have been followed up with CCTV images. The fact that no action has been taken, Mr Power considered this to be damaging information.
- 3.24 Members of the Committee then withdrew to make their decision. When they returned it was:

RESOLVED that the premises licence be REVOKED.

- 3.25 Ms Spall said that any registered party and the applicant may appeal against this decision to the Magistrates Court within 21 days from the date of the decision letter which would be sent out within 5 days of the meeting.

The meeting ended at 7.55pm.

Chair