

## **LONDON BOROUGH OF LEWISHAM**

MINUTES of the meeting of the LICENSING COMMITTEE, which was open to the press and public held on WEDNESDAY 30 JANUARY 2019 in Room 3 Civic Suite, Catford Road, Catford SE6 4RU at 7.15pm.

### **Present**

Councillor Stamirowski (Chair), Councillor Elliott (Vice Chair) Councillors, Hordijenko, Kalu and Millbank.

Apologies for absence were received from Councillors Codd, Feis-Bryce, Howard and Wise.

### **Also Present**

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

## **Oregano Leaf 98 New Cross Road SE14 5BA**

### **Applicant**

Mr Eby Sebastian – Solicitor for the Applicant  
Mr Allahdad Momtaz Premises Licence Holder  
Mr Nasir Momtaz

### **Representation**

P.C. Nick Gerry- Metropolitan Police  
Khadija Mohamed Sheikh - Planning  
Lisa Spall - Crime, Enforcement and Regulation Manager

#### **1. Minutes**

RESOLVED that the minutes of the meeting of the Licensing Committee held on 15 January 2018 be confirmed and signed.

#### **2. Declarations of Interests**

Councillor Millbank said that she is the ward councillor for the area in which Oregano Leaf is situated. She did not have any pecuniary interest in this application.

#### **3. Oregano Leaf 98 New Cross Road SE14 5BA**

- 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 this application for the variation of a premises licence for Oregano Leaf 98 New Cross Road SE14 5BA. Representations had been received from the Police, Crime, Enforcement and Regulatory (CER) service and Planning. She outlined the current licence and the proposed variation to this licence.

### Representation

- 3.3 Ms Spall said that the CER service considered it necessary to submit a representation against the full variation to enable Oregano Leaf to trade until 2am Monday – Thursday and 3am Friday – Sunday. Since the last full variation hearing on 15 September 2017, the CER service has made various unannounced visits to the premises. At a meeting of the Licensing Committee 15 September 2017, Mr Zardad Momtaz was in charge of the premises and was advised at that hearing of his conditions which, at that time were in breach, namely the 2 conditions regarding CCTV.
- 3.4 On 18 September 2017, CER officers visited the premises and the breaches had been rectified. Shortly after this, in November 2017, Mr Allahdad Momtaz took over the running of the premises. Ms Spall said that she has had many meetings with Mr Momtaz at the council offices and he is fully aware of the conditions on his licence and of all the previous issues during 2017.
- 3.5 On 24 November 2018, Ms Spall said that with P.C Gerry and officers from the immigration service, she attended the premises as part of a planned operation in the borough inspecting takeaways. Mr Allahdad Momtaz was on the premises at the time. It was noted that there was no functioning CCTV in the premises. When challenged, Mr Allahdad told her that it works 'now and then'. In addition, no other member of staff knew how to operate the CCTV when questioned. During this visit, it was also noted that the summary licence was not displayed, which, with the CCTV, made 3 breaches of the licence during that visit alone. All these breaches are offences under section 57/4 and 57/7 of the Licensing Act 2003.
- 3.6 Following one of the visits to the premises, P.C Gerry left Mr Momtaz with an action plan to get the CCTV working, train staff and display the summary premises licence. Ms Spall wrote to Mr Momtaz on 26 November 2017, explaining the breaches in detail and the fact that the action had to be complied with to ensure that they satisfied the conditions on the licence.
- 3.7 On 10 January 2019, CER officers carried out a follow up visit to see whether the action plan had been adhered to. On arrival it was evident that the summary licence was still not on display. Staff present were asked about the CCTV. They said that it had been fixed straight after officers visited in November 2018 and that it recorded for 200 days; it seemed to be working. Ms Spall asked staff to supply her with some downloaded footage to prove that the CCTV had indeed been working since November 2018. She was then advised by staff that they could not do this because it had only been fixed on 5 January 2019. In addition to this, no member of staff present, including Mr Momtaz's father could operate the CCTV and

officers were told that only Mr Allahdad Momtaz knew how to operate the CCTV. This proved that they were still in breach of their licence.

- 3.8 Ms Spall asked staff to ensure that Mr Momtaz downloaded footage from 5 January 2019 and deliver the footage to her office. It was a further two weeks before the footage was received. Extracts from this footage was shown to members of the Committee. It showed that cameras were incorrectly labelled; Cameras labelled as camera 1 displayed the front and the back of the shop. All four cameras displayed incorrect timings; they were showing 01:00 hours as 13:00 and 13:00 as 01:00. There were multiple dates and incorrect labelling.
- 3.9 P. C Gerry said that management from Oregano Leaf have attended meetings of this Committee and have been reminded of their obligation as a premises licence holder. There is only one condition on their licence and they have been in breach of this condition. The variation was not granted in September 2017 and he thought that the premises licence holder would have addressed the issues that have been raised many times, but he has not.
- 3.10 Ms Sheikh said that her objections are based on planning permission dated 19 September 1986; in particular, there is a condition 2 which states that the premises must not be open for business between the hours of Midnight and 8am. In the application it states that there will be orders and deliveries which constitutes operating a business and would be in breach of the planning permission granted in 1986. In part 3 of the application to vary the licence, it refers to the existing planning permission granted for the premises. She had been surprised, therefore, that the applicant had applied to increase his licensable hours with this planning restriction. She had explained to Mr Momtaz that he needs to apply for planning permission to extend his licenced hours. If he does not apply for permission and continues to trade after midnight, he will be in breach of the planning permission granted in 1986.
- 3.11 Councillor Elliott asked about the legal position regarding planning and this Committee's decision. Ms Der Man said that there are distinct regimes between planning and licensing. However, should members decide to determine the application which is in conflict with any of the planning permissions or conditions, it is up to the applicant, who may expose themselves to breach of enforcement, to take their own legal advice whether or not they open in breach of planning provisions, which would be compliant with the licensing authority.
- 3.12 Councillor Elliott said that P.C Gerry referred to an action plan he had issued the applicant with regard to the CCTV and the summary licence. He asked whether he received a response. P. C Gerry said that the action plan was issued on 24 November 2018 and asked for the faults to be rectified by 28 November 2018. He did not go back to the premises until 10 January 2019 to discover that the CCTV had not been fixed. He has not received a response to the action plan.

### **Applicant**

- 3.13 The Chair asked Mr Sebastian to make his presentation. He asked the Chair if he could discuss the issues raised with his client for a few moments. This was agreed.

- 3.14 Mr Sebastian said that the summary licence is now displayed. His client had employed technicians to fix the CCTV. The fact that it does not work is a technical error and can easily be rectified. He said that the CCTV in the shop is working now. He said that his client has financial problems but has paid all of his taxes. He wants to extend his hours and if customers coming to and from his shop causes problems for residents he will only accept telephone orders after midnight.
- 3.15 The Chair asked why the summary licence had not been displayed in the shop. Mr Sebastian said that a member of staff had taken it off the wall to photocopy it when an application was made for the variation of the licence. The staff member forgot to display the licence after it had been photocopied. He said that he had advised his client to frame the licence and put it on the shop wall.
- 3.16 Councillor Millbank said that the Police issued an action plan in November 2018 but the CCTV was not fixed until January 2019. She asked why it had taken so long to repair the machine. Mr Momtaz said that the day after being given an action plan, the technician fixed the CCTV. He is unable to use the CCTV himself properly so he called the technician back to check the machine on 4 or 5 January. The technician advised him that he pressed the wrong button and the machine was working but not recording.
- 3.17 Councillor Millbank referred to the receipt for the repair of the CCTV. She asked whether Talha Mohammadi is the name of the business. Mr Momtaz said that he is a friend who installed the system; he has his own business.
- 3.18 Councillor Elliott said that Mr Momtaz referred to the timing issues and recording of the CCTV cameras but the cameras were not showing the correct location to the correct camera, so the problems with the CCTV are greater than Mr Momtaz suggests. Mr Momtaz said that the technician came to fix the CCTV and he asked why it had not been working. The technician put the correct plugs in to the machine and it works now. Mr Momtaz said that when the officers came to his shop on 10 January 2018 he was not present. His father was there but he does not speak English. Nasir was present and he asked the officers whether they wanted to look at the CCTV but they said that they did not want to look at it.
- 3.19 The Chair asked how many times Mr Momtaz has been advised about his CCTV. Ms Spall said that the Momtaz family, including Mr Zhardad, as the premises licence holder before his brother, have been told four times and they have attended three meetings of this Committee when representations to their application were considered,
- 3.20 Mr Momtaz said that extending his licence by 1 or 2 hours would help him financially, and is when there is a lot of custom. He said that he has told his neighbours that he would install an extractor fan so that they do not experience the smells of the cooking. He did not agree with Ms Spall when she said that his family have been told 4 times to manage a functioning CCTV.
- 3.21 Ms Spall said that one of the reasons that CER had objected to the application is because staff cannot operate the CCTV and Mr Momtaz had declared during this meeting that he is unable to operate the CCTV. Mr Sebastian said that when Mr

Momtaz is not at the premises a member of staff is able to operate the CCTV system.

3.22 Members of the Committee then withdrew to make their decision. When they returned it was:

**RESOLVED that** the application be refused.

3.23 The Chair said that this Committee needs to have evidence that there are no breaches of the licence at the shop. When this has been done, another application could be made to vary the licence. Mr Sebastian asked when they could re-apply to vary the licence. The Chair said they need to show that the business is being managed properly and that the four licensing objectives are being upheld. Ms Spall said that she expected that to be in approximately nine months. Ms Sheikh said that they also need to apply for planning permission to extend their licensable hours.

3.24 Ms Spall said that an appeal may be made 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 8.10pm

Chair