

LONDON BOROUGH OF LEWISHAM

MINUTES of the meeting of the LICENSING COMMITTEE, which was open to the press and public held on TUESDAY 7 MAY 2019 in Room 3 Civic Suite, Catford Road, Catford SE6 4RU at 7.15pm.

Present

Councillor Stamirowski (Chair), Councillors Anwar, Handley, Hordijenko, and Howard.

Councillor Anwar was present for one item; Pizza 2 Night.

Apologies for absence were received from Councillors Campbell, Elliott, Hall and Wise.

Also Present

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

Pizza 2 Night 26a Catford Hill SE6 4PX

Applicant

Nabaz Hussein- Premises Licence Holder

Representation

Frank Olaniran - Crime, Enforcement and Regulation Officer

Dirty South P.H 162 Lee High Road SE13 5PR

Applicant

Ian Gough – Premises Licence Holder

Representation

Councillor Mallory, Mr Bailey, Mr Lai, Ruth Chapple, Roberto Sepulveda, and Andrew Bailey

1. Minutes

RESOLVED that the minutes of the meeting of the Licensing Committee held on 5 March, 2 and 3 April 2019 be confirmed and signed.

2. Declarations of Interests

None.

3. Pizza 2 Night 26a Catford Hill SE6 4PX

- 3.1 The Chair welcomed all parties to the meeting and introductions were made. She then invited Ms Hooper to introduce the application.
- 3.2 Ms Hooper said that members were being asked to consider the application for a review of a premises licence sought by the Crime, Enforcement and Regulation service. She outlined the current licensed hours and said that the application had been advertised in accordance with regulation 39 of the Licensing Act.
- 3.3 Mr Olaniran said that the Crime, Enforcement and Regulation Service have concerns regarding Pizza 2 Night's ability to uphold key licensing objectives namely the prevention of Public Nuisance and the Prevention of Crime and Disorder.
- 3.4 On 19 February 2019 at approx. 04:18, CER officers observed a male, suspected to be a delivery driver, leaving Pizza 2 Night with a hot food bag. After further investigation, it was confirmed that Pizza 2 Night are only licensed till 04:00 Monday – Sunday.
- 3.5 On 25 February 2019, Mr Olaniran met a male who advised that there was no manager on site. Upon requesting access to CCTV footage, the male advised that he did not know how to operate the CCTV. This is a breach of condition 2 of Annex. A receipt was found, dated the 25 February 2019, confirming the acceptance of an order at 04:26. Mr Olaniran asked to see other receipts, to which the male advised that they were kept by the manager offsite. While officers tried to investigate further, it was noted that tablets for acceptance of online orders were not generating order history.
- 3.6 Mr Olaniran was given the details for the manager, Alan Rasheed. He sent him an email requesting access to CCTV footage. The premises has failed to comply with condition 1 under annex 2 of the licence. Effort was also made to contact another member of staff to obtain CCTV footage via email. On the 26 February 2019, an email was received advising that there was an error with the playback. No attempts were made to rectify this matter. Mr Olaniran said that he is of the view that this amounts to obstruction under s179 preventing him from investigating any offences under the Act
- 3.7 In addition Mr Olaniran said that members should note that 6 months ago;
- Officers from this service observed the provision of hot food at 03.20 during a time when there was only a license till 02:00
 - The premises was in breach of s57(4) – failure to secure a premises licence or a certified copy of the licence or to prominently display a summary of the licence
 - The premises was in breach of s57(7) – failure to produce a premises licence or a certified copy of the licence
- 3.8 Mr Olaniran said that despite this, the licensing service provided education on the failings of the business as a means of supporting the business and allowed an extension of the business hours to prevent further breaches. The variation was granted in good faith, with the expectation that the business would operate

responsibly in future. However, within 3 months of the variation, the same issue continued. There are clear concerns with regard to the upholding of key licensing objectives and the management's ability to operate responsibly.

3.9 Mr Olaniran said that he recommends that members agree the following restrictions:

- the provision of hot food on Monday to Thursday till 01:00
- the provision of hot food on Friday to Sunday till 02:00

He considers that the recommended conditions are appropriate measures to address what officers believe to be the shortcoming of the business. The premises has failed to operate within the parameters of their conditions on the licence. Reducing the hours for licensable activity is therefore seen as proportionate.

3.10 Mr Hussein said that he had not been at the premises when the licence was breached. He is now managing the business himself and there will not be any more problems.

3.11 The Chair asked Mr Olaniran whether he has ever received a copy of the CCTV as requested. He confirmed that it has not been received; it is a condition on the licence that CCTV must be available to the Police or authorised officer.

3.12 Councillor Anwar said that Pizza 2 Night need to prove that they can uphold the licensing objectives. He asked whether a 24 hour licence could be granted. Ms Hooper said that when licensing officers receive an application for a licence, they need to take the four licensing objectives into account. Consideration is given to noise complaints, and other similar establishments in the area. When an application for the sale of refreshments up until 5am was received, officers considered it appropriate to grant the licence until 4am. This was because of the high level of noise issues in the area. Mr Hussein agreed with officers that he could operate within the hours until 4am, but he has breached the conditions on his licence.

3.13 Councillor Howard asked whether the premises have been involved with any serious offences apart from breaching the conditions on their licence. Mr Olaniran said that the premises have not been involved with serious crime. He said that a comprehensive CCTV system must be installed and maintained. He has met the manager of the shop recently but the footage requested has still not been given to him.

3.14 Mr Hussein said that they have an issue with the Police because they have taken the hard drive away on three occasions to use as evidence for a crime in the street but they have not been returned. The CCTV is now fully installed and in good working order. He is now able to provide recordings from the CCTV. He asked members not to reduce his licensable hours for the provision of hot food. His business is not doing well and it would affect him financially if the hours are restricted as recommended by the licensing officers.

3.15 The Chair asked whether the CCTV is in operation now. Mr Olaniran said that it was not working a month ago. Mr Hussein said that it is working and he showed

members evidence of this on his phone. Mr Olaniran said that during request of the CCTV footage, Mr Hussein never advised him that the Police had seized his CCTV equipment and he had not received any request from the business to look into this matter. The only explanation provided was from Mr Hussein advising that there was an error with the playback and that footage could not be provided. Despite the CCTV being fixed, Mr Hussein has failed to provide the footage requested, the request for the footage was never retracted. Ms Der Man asked whether a receipt was received from the Police when they took the CCTV away. Mr Hussein said that he did not know that a receipt was required. The last time the Police took away the CCTV hard drive was 18 months ago

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

RESOLVED that the following restrictions be added to the premises licence, as recommended by the CER team, be agreed. Namely:

- the provision of hot food on Monday to Thursday till 01:00
- the provision of hot food on Friday to Sunday till 02:00

- 3.17 Ms Hooper 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.

Councillor Anwar left the meeting.

4. Dirty South P.H 162 Lee High Road SE13 5PR

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

Licensing Officer

- 4.2 Ms Hooper said that members were being asked to consider the application for the variation of a premises licence for Dirty South P.H 162 Lee High Road SE13 5PR. She outlined the current licence and said that this application is for the change of layout and associated plan for the rear outside area of the premises with a pop up bar/fixed bar. All licensable activities on the current licence are to be permitted in all areas of the new plan. Representations have been received from 24 interested parties including one local councillor. There are concerns that the granting of the licence is likely to cause an increase in noise nuisance for local residents.

Applicant

- 4.3 Mr Gough said that the application is to extend the licensing activity to the North West of the site in the outside area and use it as a beer garden. This area has been chosen because it is light and it catches the sun for most of the day. There is an area at the front of the premises used by smokers but is a shady area. The area at the rear of the premises will be used during the day and early evening as an area where patrons can drink, eat food and converse. It will not be a noisy

area; music will not be played outside. The application is for a licensed outside area until 10pm so that they can make the most of the daylight hours.

- 4.4 Mr Gough said that a few years ago, the premises operated as a live music venue but the focus of the business now will be on food. There will be some background music inside the premises and he would like to create a pleasant outside area for patrons.
- 4.5 Councillor Howard asked what time the outside area would close. Mr Gough said the garden would close at 10pm. Councillor Howard said that the garden will not be in sunlight at 10pm. Mr Gough said that the garden would only be open until 10pm in the height of the summer and food would be served outside. There will be a maximum of 30 patrons in the garden. Councillor Howard said that from the pictures, residents live very close to the garden area, and 30 people socialising in the area would have a detrimental effect on them. Mr Gough said that the premises is next to the car park not residents' homes.
- 4.6 Councillor Howard said that the garden area could be open 7 days a week until 10pm in the good weather. This would be very intrusive for residents. Mr Gough said that patrons in the beer garden can see residents on their balconies and residents can see down to the garden. There is no intention to hold parties outside, it is more an area for eating and drinking.
- 4.7 Councillor Howard said that last summer unlicensed activities took place in the garden area and several unpleasant events took place. She asked Mr Gough how he would ensure that this would not happen again. Mr Gough said that there was an occasion when patrons were allowed in to the garden until late, but this would not happen again.
- 4.8 Councillor Howard asked about the previous use for the garden. Mr Gough said that about 20 years ago it was used as a storage space. In the last 12-13 years it has been used as a private garden with a summer house and an office.
- 4.9 An objector had submitted a video which showed how quiet the area is under normal conditions. This was shown to members of the Committee.

Representation

- 4.10 Mr Lai said that he lives in Waterside Court and his flat faces the beer garden. When the beer garden opened to the public, it was impossible to contain noise nuisance because it is not possible to sound proof noise an open space. The applicant has shown a lack of consideration for residents and the measures he claims to have made to contain the noise have been ineffective.
- 4.11 Mr Lai said that he experienced unpleasant anti-social behaviour and abuse from a customer. Patrons shouted at him because they thought he was looking at their children. This shows how close the flats are to the beer garden. He said that he feels vulnerable and this has affected the enjoyment of his home. This bad behaviour also affected children who live in their block. Mr Lai said that the applicant claims that they will patrol the outside area but they cannot control the noise from people who have been drinking.

- 4.12 Mr Gough said that he did not know about this incident because he was not there at the time. He does not condone this behaviour and does not want this interaction between patrons and residents again. There will be talking in the garden, but the level of sound will be in the context of noise in the area and will not make any difference to the intermittent background noise in the area.
- 4.13 Mr Cox said that for the 6 week period that the beer garden was open, there were incredible levels of nuisance. This noise level increased over the ambient levels. There were low noises and sudden loud noises and the lights from the beer garden shone into the flats. The balcony of the flat on the first floor is at eye level to the garden and residents are at risk of crime. Mr Cox said that he does not have the option to leave his home and is opposed to the application. The garden could not be closer to the flats and if the application is granted it would have a detrimental impact on residents' enjoyment of their homes.
- 4.14 Ms Chapple said that she lives in a Victorian house opposite Dirty South; her property does not have sound proofing. It is 15-20 metres away from the beer garden. Dirty South has double doors at the rear that open on to the garden. On page 61 of the agenda, it states that notices will be displayed in the garden, but noise will be difficult to police. When the garden was open to the public, a group of school teachers were noisy and were not respectful towards residents. A 10pm closure of the garden will not uphold the licensing objectives. On 19 July 2018, her children were very upset by the noise and screaming emanating from the premises. If the application is granted her children will not be able to sleep or play inside or outside of their home.
- 4.15 Mr Sepulveda agreed with members' comments. He said that shouting from patrons can be heard in the top flat.
- 4.16 The Chair asked how long the beer garden was open in the summer. Ms Hooper said that the licensing team visited the premises following receipt of a few complaints from residents. The front of the premises was licensed but not the rear. Mr Gough accepted that he needed to apply for a full variation. The garden had been open for 6 weeks. The Chair asked whether licensing officers had witnessed statutory noise nuisance. Ms Hooper said that they had not.
- 4.17 Mr Bailey said that he has experience working in a public house and so he knows that local residents must not be affected by noise nuisance from the outside space of the premises. If the capacity of the outside place is 30, there will be a lot of noise and anti-social behaviour and it cannot be policed by staff. He said that there is an alleyway alongside the premises and this could become an area for crime and disorder. He does not support the application.
- 4.18 Councillor Mallory said that enforcement is a problem. The premises was known as the Rose of Lee and was a musical venue. He said that residents have outlined the problems that they have experienced with the beer garden and how it would affect their lives if the application was granted.
- 4.19 Councillor Mallory said that if the licence application for the beer garden is granted, it would need a roof and acoustic cover otherwise residents will suffer

from noise nuisance. There are no plans to properly police the area and the risk of anti-social behaviour, so close to residents, is very high.

4.20 Mr Gough said that the alleyway to which residents refer, is not part of the area near to the garden, it is further down. Patrons leave the premises through the front door. He accepts that there could be anti-social behaviour but said that it is the responsibility of the staff to manage it. There will not be any amplified music outside or entertainment. He said that he has had a meeting with residents and he noticed that it was interrupted by the noise of sirens and aircrafts. The noise in the garden will not be adding to the noise in the area. Staff will control litter to ensure that there is no infestation of pests. Mr Gough questioned what ambient noise is and how the patrons at the Dirty South would add to this noise. People only talk and laugh in the garden.

4.21 The Chair asked whether the area at the front of the premises could be used for patrons to eat food. Mr Gough said that there are 3 large tables at the front of the property for patrons to smoke. It is a shady area, on the main road and is not a suitable area for eating.

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

RESOLVED that the application, as applied for, be REFUSED.

4.23 Ms Hooper 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 9.05pm

Chair