

LONDON BOROUGH OF LEWISHAM

MINUTES of the meeting of the LICENSING COMMITTEE, which was open to the press and public held on TUESDAY 10 SEPTEMBER 2019 in Room 3 Civic Suite, Catford Road, Catford SE6 4RU at 7.15pm.

Present

Councillor Stamirowski (Chair), Councillor Elliott (Vice Chair) Councillors Campbell, Handley, Powell and Wise.

Councillor Hordijkeno was present for Alpha Lounge

Apologies for absence were received from Councillors Anwar, Hall and Howard.

Also Present

Lisa Hooper - Crime, Enforcement and Regulation Manager

Petra Der Man – Lawyer

P.C Nick Gerry – Metropolitan Police

Alpha Lounge and Bar 100-104 Lewisham High Street SE13 5JH

Applicant

Kelly Hickmott Crime, Enforcement and Regulatory officer.

Representation

David Dadds – Solicitor representing the premises licence holder Evans Olekanma who was present. Approximately 6 members of the public.

Bento 47-49 Lee High Road SE13

Applicant

Ameeta Patel –Home Office.

Representation

The premises licence holder was not represented at the meeting.

1. Minutes

RESOLVED that the minutes of the meeting of the Licensing Committee held on 27 August 2019 be confirmed and signed.

2. Declarations of Interests

None.

5 Exclusion of the Press and Public

RESOLVED that under Section 100 (A) (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12 (A) of the Act, as amended by the Local Authorities (Executive Arrangements) (Access to Information) (Amendments) (England) Regulations 2006 and the public interest in maintaining the exemption outweighed the public interest in disclosing the information:

6. Bento 47-49 Lee High Road SE13

The following is a summary of the item considered in the closed part of the meeting.

Members of the Committee were advised of the following breaches of the Premises Licence for Bento:

- No summary licence on display
- No licence on the premises
- None of the 12 officers knew the name of the DPS
- The DPS on the licence left in 2014

The premises licence was revoked

At 7.20pm, the Committee went into closed session to consider item 6, the review of a premises licence for Bento 47-49 Lee High Road SE13.

At 7.30pm, the Committee returned to open session.

7. Catford Food Centre

This item was deferred until 9 October. Ms Der Man said that she had confirmed with Mr Dadds that should there be any further representations or information for his client to address, that he would be provided with 5 clear working days before the meeting.

RESOLVED that this item be deferred until 9 October 2019. (This was subsequently changed until 16 October 2019)

3. Alpha Lounge and Bar 100-104 Lewisham High Street SE13 5JH

- 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 in respect of Alpha Lounge 100-104 Lewisham High Street SE13. It had been sought by Kelly Hickmott of the Crime, Enforcement and Regulation (CER) service. She outlined the current licensed hours for the premises. Two representations had been received from residents living within the local area. She outlined the options open to members of the Committee.
- 3.3 Mr Dadds confirmed that the grounds for the licensing objectives that had been engaged were for the prevention of public nuisance and public safety. It was not brought on the grounds of crime and disorder.

Applicant

- 3.4 Ms Hickmott said that since 13 February 2019, the CER service have been receiving complaints regarding excessive loud music, particularly the base, emanating from the Alpha Lounge. She said that she has been trying to mediate between the premises and local residents, but has been unable to resolve the issues.
- 3.5 On 16 March 2019, CER officers visited the complainants' address. During this visit officers witnessed noise which was deemed to be a statutory noise nuisance. On 27 March 2019, an abatement notice was issued. A 'breach of licence conditions' letter was also served on 21 March 2019. However, CER officers are still receiving complaints.
- 3.6 Officers visited Club Vibes and Alpha lounge on 27 April and 18 and 26 May 2019 and witnessed the music from the complainants' property and at street level. Officers deemed the noise to be unsatisfactory and a statutory nuisance was witnessed. This was in breach of the abatement notice served in March 2019.
- 3.7 The CER team received two further complaints from residents living within a short distance from the club. They have not only complained about the level of the music but also the noise from patrons attending the club and leaving in the early hours of the morning.
- 3.8 Ms Hickmott said that officers also witnessed in excess of 50 cars parked in the high street. On one night, an ambulance vehicle had difficulty parking close to the club to assist a patron who needed medical assistance.
- 3.9 On Sunday 16 June 2019, officers made a further visit to the complainants' house. At 0145 officers witnesses a statutory noise nuisance. Both officers provided statements to confirm that there was a statutory nuisance despite previous breaches of the abatement notice.
- 3.10 Officers made a further visit on 13 July 2019 at 01:15. Officers were outside the premises and noise could be heard clearly from both Alpha lounge and Club Vibes. Officers could distinguish between the music emanating from each club.
- 3.11 Following a review of the premises licence for Club Vibes, a significant number of representations have been received from the public. They highlight the concerns

about both premises, both of whom contribute to the noise nuisance and anti-social behaviour that is affecting the lives of local residents.

- 3.12 Ms Hickmott said that the premises should be addressing these concerns because they are contributing to the problems experienced by local residents. On 17 March 2019, officers witnessed Alpha Lounge allowing entry after 2am which is in breach of the conditions on their licence and a breach letter was served. A map showing the situation of the premises was given to Mr Dadds and circulated to all members of the Committee for information.
- 3.13 Ms Hickmott said that she had hoped to discuss with Mr Dadds, some extra conditions that she considered should be added to the premises licence, but Mr Dadds did not want to discuss them.

Representation

- 3.14 Mr Dadds said that he did not consider it appropriate to discuss possible conditions with Ms Hickmott just before this meeting because the local authority should have sent them to him in advance so that he had time to consider them and take instruction from his client. He clarified that the Police had not made a representation and would not be making a representation at the meeting, nor were they in attendance for any reasons of crime and disorder.
- 3.15 Mr Dadds said that he had submitted a document regarding public and private nuisance. Members had received this document.
- 3.16 Mr Dadds was advised that the licensing authority and Environmental Health team are usually separate. Ms Der Man explained that they are within the same team in Lewisham. He asked whether the officers making the representations are experts and qualified to make their representation. He said that he would refer to these representations later in his presentation.
- 3.17 Mr Dadds said that this application is based mainly on public nuisance but also on public safety. Concerns were raised about public safety following a number of cars parked on the public highway and there was reference to an ambulance attempting to assist a patron. He said that he cannot comment on this because he does not know who the cars belong to and there had not been any evidence to link these cars with Alpha Lounge. If they were not parked illegally, this could be a civil matter rather than something to be considered by this Committee. Statutory guidance states that a cause or concern must be identified and the action taken must be proportionate. There must also be evidence linking this to the premises. Unless officers know the owners of the vehicles obstructing the road then there cannot be a direct link with the premises. In addition, the London ambulance service have not made a representation.
- 3.18 Mr Dadds said that only two representations had been received from the public and they live at the same address. There were no other written representations from local residents within the 28 day period. This review application had been based on the licensing objective of public nuisance. However, in order to be a public nuisance, the noise must affect more than one dwelling. He then outlined case law. He said that this application is based on a private rather than a public

nuisance. Mr Dadds said that there may be grounds for noise abatement but that is dealt with under different legislation of the Licensing Act. It is for Lewisham officers to establish a statutory nuisance.

- 3.19 Mr Dadds drew members' attention to page 22 in the agenda paragraph 4. He said it is very unusual for a club to turn off its music when it is in full flow because it can be detrimental for the club and can cause panic; patrons often feel the need to leave the premises. Officers then established that it made no difference to the loud music and the base was clearly coming from Club Vibes.
- 3.20 Mr Dadds then referred to paragraph 6 on page 23. This evidence again reported Club Vibes as having been responsible for noise nuisance. He referred members to page 30 in the agenda where it is acknowledged that Alpha Lounge installed a noise limiter and have been engaging with the licensing authority. However, Mr Dadds said that there has not been a public nuisance and this evidence, therefore is not relevant.
- 3.21 In relation to public safety, there is no evidence to connect any owner of a car or illegal parking to the club and is not relevant to this review application.
- 3.22 On 16 March 2019, it is alleged that some patrons were admitted after 2am. His client denies this. Mr Dadds referred members to page 48 in the agenda. He said that these are the conditions that were suggested by Alpha Lounge. The 5th paragraph down states that patrons are allowed to leave temporarily and re-enter in order to smoke. Every patron who leaves Alpha Lounge receives a stamp because the other premises also allows their patrons to leave their premises to smoke and then when they re-enter, their stamp is checked.
- 3.23 In conclusion, Mr Dadds said that he does not believe that any action is required. His client is working with the Council. There is no public nuisance, no crime and disorder, and no undermining of public safety or protection of children from harm.
- 3.24 Ms Der Man referred Mr Dadds to pages 22 and 23 and the statement of Ms Spall. The premises are not allowed to admit or re-admit patrons after 2am. She witnessed patrons being admitted at 2.30am. When she left the premises at 2.33am, she witnessed a loud base and there was still a queue of people waiting to go in to the venue. This was after she had spoken to Ricardo. Mr Dadds said that it must have been the queue for the other venue and he can only speak for Alpha Lounge. There is only re-admittance for people who have been smoking outside the venue.
- 3.25 Ms Hickmott said that whilst she appreciates that Alpha Lounge have taken steps to minimise noise, in December 2018 it was agreed that a sound limiter should be installed. A meeting was subsequently held with Mr Evans in March 2019 to discuss the condition which states that a sound limiter will be installed. At that meeting, Mr Evans said that he was not aware that a sound limiter should have been installed so it was agreed that the equipment would be installed and that Mr Evans be given an extra 2-3 weeks for this installation. However the installation did not take place until 21 May 2019. Ms Hickmott said that the time it took to install the equipment was unacceptable.

- 3.26 Ms Hickmott said that Mr Dadds claims that officers are unable to distinguish from which club the music emanates. When officers go into the complainants address they can hear the music that is being played and can hear this music when they go into the clubs. She said that there are two statements confirming this on the agenda. Both statements were made in July 2019, one from Mr Adu-Brobbey, the other from Mr Bahannack on pages 34 and 36.
- 3.27 Mr Dadds said that even if it is shown that there was a noise break out from the premises, it would be a private nuisance and in any event, his client will challenge these statements. In relation to page 34, Mr Dadds asked whether Mr Adu-Brobbey is a noise expert, because there is no reference to his qualifications; it is not included in the statement. Ms Hooper said that Mr Adu-Brobbey has been trained and suitably qualified. Mr Dadds said that when an officer makes a statement, they should include their qualifications. Ms Hooper said that they do not need a professional qualification to witness a statutory nuisance they need to be suitably qualified. Mr Dadds said that he would challenge this at the magistrate's court in relation to the statutory nuisance.
- 3.28 Councillor Campbell referred to the alleyway where vans are parked, drugs are used and people use the area as a toilet. She asked whether the gates could be shut to prevent the misuse of the area. She said that in the representations, reference is made to children being at risk of harm. Ms Hickmott said that closing the gates has been considered but residents need to use this alleyway in case of a fire. Mr Dadds said that statutory guidance dictates that there must be proof of a direct cause of link and the general nature of the alleyway does not have a direct link to Alpha Lounge.
- 3.29 Councillor Wise said that there are representations made by two officers who claim that they could differentiate between the music played in each club. If music can be identified and linked to a particular club, then that is a cause of link. Ms Hooper agreed.
- 3.30 The Chair said that very little action has been taken by the premises since the abatement notice was issued. Ms Hickmott said that the notice was issued in March 2019; the notice was not appealed. There were two breaches, the Chair asked what the response had been when they were issued. Ms Hickmott said that Mr Olekanma had not been pleased to receive the first breach letter but he understood the reason why it had been issued. Mr Olekanma was not pleased to receive the second notice. Officers tried to explain how serious it is to be in breach of an abatement notice. The Notice is still in place.
- 3.31 Mr Dadds said that he is in possession of an email from a licensing officer, stating that no further action will be taken with regard to the noise abatement. His client understands that officers went out in May 2018 and asked the club to turn the music down. Officers then acknowledged that the music was not coming from Alpha Lounge and no further steps taken. If the Council want to prosecute, then they can serve the papers and Mr Dadds will deal with that outside of the licensing statutory scheme; he will rely on the evidence contained within the email.

- 3.32 Mr Dadds said that even if there is a direct cause of link, and the officer proves that the noise nuisance emanates from Alpha Lounge, it is still a private not a public nuisance.
- 3.33 The Chair asked whether the sound limiter is in place. Mr Dadds confirmed that it is in place; licensing officers inspected it in May and they were satisfied with it. There has not been any problem with it since then. Ms Hickmott said that a statement was made in July which contradicts this. Mr Dadds said that the limiter has been set, if officers are not satisfied with this, they can go back to the premises and inspect it again.
- 3.34 Councillor Handley asked how many other residents live within close proximity of the club. Ms Hickmott said that the complainant lives in a flat above the club. Other residents live in flats in the building but she does not know how many. Mr Dadds said that his understanding is that there is one flat above the premises with three floors. Nothing else adjoins or abuts it. There have not been any other complaints. Ms Hickmott said that although there has only been one complaint, the nuisance has been prejudicial to the health of the complainant and they are suffering as a result. Ms Der Man said that this is a matter for the Environmental Protection Act. Mr Dadds said that his client is not being disrespectful and they will work with the Council to resolve this issue.
- 3.35 Ms Hickmott said that she had some conditions, similar to those agreed when the Club Vibes review was considered. She recommended that that they be added to the premises licence. She read them out to those present:

Sunday to Thursday Reduction Midnight
Friday and Saturday Reduction to 2am

Additional Conditions.

1. During the provision of regulated entertainment, a personal licence holder employed by the premises must be on duty at all times.
2. The premises must take all reasonable steps to encourage onward journeys and ensure the customers of the premises do not loiter outside so not to cause a disturbance to the local residents and businesses.
3. When the premises is open to the public and door staff are employed, the premises must provide a member of staff to act as a parking / taxi marshal thus to prevent a nuisance to the local residents and other road users, this marshal must be clearly visible and must wear a hi-visibility jacket or tabard and to help ensure the safe journey home of its patrons.
4. All windows and door to remain closed when entertainment or live music is in progress.

- 3.36 Mr Dadds said that every case should be judged on its own merits.

3.37 Councillor Campbell asked about the fire exits. Mr Dadds said that there is a fire escape at the rear of the property, the main entrance is at the front.

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

RESOLVED that the premises licence for Alpha Lounge should not be amended.

3.39 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.

4. New Cross Inn 323 New Cross Road SE14 6AS

The Chair advised members of the Committee that agreement had been reached between the applicant and objector. This application had, therefore, been withdrawn.

The meeting ended at 8.50pm

Chair