

LONDON BOROUGH OF LEWISHAM

MINUTES of the meeting of the LICENSING COMMITTEE, which was open to the press and public held on THURSDAY 7 JUNE 2018 in Room 3 Civic Suite, Catford Road, Catford SE6 4RU at 7.35pm.

Present

Councillor Elliott (Vice Chair) (In the Chair) Councillors Codd, Feis-Bryce, Hordijkeno, Howard, Kalu, and Millbank.

Apologies for absence were received from Councillor Stamirowski (Chair), and Councillors Hall and Wise.

Phase 1 Lounge 136 New Cross Road SE14 5BA

Samuel Ojo – Premises Licence Holder
Gladness Ojo – Director

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 meetings of the Licensing Committee held on 23 and 24 May 2018 be confirmed and signed as a correct record.

2. Declarations of Interests

Councillor Millbank declared the fact that she is ward councillor for Phase One Lounge but does not have any pecuniary interest in the premises.

3. Phase One Lounge 136 New Cross Road SE14 5BA

- 3.1 The Vice - Chair welcomed all parties to the meeting and introductions were made. He 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 Phase One Lounge 136 New Cross Road SE14 5BA. 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. The application was being supported by P.C Gerry. She outlined the current licensed hours for the sale of alcohol, regulated entertainment, late night refreshment and seasonable variation for bank holidays.

Applicant

- 3.3 Mr Power introduced himself. He said that the CER service were seeking a review of the premises licence in relation to Phase 1 Lounge as a consequence of the premises routinely failing to safeguard key licensing objectives, most notably the prevention of Crime and Disorder and the Prevention of Public Nuisance.
- 3.4 Mr Power said that the premises is located within an existing cumulative impact zone (CIZ). The very existence of the CIZ is to address the cumulative effect a high concentration of licence premises within a small geographical area has had on the licensing objectives. With this in mind, new and existing licences within a CIZ are expected to exhaust all possible measures to ensure the existence of the premise does not contribute, in anyway, to reports of crime and disorder or nuisance.
- 3.5 Whilst the application seems to outline incidents noted after a previous review application made by P.C Gerry on 2 March 2017, evidence located at DP/1 on page 20 of the agenda and DP/2 highlights confirmation of an initial complaint of noise nuisance initially reported to the CER service in October 2016. Mr Ojo is the premises licence holder as a consequence of a transfer of the premises licence following a complaint of noise nuisance of patrons congregating towards the rear garden of the premises. Evidence at DP/3 and DP/4 shows the letter where Mr Ojo was informed of potential breach of Annex 3 condition 9, in relation to the use of outside areas. A follow up call from Mr Ojo, provided the CER service with an opportunity to reiterate that despite an exemption in relating to live and recorded music afforded by the premises have alcohol 'on sales', the provision of recorded music outside of 08:00 and 23:00 requires a variation to the licence. Continuing to provide recorded music after 23:00 is an offence via section 136 of the Licensing Act 2003 in relation to unauthorised licensable activity.
- 3.6 Evidence at DP/4 exhibits a counter allegation from Mr Ojo. It suggests that music was in fact the result of a neighbouring property recently opened facilitating private parties. This resulted in the CER service investing in multiple hours investigating Mr Ojo's allegation, which to date remains unfounded.
- 3.7 Further complaints were received in relation to noise nuisance as exhibited at DP/5 and DP/6. Allegations suggest noise nuisance until 04:00; approximately two hours after the permitted hours of licensable activity.
- 3.8 DP/7 exhibits a request made to Mr Ojo to view CCTV between 23:00 on Saturday 16 February and 05:00 on Sunday 17 February 2018. Mr Ojo claimed that on the night this CCTV was requested, trade at the premises was brisk and in fact any noise heard, originated once more from the neighbouring premises.
- 3.9 On 7 March 2018, Mr Power met Mr Ojo at the premises with Mr Spall. He obtained receipts indicating sales after the permitted hours of 02:00. Alcohol and hot food sales were documented until 04:30. Licensable activity routinely occurs outside of permitted hours as evidenced in leaflets at DP11 in the agenda. 'Morning Breakfast/Hangover Cure' is advertised between the hours of 04:00 and 08:00.

- 3.10 Mr Power said that a defence of due diligence is available to the applicant. However, a defence of mistakenly failing to adhere to permitted hours is diminished, not only via previous attempts to engage with the licensee in line with the local authority's Enforcement Policy but a premises licence summary clearly indicating time of permitted activity is located behind the bar on the premises at all times in line with section 57 of the Licensing Act 2003.
- 3.11 On Saturday 17 February 2018, P/14 evidence unauthorised alcohol sales which occurred at 03:11. Sale of items included Origin Bitter, and Guinness Stout.
- 3.12 An email was received from a complainant of noise nuisance on Sunday 18 February 2018. CCTV shows the premises close at 02:24 but reopens at 02:40. Mr Ojo confirmed that the existing Designated Premises Supervisor, Mr Aii-dag-ba reopened the premises. There was a minimum of 11 patrons on the premises until 04:00. There were sales of Hennessy Cognac as well as hot food sales.
- 3.13 Mr Power said that there is evidence of sales after permitted hours over the weekend of 16/17 February 2018, despite Mr Ojo's counter allegation. Till receipts, as exhibited at DP/16, shows that on cross matching till receipts with the available CCTV footage, officers noted a 5 minute discrepancy between the two, nevertheless, all amount to unauthorised sales. Till receipts provide evidence of sales of alcohol, which is a breach of Annex 3 condition 7; the sale of alcohol should only occur with a substantial meal.
- 3.14 Evidence at DP 17, 18 and 19, identifies at least 16 incidents of unauthorised licensable activity. Of most concern are the four sales that took place after midnight on Monday 12 February 2018 when Mr Ojo was on the premises. Despite the efforts of the CER service to notify Mr Ojo of allegations in relation to unauthorised licensable activity via a letter on 21 February 2018, there were further unauthorised sales on 22,23,24 and 27 February 2018.
- 3.15 Mr Power said that the actions of Mr Ojo, as premises licence holder of Phase One Lounge, fall short of those expected of a licensee particularly within a CIZ. Additionally, engaging in effort to stifle and delay officers investigating noise complaints, demonstrates behaviour that can amount to obstruction; clearly disregarding the safeguarding of key licensing objectives. In conclusion, he said that members may seek to consider the recommendations outlined at pages 14 and 15 in the agenda. Nevertheless, P.C Gerry exhibited evidence of Mr Ojo's response to the recommendations. The response provided only serves to exacerbate his concerns with regard to Mr Ojo's ability to safeguard key licensing objectives. Mr Power said that he believes that there will be further breaches if the licence is not revoked.
- 3.16 The Chair asked whether officers witnessed any noise from 134 New Cross Road. Mr Power said that there is no out of hours service, officers were drafted in as a result of Mr Ojo's allegation. CCTV showed that Mr Ojo was trading 1 ½ hours outside of his licensing hours.
- 3.17 Councillor Millbank asked whether there were any other complaints of noise with regard to 134 New Cross Road. Mr Power said that since this review application, Mr Ojo has attempted to keep within his current licensing conditions, and in doing

so there have not been any complaints; in fact there have not been complaints of any noise in the neighbouring area.

- 3.18 Councillor Codd asked for information about the complainant who had not received a response to her complaints of noise nuisance despite writing 8 letters. Mr Power said that he was not aware of that but he was aware of four separate complaints sent by email. One complainant was forced to sleep in the kitchen to avoid the noise emanating from the premises.
- 3.19 P.C Gerry said that the Police try to employ a structured approach when key licensing objectives are not being upheld. They try to work with premises licences holders and educate them.
- 3.20 P.C Gerry has been to Phase One Lounge on several occasions. An action plan was discussed in January 2017 as well as informal arrangements. In February 2016 he applied for a review of the premises licence following serious failings. However, P.C Gerry pulled back from the review because Mr Ojo came to talk to him and P.C Gerry was able to explain the constraints of his licensable hours. After this meeting, PC Gerry was then advised that there had been more complaints of noise and breaches of conditions. At this stage, P.C Gerry could have prosecuted Mr Ojo but decided to apply for a review of his licence instead.
- 3.21 P.C Gerry said that Mr Power had suggested various recommendations for extra conditions to be put on the licence. On page 96 of the agenda, Mr Ojo's response with regard to the review, states that reducing his current licensing hours would not be profitable for him and he would prefer them to be extended. He is not making enough money with his current licensing hours. P.C Gerry did not think that Mr Ojo could work within his current licenced hours.
- 3.22 P.C Gerry said that the Police and CER officers have tried hard to work with Mr Ojo in an effort to ensure that key licensing objectives are upheld. However, he has continued to operate in breach of his current licence. P.C Gerry said that the only recommendation that he could make now is that Mr Ojo's premises licence be revoked. This would protect the key licensing objectives.

Representation

- 3.23 Mr Ojo said that he has apologised to CER officers and Police for the breaches of his conditions on his licence. He said that he only plays music from a television, the noise nuisance was not emanating from his premises.
- 3.24 Mr Ojo said that his premises close at 2am. Most people order by 01:45 and this is before his licensing hours, but then Mr Power explained that he had to close at 2am. He said that his neighbours play music outside in the garden and they have a DJ and he knew this would be a big problem for him. Mr Ojo works at the premises most of the time. Customers work late and come to his premises late for their food. It is difficult to predict how long the food will take to cook and sometimes it is ready after 2am. Most of the customers sit down in the restaurant before they pay for their food, and this could be for a long time. He does not allow patrons to use the garden and always brings them in. He promised that he would never serve customers late in future.

- 3.25 The Chair asked why he had flyers advertising food from 4am. Mr Ojo said that it had been a mistake. He was told that he could open at 5am. He did this one weekend but it attracted people who had been clubbing and were drunk. He did not open at this time again because it caused so many problems.
- 3.26 The Chair asked about the DPS. Mr Ojo said that Mr Aii-dag-ba is the DPS and only works over the weekend, three days a week.
- 3.27 Councillor Millbank said that members had received evidence of invoices showing that alcohol had been served without food. She asked why he had allowed this. She also asked why he served food past his licensed hours if he knows when he should cease trading. Mr Ojo said that it can take 40 or 50 minutes before food has been cooked. Patrons order their food before 2am so he thought he was able to accept these orders. However, he was then advised that food had to be served by 02.00. Most of his patrons order food from midnight. He is struggling to pay his bills and he asked members not to reduce his licensed hours.
- 3.28 Councillor Millbank asked Mr Ojo if he was saying that he was not familiar with the terms of his licence and it was only when officers told him that he became aware of his responsibilities. Mr Ojo said that was correct. She then asked whether he has managed a licensed business before. Mr Ojo said that he had not. Councillor Millbank said that the conditions on the licence are clear, and she asked why he did not understand them. Mr Ojo said that he thought that he could accept food orders as long as they were received before 2am.
- 3.29 Councillor Millbank said that Mr Ojo had received visits from officers early on in the year and yet the practice of trading after hours carried on. She asked why he did that. Mr Ojo said that he was sent a letter on 21 February 2018, which he received on 23 February, but he did not see the contents at first. He knows now that he must stop selling food after 0130.
- 3.30 Mr Power said that officers have been interacting with Mr Ojo since 2016. There have been stringent checks because it is in a CIZ. He has been made aware of the conditions on his licence, they are even displayed on the wall behind the bar if he needed to check. In addition he was given one final reminder on 21 February 2018 which Mr Ojo received on 23 and yet there were still breaches on the 24 and 27 February 2018, there has been CCTV evidence and a review. Mr Ojo is not an arm's length manager; he is on the premises when the breaches have taken place and the fact that he says that he did not know what his licensed hours were, was a concern to Mr Power. The CER service has given him advice over the past 2 years and the premises are within the CIZ so the conditions on the licence should have been known and understood.
- 3.31 P.C Gerry referred to the investigations that officers made into the allegation of noise at 134 New Cross Road. He said that during this investigation, CCTV showed Mr Ojo operating outside of his licensed hours. Mr Power said that Mr Ojo was relying on due diligence and yet he was persistently operating outside of his hours without any concern regarding the effect it had on local residents. It is also a criminal offence and he said that Mr Ojo has shown very little tangible offers of any resolution to the problem, he continues to say that he did not understand the conditions on his licence.

- 3.32 Mr Ojo said that he has already told his customers that he will close at 01.30. He said that he needs his licence to keep his family. There is no noise at his premises because his customers come to his premises to eat and then they leave. His neighbours make the noise but he apologised for any inconvenience caused.
- 3.33 Councillor Millbank said that she had read in the agenda that Mr Ojo stated that he could not make money operating under his current licensing hours. She asked whether was correct. Mr Ojo said that he would employ SIA security to prevent patrons coming late to the premises. Mrs Ojo said that after her husband met Mr Power, he understood that that he must operate within his licensing hours. After 11pm he must announce to customers when it is an hour before closing time and that orders for food must be made. She said that they had not had time to email that back to officers and say that they would work within their licensed hours.
- 3.34 Mrs Ojo said that her husband has been in business for a year and he has many loyal customers, but he has failed to tell them the correct time the business closes. He has good media skills, and will advertise the hours of trading correctly. She said that he has been confused on occasions but can work within his current licenced hours, he accepts the current recommendations. She said that the email as set out in page 96 of the agenda is wrong; the business is profitable, her husband just needs to make a few changes to the way he does things because his customers are used to coming to the bar at midnight and wanting to stay late.
- 3.35 Mrs Ojo said that her husband had been looking for extra money because their child had been ill and the landlord wanted money. She has told her husband that he can say 'no' to their customers. She was surprised that the menu flyers still had the incorrect licensing hours advertised and she suggested that the business could close for a short time. Alcohol would then be sold within licensed hours and security would be in place.
- 3.36 The Chair said that on page 14 of the agenda, there are more recommendations than just the hours. Mr Ojo said that he had identified a good security company and could pay for this service. He said that he had learned a lot over the last year and he asked members to continue to allow him to trade within the current hours.
- 3.37 Councillor Howard said that it can be difficult to predict how long it will take to cook food, although after a year she would have thought that he would have a good idea. However, there have been allegations that strong alcohol was sold after hours without any food. Patrons may not behave well drinking without eating food. Mr Ojo said that patrons are given an alcoholic shot whilst waiting for food to cook which has been just before 2am. However sometimes this order for food has been ready until after licensing hours, but he said that he would never do that again.
- 3.38 Councillor Feis-Bryce asked for an explanation as to why CCTV had shown the premises open after it had been closed at 2am. Mr Ojo said that he had shut the premises and gone home, but the DPS opened it again to serve patrons who had sent in an order whilst at a party. Mr Ojo did not know that this happened until the next day. He told the DPS that he should not have opened up the shop and he promised that it would not happen again.
- 3.39 Councillor Howard asked whether there was sound with the CCTV. Ms Spall said that there is no sound. She had been to the premises with Mr Power and the

Police; a music channel is played through their television. Councillor Howard asked whether she noticed the volume of music. Ms Spall said that when she attended the premises for the longest period of time, the music was quite loud but it was before the licence was due to be reviewed by this Committee last year. Officers had worked with Mr Ojo since then. Mr Power said that Mr Ojo does not have a regulated entertainment licence. Mr Ojo said that he has taken the two speakers off the wall in an effort to reduce noise.

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

RESOLVED that the premises licence be Revoked.

3.41 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.

Chair