

LONDON BOROUGH OF LEWISHAM

MINUTES of the meeting of the LICENSING COMMITTEE, which was open to the press and public held on WEDNESDAY 6 SEPTEMBER 2023 at 7pm and held remotely via Microsoft Teams.

Present

Councillor Wise (Chair) Councillor Anifowose (Vice-Chair) Councillors, Brown, Howard, Kestner, Shrivastava and Warner.

Apologies for absence were received from Councillors Hayes, Huynh and Jackson.

Also Present

Charlie Kenny – Lawyer
Kennedy Obazee – Safer Communities Officer

Rubys - 104-106 Rushey Green, London, SE6 4HW

Applicant

Agent - Frank Fender speaking on behalf of the applicant.
Mr Lusadisu – Applicant

Respondents

David Graham – Solicitor for the Police
P.C Gillian Pearce – Police
Harry Gleed – London Fire Brigade
Angela Mullin - Safer Communities Officer

1. Minutes

RESOLVED that the minutes of the meetings of the Licensing Committee held on 26 July and 8 August 2023 be confirmed and signed.

2. Declarations of Interests

None.

3. Rubys - 104-106 Rushey Green, London, SE6 4HW

- 3.1 The Chair welcomed all parties to the Licensing Committee. and outlined the procedure to be followed for the meeting. She said that Mr Fender had asked for longer than the allocated time of 5 minutes to present the application. because he did not believe it was adequate time to present all the evidence. He appreciated

that members had seen all the paperwork. However, members agreed not to extend the time for presentations. This was not usual practice, they had read all the documents and wanted time to ask questions. The Chair then introduced those present and invited the Senior Licensing Officer to introduce the application.

Introduction

- 3.2 Mr Obazee said that members were being asked to consider a premises licence application for Rubys - 104-106 Rushey Green, London, SE6 4HW. The application was received on 20 July 2023 and the last day for receiving objections was 17 August 2023. Three representations were received during the consultation period from the Police, Fire Service, and the local authority. The objections were on the grounds of the Prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm.
- 3.3 The representations were not considered to be vexatious or frivolous. and were received within the specified time. The licensing authority had offered a set of conditions that they believed would uphold the licensing objectives if the licence was granted.
- 3.4 Mr Obazee reminded members of the steps available to them when making their decision, having considered all representations and evidence heard during the hearing.

Applicant

- 3.5 Mr Fender said that he was speaking on behalf of Ruby Events Ltd and the sole director Mr Lusadis who was an experienced operator of licenced premises. He had operated premises in Luton and Enfield, both with licences until 5am.
- 3.6 The premises was a large commercial building. The intention was that the ground floor would be used as a restaurant with a club room behind. The first floor would be a large function room capable of being divided up into smaller function rooms if required. The roof top would provide a roof top facility.
- 3.7 Mr Fender said that there was a list of measures on pages 33-35 in the agenda which would become conditions on the licence if granted. He stressed that these conditions were comprehensive and robust and necessary for activities at the times as set out in the application.
- 3.8 Mr Fender said that it was unusual for the fire service to object to an application because they had other legislation, they could use to ensure fire safety. It was a legal requirement for all premises to have a fire risk assessment and if the fire service had any concerns about fire safety, they could serve notices to close the premises until the deficiencies were remedied.
- 3.9 Mr Fender said that the applicant had noted the comments made by the fire service in relation to capacity and fire exits and when the premises was refitted, if the application was granted, there would be additional stairways in order to meet the requirements of the fire service. The applicant would agree to a condition

requiring a fire risk assessment to be sent to the fire service prior to any licensable activity taking place.

- 3.10 Mr Fender said that the licensing authority, in their objection, had referred to the fact that the application exceeded the preferred hours in Lewisham's licensing policy. He said that members could grant an application beyond these preferred hours. The comprehensive and robust measures set out in the application, provided the reasons why members could deviate from the policy. The licensing authority recommended more conditions should the application be granted. Some were acceptable, others were not. He gave the example of 12 door supervisors required for a premises operating as a restaurant. This was not reasonable.
- 3.11 The Police objection was simply that they did not want these premises to be used as proposed by the applicant. They did not believe that the licensing objectives would be upheld. The applicant did not agree. The measures proposed were robust, enforceable and would promote the licensing objectives. Police claimed that it would affect the lives of local residents and yet no representations had been received from any residents. Police claimed that there was crime in the area, however, these premises were not responsible for any crime. If this was true, this was a Police matter.
- 3.12 Mr Fender said that there was no saturation policy in this area; no cumulative impact zone or cumulative impact policy. Police had not offered any additional measures; they said that this business would add to crime in the area.
- 3.13 Councillor Brown asked whether the applicant aimed to make changes to the premises to obtain the highest capacity or whether they accepted the capacity put forward by the fire brigade regardless of any changes planned. Mr Fender said that the plans submitted showed stairwells at either end of the building. When buildings were made fit for purpose, in his experience, snags occurred. Comments made by the fire officer must be taken into account. Additional stairways would increase capacity, but he was unsure whether this increased capacity would make this a viable business. The applicant would take advice from building control and the fire service in producing the plan.
- 3.14 Councillor Shrivastava said that the capacity proposed by the applicant was high. The objection from fire brigade stated that this capacity far exceeded that which the building could safely accommodate as indicated by proposed plans. The plans did not satisfy the fire brigade and did not believe that the stairwells would alleviate these concerns. He read out the maximum capacity as recommended by the fire brigade and said that the local authority had recommended that there should not be any more than 10 patrons smoking in the outside area. He asked how this would work if there was to be a roof terrace. He also asked for more information about the applicant's experience in operating licensed premises.
- 3.15 Mr Fender said that the application did not mention a capacity figure. He explained that a meeting took place at the premises with the Police and the licensing officer. The applicant felt under pressure to give a capacity figure by Police. He said the maximum capacity was 2700 people, but it was a figure he had not given much consideration. The applicant would always abide by the requirements of the fire service.

- 3.16 Mr Fender said that the applicant's other two businesses were nightclubs/eateries and both had licences for licensable activities until 4/4.30am and 5am.
- 3.17 The Chair asked whether the applicant had spoken to the Police about their concerns with the application. Mr Fender said that he had spoken to the Police. In his experience, mediation usually includes a number of conditions around which discussions could take place. However, there were no conditions that would satisfy the Police in the granting of this application, so mediation ceased.
- 3.18 Councillor Kestner asked the applicant about the conditions proposed by the licensing authority. Mr Fender said that many of the conditions would be acceptable to the applicant. However, to employ twelve door supervisors the entire time the restaurant was operating was not reasonable. The condition should be reworded to state that supervisors should be employed when these premises were not operating solely as a restaurant. In addition, a noise limiter and acoustic reports were usually only required when attempting to address noise issues. Mr Fender said that the condition relating to smoking would be better worded by stating that the operator should manage smoking to ensure that it did not cause a nuisance rather than dictating a certain number of smokers at any one time.
- 3.19 Councillor Howard asked about capacity and how operators could ensure that when the premises were at full capacity, there were never more than the recommended number of people on each floor. Mr Fender said that the fire service would want to see, in the risk assessment, the different capacities for each room. Licenced operators must manage capacity in each of the rooms and they use door supervisors and security to achieve this.
- 3.20 Councillor Anifowose asked about how security was managed in the applicant's other businesses and what protection was afforded to female patrons. Mr Lusadisu said that capacity at his business in Luton was 280-300 with 6-8 security staff. His licence only requires 4 security staff, but he always had extra staff including one female.

Representation

- 3.21 Mr Graham, solicitor for the Metropolitan Police, then addressed the Committee. He said that the Statement of Licensing Policy expected applicants to demonstrate, in the operating schedule, how they would promote the licensing objectives. Applicants were expected to carry out their own research and where necessary seek the views of the responsible authorities before submitting an application. He gave the relevant paragraphs in the policy, where it outlined the documents and knowledge required before making an application. This application should demonstrate that it was suitable for the proposed activities. However, the applicant had applied for a licence with an expectation that assessments would be undertaken later, and conditions added, if necessary, after the licence was granted.
- 3.22 Mr Graham said that as a matter of principle, you cannot substitute the work that should be done before deciding whether to grant permission. The applicant had

failed to provide evidence in their application. There was no risk assessment plan, and no consultation with the responsible authorities in advance,

- 3.23 The applicant/director, came up with a random figure when being asked by the Police about capacity for the building. The number of people that the building could safely support should have been considered in advance. It was not known whether the business was viable. All these issues should have been evidenced.
- 3.24 Mr Graham said that the building should be appropriately modified, with the appropriate plans. An application could then then be submitted to Committee so that members could form a view as to how the layout should be.
- 3.25 Mr Gleed addressed the Committee on behalf of the fire brigade. He said that the fire service had concerns about capacity. He said that number of means of escape available and their widths reduce the maximum occupancy within the building to 484. If any more patrons were given access to this building, the fire service would have concerns for their safety.
- 3.26 P.C Pearce said that with an annual ground rent of £92,000, she calculated that the applicant would have to operate at full capacity in order to break even. This did not include the cost of running the venue, or the cost of the upkeep of the venue. She understood that the other businesses that the applicant managed were on an industrial estate and the capacity was 350 which was ten times less than the proposed capacity in this application.
- 3.27 P.C. Pearce said that crime was high in the area. There were many vulnerable people who were also likely to commit crime. The applicant advised that he expected patrons to use Ubers when leaving the premises. P.C Pearce said that the premises was on a red route and up to 600 cars would be forced into residential roads. Police also had concerns about whether the roof terrace would be able to safely support 500 patrons.
- 3.28 Ms Mullin responded to some points raised by Mr Fender. Condition 4 stated that SIA staff should be on duty from 2200 hours until the last customer left, not from when they open. Condition 12 required a noise limiter to be fitted and maintained. This was a large venue, there was another venue next door with a roof terrace, and they also held events. A noise limiter had been suggested to ensure there was no cumulative impact between the two premises causing a problem in the vicinity.
- 3.29 Ms Mullin said that the condition relating to smoking stated that 10 people should be allowed to smoke in the outside area not outside the front of the building. If the smoking area was to be at the front, this could be managed by door staff. The plans were not clear where the smoking area would be. The only other place to smoke would be at the rear of the premises close to residential properties and the reason why a maximum of 10 people was recommended. Patrons could smoke on the roof terrace, but it was recommended that this should close at 2200 hours.
- 3.30 Councillor Kestner asked whether the Police could suggest any conditions under which they would agree to the granting of this application. P.C Pearce said that Police could not offer any conditions because the business was not considered to be viable for the reasons stated in this meeting.

- 3.31 Councillor Shrivastava asked whether the business would be viable if the applicant had to keep within the capacity recommended by the Fire Brigade. Mr Fender said that the viability of a business was not a consideration for a licensing committee. As the building developed, building control would be involved as well as the local authority. Capacity would be written into the fire risk assessment and discussed with the fire service who would have the overall say on what the capacities should be.
- 3.32 Councillor Brown asked objectors why, in their experience, the applicant had not included all the documents and information that was normally included in the operating schedule prior to the submission of the application. Mr Graham said that they could speculate as to why the applicant had applied for a licence before he was ready to do so. He had not produced all the assessments; he intended to produce them at a later date. This was not how the process works and left members in an invidious position because members had to make a decision on the information available. Police could not see how the number of patrons required to make the business viable could be accommodated in the building in a safe and manageable way.
- 3.33 Ms Mullin said that the licensing policy states that the documents should be in place prior to application but a lot of people do apply for a premises licence prior to obtaining planning permission. A licence can be granted but planning supersedes this and if planning did not grant permission the premises cannot trade.
- 3.34 Mr Gleed said that it was unusual for the fire brigade to make a representation to a licence application, but it was because the procedure was unusual; the application would normally have been sent to building control.

Conclusion

- 3.35 In summary Mr Fender said the Licensing Act was a permissive legislation so applications should be granted unless there were reasons not to do so. This application proposed strong, robust enforceable conditions which would uphold the licensing objectives. A fire risk assessment would be sent to the fire service prior to licensable activity taking place.
- 3.36 Mr Fender referred to comments made by the Police and said that prior engagement was not a legal requirement. He questioned whether £4000 should be paid for an acoustic report before a premises licence had been granted. The granting of the lease was subject to the licence being granted. If a licence was granted, the applicant would ensure that all of the risk assessments would be completed prior to the premises opening for licensable activity.
- 3.37 Costs and viability of the business were not a consideration for this Committee. A decision should be based on upholding the licensing objectives. If this application was granted, it would bring growth to the area and employment for local people. He recommended that the licence be granted, not as applied for because there was need for clarity. There would be negotiation around some of the conditions and he would be willing to work with the local authority to produce a set of conditions as suggested by Ms Mullin in this meeting.

- 3.38 The Police then summarised their objection. Mr Graham said that the key point that he had made was that Lewisham's Licensing Policy required the applicant to produce certain documents before applying for a licence unless there was a good reason to make an exception. He listed the number of assessments that had not been produced and said that the building had previously been a commercial business not a night club. There was an assertion that there was good structural sound insulation, but it was not the building did not have sound proofing in fact the rear of the property had large metal doors to facilitate deliveries.
- 3.39 Mr Graham said that there was not a basis for the Committee to grant this application because the applicant had not demonstrated that they had understood and dealt with the risks to the licensing objectives. He did not believe that there was any reason for members to deviate from their licensing policy and he recommended that the licence should not be granted.
- 3.40 P.C Pearce said that the building was large, and she believed that the application had been made because the applicant wanted a large capacity venue.
- 3.41 Mr Gleed advised those present that it was important to have accurate occupancy numbers. There had been fires in night clubs where the occupancy rate had been exceeded between 4.8% to 9% and 100 people were lost. This was the reason why the fire service was considering this application very seriously.
- 3.42 Members confirmed that they had been present throughout the meeting and had not lost connection.
- 3.43 A decision letter would be sent out within 5 working days. The Chair thanked all parties for their attendance, and they left the meeting.

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:

3. Rubys - 104-106 Rushey Green, London, SE6

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

Rubys - 104-106 Rushey Green, London, SE6

The application for a new premises licence was REFUSED for the following reasons:

- The Applicant has failed to follow the local authority's published Statement of Licensing Policy. The committee are required to consider the application and apply the policy unless there is good reason to depart from it. The Applicant was unable to demonstrate why it wanted the Licensing Committee to disapply the Policy or depart from it.
- There were many concerns raised by the Responsible Authorities that demonstrated how granting the licence would undermine the Licensing Objectives.
- The Applicant did not provide sufficient information with the Application or in submissions to the committee to demonstrate that it could uphold the Licensing Objectives.
- The Applicants plans did not adequately address its plans for the smoking area and how it would manage this in order to uphold the Licensing Objectives.
- The committee were not satisfied that the Applicant demonstrated sufficient capability to manage the venue in a safe way to uphold the Licensing Objectives.
- There was insufficient information within the Application and submissions that would enable the Committee to grant the licence subject to further conditions.
- There was no evidence that was able to demonstrate how the Premises would mitigate noise nuisance.
- Given the lack of information relating to capacity, the Committee were unable to propose conditions that would uphold the Licensing Objectives.
- The Applicant did not demonstrate how it would uphold the Licensing Objectives dealing with ingress and egress given the location of the Premises and its proximity to a main road with a red route.
- The lack of information and plans relating to capacity and the fire safety concerns should the venue exceed the capacity.

The meeting ended at 8.05pm

Chair