

MINUTES OF THE SPECIAL LICENSING SUB COMMITTEE MEETING HELD ON TUESDAY, 7TH SEPTEMBER, 2021, 7.00 - 8.55 PM

PRESENT: Councillor Gina Adamou (Chair), Councillor Barbara Blake, and Councillor Luke Cawley-Harrison.

1. FILMING AT MEETINGS

The Chair referred to the notice of filming at meetings and this information was noted.

2. APOLOGIES FOR ABSENCE

There were no apologies for absence.

3. URGENT BUSINESS

It was noted that, it being a special meeting of the Sub-Committee, under Part Four, Section B, Paragraph 17 of the Council's Constitution, no other business would be considered at the meeting.

4. DECLARATIONS OF INTEREST

There were no declarations of interest.

5. SUMMARY OF PROCEDURE

The Chair provided a summary of the procedure for the meeting.

6. APPLICATION FOR A NEW PREMISES LICENCE AT DIVINA KITCHEN LTD, 256 ARCHWAY ROAD, LONDON, N6

Daliah Barrett, Licensing Officer, introduced the report which presented an application for a new premises licence for Divina Kitchen, 256 Archway Road, London, N6. It was explained that the application requested a licence for the following licensable activities:

Regulated Entertainment: Live Music

Monday to Wednesday 1700 to 2000 hours

Thursday to Saturday 1700 to 2300 hours

Sunday 1700 to 2100 hours

Recorded Music

Monday to Thursday 1000 to 0000 hours
Friday to Saturday 1000 to 0100 hours
Sunday 1000 to 2300 hours

Late Night Refreshment

Monday to Thursday 2300 to 0000 hours
Friday to Saturday 2300 to 0100 hours

Supply of Alcohol

Monday to Thursday 1000 to 0000 hours
Friday to Saturday 1000 to 0100 hours
Sunday 1000 to 2300 hours
Supply of alcohol **ON** the premises

Hours open to Public

Monday to Thursday 1000 to 0000 hours
Friday to Saturday 1000 to 0100 hours
Sunday 1000 to 2300 hours

It was stated that representations had been received from other persons, including a ward councillor, and these were set out in full in the report. It was added that three representations had been received from Responsible Authorities: the Licensing Authority, Building Control, and Planning.

It was explained that the premises had previously held a licence under different ownership. It was noted that, over time, there had been some changes to the type of restaurant and the layout of the premises, including changes to the rear garden. It was also noted that there had been noise complaints resulting from the use of the rear garden.

The Licensing Officer explained that the application carried the conditions offered by the applicant but that, in this case, the conditions offered were largely unenforceable and would not be able to be converted into conditions. It was noted that the representation from the Planning Officer commented that there were outstanding planning issues in the rear yard and that the hours of operation permitted under the planning permission for the premises were 9am – 11pm across the week. The representation from Building Control noted that the plans submitted were not reflective of the premises and that there were a number of issues that should be rectified before a licence became operational. The representation from the Licensing Authority stated that noise control measures and any conditions would need to be appropriate and proportionate and proposed alternative hours.

It was also noted that the relevant laws and guidance were listed in the report, from section 6 onwards. It was explained that the Committee could grant the licence subject to mandatory and other conditions, exclude from the scope of the licence any of the licensable activities to which the licence related, refuse to specify a person in the licence as the premises supervisor, or reject the application. It was added that the licensing authority's determination of the application was subject to a 21 day appeal period.

At 7.15pm, Cllr Barbara Blake noted that she had experienced some technical issues and had missed approximately three minutes of the discussion. The Licensing Officer repeated the information that had been missed during this period and the meeting continued.

In response to questions, the following responses were provided:

- In response to a question about the allegations that the premises had been offering licensable activities without a licence, the Licensing Officer stated that the premises had not been issued a licence under the new owner. It was commented that Licensing Officers had not directly witnessed any licensable activities and that this was why there had been no prosecution.
- The Licensing Officer confirmed that the representation from Building Control noted 23 areas of concern where the application did not meet minimum standards. It was explained that many of these issues would fall under the public safety licensing objective and that the operator would need to ensure that these issues were rectified. It was added that some of the issues would be covered under the Fire Safety Regulations and that these would not be duplicated under the licensing regime.
- Tamara Diniz, Manager at Divina Kitchen, asked about the evidential basis for the allegations about the premises selling alcohol without a licence. The Licensing Officer explained that residents had provided footage and photographs of customers in the premises with alcohol, including bottles of beer, and evidence of the restaurant's website offering alcohol alongside a price list. Tamara Diniz stated that the premises had been issued a licence for a period of two weeks and that, prior to this, alcohol had not been provided to customers. It was noted that the restaurant had been closed during lockdown. Tamara Diniz also commented that she had evidence that the restaurant had sent email to the council and that they had applied for a licence but that no response had been received from the Council.

The Committee received representations from objectors:

- Noshaba Shah, Licensing Authority, stated that the Licensing Authority considered that the hours applied for were excessive for premises that were located in a residential area. She noted that the applicant had not been in communication with the Licensing Authority during the 28 day consultation period for the licence and had failed to comply with requests not to offer alcohol sales before a licence had been issued. It was explained that there had been no prosecution only because the Licensing Authority had not yet obtained the necessary evidence. It was noted that there were a number of allegations from residents, including pictures, that patrons of the restaurant were consuming alcohol.
- Noshaba Shah stated that there had been a number of noise complaints relating to events at the premises which had been exacerbated by use of the rear garden. It was highlighted that the Planning Authority had advised that there was no planning permission to use the rear garden at the premises.
- It was noted that, if the Special Licensing Sub-Committee granted a licence, the Licensing Authority proposed restricted hours and that, if it was permitted at all, use of the garden should cease at 9pm. The restricted hours proposed were as follows:

Regulated Entertainment: Live Music – indoors

Sunday to Thursday 1700 to 2000 hours

Friday to Saturday 1700 to 2200 hours

Recorded Music – indoors only

Sunday to Thursday 1000 to 2200 hours

Friday to Saturday 1000 to 2300 hours

Late Night Refreshment

It was noted that the hours for late night refreshment should be amended in the Licensing Authority representation to be removed as late night refreshment only applied from 2300 and it was recommended that the venue should close at 2230 Sunday to Thursday and at 2300 Friday to Saturday.

Supply of Alcohol

Sunday to Thursday 1000 to 2200 hours

Friday to Saturday 1000 to 2230 hours (it was noted that this time should be amended in the Licensing Authority representation to 2230 rather than 2300 which was stated in the report).

Supply of alcohol **ON** the premises

Hours open to Public

Sunday to Thursday 1000 to 2230 hours

Friday to Saturday 1000 to 2300 hours (it was noted that this time should be amended in the Licensing Authority representation to 2300 rather than midnight which was stated in the report).

- Tamara Diniz stated that she had evidence that the premises had a two week licence and that she would like to send this to the Special Licensing Sub-Committee. The Licensing Officer stated that late evidence should not be admitted at the hearing and that, as the allegations were set out in the report, the applicant should have produced and submitted this evidence before the hearing.
- Mark Broome, local resident, noted that he was also speaking on behalf of his neighbours who had submitted representations, John-Henry and Anna Liepe. He explained that local residents felt that the application should be rejected in its current form, in accordance with the Statement of Licensing Policy, due to the nature of the locality and the premises which were not suitable for a bar with live and amplified music.
- It was commented that the prevention of public nuisance licensing objective was cited as protecting local residents from nuisance. Mark Broome drew attention to paragraph 16.10 of the Haringey Statement of Licensing Policy which noted that location, type and mix, character, physical suitability, and other relevant matters would be taken into account when considering new applications. He believed that granting this licence would contradict the Statement of Licensing Policy. In his view, the area was very quiet and residential and it was noted that this was also a conservation area. Mark Broome stated that he was unable to use his garden when the premises was being used for music or patrons due to the volume of

noise. He explained that he had been unable to use his garden and had moved his nine month old child from the rear to the front of his house due to the amplified noise, shouting, and cheering at the premises. It was added that this noise had occurred during the day.

- Mark Broome stated that he had raised a number of complaints about music at the premises and that a group of residents, which included five or six other households, had sent a letter to the council. He noted that some Council officers had visited the premises and that the music had been turned down but that the music had been turned back up when the officers had left. He also noted that the applicant had allegedly sold alcohol without a licence. He stated that there was a clear lack of respect for council policy, laws, and residents and that residents had little faith in the reassurances provided about implementing measures to reduce noise nuisance.
- Tamara Diniz apologised and noted that she did not want to disturb the neighbours. She stated that she wanted the premises to provide options such as live music for the neighbours as well as other patrons and she added that she was available to discuss any issues. Tamara Diniz explained that the Noise Team had been to the premises to show her how to manage the noise level. The Chair noted that there would be an opportunity for the applicant to present their case and asked whether there were any questions.
- Tamara Diniz enquired whether Mark Broome had ever asked the restaurant to turn down its music. Mark Broome believed that a number of fellow residents had tried to talk to the restaurant over the fence but that he had approached the council who provided a service to manage noise.
- Simon West, local resident, stated that he was speaking for himself and his wife, Tatia Engelmores. He explained that the restaurant was located on a very quiet, residential street and was adjacent to a number of gardens. He noted that his garden had been peaceful but that, recently, there had been some loud concerts with amplified music and guests who were drunk and shouting, sometimes until midnight. He stated that the noise meant that residents could not have conversations outside, could not use their gardens, and had to keep their windows shut. Simon West commented that residents felt trapped and he highlighted that this was an issue whenever there was music, which often started from 3pm, and this meant that residents could not use their gardens for a significant portion of the weekend. He added that this was affecting residents' mental health.
- Simon West believed that the root cause of noise issues at the premises was that the external area was completely inappropriate for use as a beer garden as it was entirely surrounded by residential accommodation. He felt that there was no indication that the applicant had properly considered the noise issues or taken any action. He stated that there had been no risk assessment and no specific noise insulation measures. He strongly felt that the application should be rejected and that the beer garden should be closed.
- It was enquired whether the external area had been used by previous business owners. Simon West believed that the area may have been used by previous occupiers but that there had been very little noise from the area before; he suggested that this could have been because the area was used for dining.
- In response to a question about when the noise had become an issue, Simon West noted that there had been noise issues since approximately April 2021. He

explained that he had submitted 10 noise complaints and that the noise issues had been worst during the hot weather when there had been noise every weekend.

- Dritan Hushi (Applicant) asked whether Simon West had been to the restaurant about the noise issues. He stated that the garden at the restaurant was very small and was only used by staff only, not patrons. He was surprised that such loud noises would emanate from the garden. Simon West commented that he felt more comfortable going to the council. He added that he felt intimidated by the amount of noise emanating from the premises and would be cautious about entering a bar with drunk patrons at 10pm.
- Tamara Diniz enquired whether Simon West had seen anyone who was drunk. Simon West explained that he had inferred that patrons were drunk based on the level of noise. He acknowledged that people may not have been drunk but stated that the main issue was the noise. Tamara Diniz stated that the restaurant did not allow drunk people to stay at the premises.
- Margaret Boucherie, local resident, echoed the points made by previous speakers and noted that her full representation was set out in the written report. She stated that there had been a number of noise disturbances and that the noise was not properly contained within the premises. She noted that this was very disruptive for neighbouring residents and that the amplifier meant that the music resonated substantially.
- She noted that, looking back to complaints from 1979, this seemed to be a historic issue. Khumo Matthews, Legal Advisor, noted that the Special Licensing Sub-Committee would need to focus on the current application and representations.
- Margaret Boucherie explained that there were a number of families in the area, including school aged children. There were concerns that the opening hours and hours where music could be played, would be late during the week and would disrupt the sleep patterns of school children. It was explained that, due to the Covid-19 pandemic, more residents were spending more time at home and that noise issues could have a detrimental effect on mental health and residents' work-life balance.
- Noshaba Shah, Licensing Authority, noted that she had checked the licensing system and confirmed that there was no record of a Temporary Event Notice (TEN) at the premises. She added that there had been 22 noise complaints in relation to the premises since May 2021. It was stated that there had also been one written warning from the Licensing Team asking the restaurant to stop all licensable activity and that Philip Cone from the Licensing Authority had engaged with the business on a number of occasions about these matters.

In response to questions from the Committee, the following responses were provided:

- Noshaba Shah, Licensing Authority, stated that no licence had been issued by the Licensing Authority. She added that, even if the premises had applied for a Temporary Event Notice (TEN), this would only run for seven days with a 24 hour break between any consecutive TENS.

Dritan Hushi (Applicant), Tamara Diniz (Manager at Divina Kitchen), and Elena (addressing the Committee on behalf of the applicant) introduced the application. Tamara Diniz explained that the restaurant was applying for a premises licence as they would like to provide more activities in order to keep the business. She stated

that the restaurant had recently provided live music for no more than two hours and that everyone had liked it, including the neighbours. She added that people often brought children to the restaurant and that she frequently told neighbours to let her know if they had any issues.

Elena noted that all complaints were taken into consideration and she apologised on behalf of the owner who she was representing for language and communication reasons. She stated that the owner was taking the issues seriously as they should not be affecting the day to day life and mental health of residents and she believed that the issues were being handled. It was explained that, due to the Covid-19 pandemic, the owners had a number of financial difficulties and that this affected their mental health as well which should be taken into consideration. It was noted that the owners had taken over the business shortly before the national lockdown and that they had only made losses over the last two years. It was added that, if the licence was issued, the noise would not disturb any neighbours.

At 8pm, the Committee adjourned briefly to resolve some technical issues for Cllr Barbara Blake. The meeting continued at 8.05pm.

In response to questions, the following responses were provided:

- The Committee considered the plan of the premises. It was confirmed that the 'seating area', or garden area, was outdoors. Elena stated that the garden was very small, that no customers were allowed in this area, and that no live music would be provided in this area.
- The Committee asked the applicant about some evidence had been provided which showed that the restaurant had advertised the garden to patrons. Tamara Diniz explained that this had been cancelled as the restaurant was only allowed to have patrons inside. She added that there had been some building works in the garden and it had been thought that the area could be used afterwards but that this had not been the case.
- The Committee enquired about the complaints from residents about noise coming from the garden area. Tamara Diniz stated that she had received a call on one occasion to complain that the premises were open but that no patrons had been in the garden and it was only staff who were cleaning.
- It was asked whether the applicant believed that the noise complaints related to noise coming from within the premises rather than the garden. Tamara Diniz stated that she had written to residents to explain that she was available to discuss any issues. The Chair asked whether Tamara Diniz was able to answer these questions on behalf of the owner. Elena explained that Tamara Diniz was at the restaurant every day and was also the applicant's business partner and a part owner.
- It was noted that there was a section of the application enquired what steps would be taken to ensure the promotion of the licensing objectives. It was acknowledged that there would be a Challenge 25 policy but that few other measures were in place. It was commented that the premises had been contacted by the Noise and Enforcement Teams and it was enquired what measures would be taken to ensure the promotion of the licensing objectives, particularly in relation to noise nuisance. Elena explained that action would be taken with immediate effect and that neighbours would be taken into consideration. It was noted that there would be no

loud music going forward, that alcohol would not be sold without a licence, and that the hours of operation would be respected.

- It was enquired whether there would be any soundproofing or similar measures at the premises. Elena stated that she was not the business owner but that there were messages that there would be sound proofing for inside the premises and that customers would not be allowed in the garden. It was explained that smokers would be required to go to the front of the premises. It was added that there would be a camera and that this could be used to check that there was no loud music at the premises.
- The Committee enquired about the alleged sale of alcohol at the premises and about the timeline and ownership of the business. Elena noted that the premises had only sold alcohol for two weeks when it had a licence and a certificate at the front door. It was explained the current owner had taken over the business on 20 March 2020 but that, from 23 March 2020, there had been a national lockdown due to the Covid-19 pandemic and so had barely traded.
- The Committee noted that the business believed that it had obtained a two week licence but stated that picture evidence had been submitted which showed alcohol being advertised by the restaurant's social media team from 12 June 2021 up until August 2021 which was longer than two weeks. Elena stated that the premises had not sold alcohol without a licence and that the owners had given a strict message not to sell alcohol without a licence. She stated that this would need to be looked at in more detail to see if alcohol had been sold without the owners' permission. The Chair noted that one of the owners was present and asked whether he could clarify this issue.
- The Licensing Officer noted that the premises had been visited on 30 April 2021 by Covid Marshals who had noticed that alcohol was on sale. They had provided advice to Tamara Diniz and had advised her to contact the Licensing Authority.
- The Chair noted that Building Control had submitted a representation which listed 23 concerns and she felt that some of these were quite serious issues. She enquired why the owners had not tried to rectify some of these issues. Tamara Diniz stated that the business had never had any bad situations or customers. The Chair clarified that she was asking about the Building Control comments which included things relating to safety, exits, and other matters. She asked whether the business had undertaken any conversations with Building Control. Elena acknowledged that there were some issues relating to the garden, the stairs to the kitchen, a plastic roof, and a roof in the garden and she believed that Toby, the architect, had been addressing these concerns and had submitted an application to deal with these issues.

At 8.20pm, Tamara Diniz had some technical issues. The Committee asked Elena and Dritan Hushi whether they were happy to continue without her. Elena confirmed that Dritan Hushi was content to proceed. The Licensing Officer noted that the applicant was present and that it was important for the Committee to be able to ask questions of the applicant.

- Mark Broome noted that Tamara Diniz had stated that some residents were supportive of the restaurant's activities and he enquired about these residents. Dritan Hushi stated that the premises had only served alcohol when it had a licence and that he was not always at the premises.

- In response to a question about the management of the premises, it was confirmed that Dritan Hushi was the applicant and that, if the licence was granted, he would be the licence holder. It was explained that Tamara Diniz managed day-to-day matters at the premises. Dritan Hushi noted that a neighbour on the second floor above the premises was supportive and often visited the restaurant with their family. He explained that there were other neighbours but that he did not know their names. Tamara added that neighbours came to the premises for birthdays and often brought their children.
- Mark Broome noted that the restaurant had stated that there had only ever been two hours of live music booked at the premises. He stated that he strongly disputed this and explained that there had been live music in the garden on a number of weekends which had started at approximately 3pm and had finished at 10pm.

The objectors were invited to summarise. Noshaba Shah, Licensing Authority, stated that the applicant had been away on holiday after submitting the licensing application. It was noted that all of the representations received had been sent to him. Noshaba Shah asked the Special Licensing Sub-Committee to consider whether the use of the rear garden was appropriate and to consider the proposed restrictions on the hours of operation that had been proposed by the Licensing Authority. She noted that, although the Licensing Authority had proposed that any use of the garden should cease at 9pm, residents had stated that use of the garden would affect them before this time. Noshaba Shah commented that a correct plan of the premises would also need to be submitted, taking into account all of the comments from Building Control. She added that there were concerns that the applicant did not appear to know what was going on at the premises and highlighted that, if a licence was granted, the applicant would be responsible for all licensable activity at the premises.

Mark Broome stated that the application was contrary to the Haringey Statement of Licensing Policy and that it would adversely affect children and the quality of life for residents. He noted that the restaurant had demonstrated its inability to interact with residents and to comply with the rules. He hoped that the impact on local residents would be taken into consideration. Margaret Boucherie stated that she had nothing to add to Mark Broome's summary and noted that the issues raised by residents remained the same. Simon West echoed the points made by other residents.

The applicant and applicant's representatives were invited to summarise. In summary, Tamara Diniz stated that she was usually available at the premises and was trying her best to engage with residents. She noted that she had changed the music and the type of the music at the restaurant and she encouraged residents to approach her rather than taking pictures at the venue. She added that the restaurant could reduce the volume of music and could coexist with residents.

Dritan Hushi noted that there had been some issues with the previous business at the premises relating to shisha and marijuana smoking and that this had been completely removed in the new business. He explained that he was trying to do what was best for the business and for the neighbours. He noted that he would be happy to join any residents' communications groups and that neighbours were welcome to call the venue directly if there were any issues.

At 8.45pm, the Committee adjourned to consider the application.

RESOLVED

The Special Licensing Sub Committee carefully considered the application for a new premises licence for Divina Kitchen, 256 Archway Road, London N6. In considering the application, the Committee took account of the London Borough of Haringey's Statement of Licensing Policy, the Licensing Act 2003, the Licensing Act 2003 section 182 Guidance, the report pack and the applicants and objectors written and oral representations.

Having considered the application and heard from all the parties, the Committee decided to refuse to grant the application for a new premises licence.

Reasons

The Committee gave serious consideration to the matters raised by the applicants, the objectors, and the responsible authorities. The committee had a particular concern that the applicants had sold alcohol without a licence and had unlawfully relied on notices advertising their application in support of their decision to serve alcohol at time when they were not authorised to do so. This suggested that the applicants were not sufficiently aware of how the process for obtaining a licence to sell alcohol operates.

The committee also heard evidence of noise nuisance emanating from the premises. Neighbouring residents stated that noise from the premises was having a profound effect on their ability to enjoy their home life. These incidents of noise nuisance, (including loud music and noise from the external area to the rear of the premises) were not addressed by the applicants despite clear evidence of the adverse effect they were having on residents.

The committee also received evidence that the building was not fit for purpose and had doors which were not fitted correctly. This raised safety concerns. In addition, the committee noted that the planning authority had given an indication about the proposed opening hours. The committee generally only consider matters that fall within their responsibility, which is for licencing matters, but was nonetheless aware that operating hours that exceeded the hours permitted by the planning permission were being sought by the applicants.

The owner of the premises told the committee he wished to have a dialogue with the residents, which the committee would generally encourage, but in this case, it appeared to the committee that the owner had minimal involvement in the day-to-day operation of the premises. The committee was not satisfied the applicants were engaging with the licensing authority. The premises were not being managed responsibly and in a manner that would support the granting of a licence to sell alcohol and as a result the committee decided to refuse the application.

Appeal Rights

This decision is open to appeal to the Magistrates Court within the period of 21 days beginning on the day upon which the appellant is notified of the decision. This

decision does not take effect until the end of the appeal period or, in the event that an appeal has been lodged, until the appeal is dispensed with.

CHAIR: Councillor Gina Adamou

Signed by Chair

Date