

MINUTES OF THE LICENSING SUB COMMITTEE HELD ON TUESDAY, 7 FEBRUARY 2023, 7:00PM – 10:15PM

PRESENT: Councillors Lester Buxton, Ajda Ovat (Chair) and Nick da Costa

ALSO ATTENDING: Councillor Zena Brabazon

1. FILMING AT MEETINGS

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

2. APOLOGIES FOR ABSENCE

No apologies were received.

3. URGENT BUSINESS

There was no urgent business.

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 REVIEW OF A PREMISES LICENCE AT RAKKAS 365-369 GREEN LANES, LONDON N8 (HARRINGAY)

Presentation by the Licensing Officer

Ms Daliah Barrett, Licensing Team Leader, informed the Sub-Committee that:

- The review application had been submitted by the Noise and Nuisance team.
- The basis of the review of the premises was the prevention of crime and disorder, public safety and the prevention of public nuisance.
- The application raised concerns about the use of a shisha lounge area which was causing a nuisance to members of the public and non-compliance with the licence conditions. There was also concern that the shisha smoking area had not complied with the Health Act and Council officers had been prevented or delayed from accessing the premises.
- The premises was authorised to provide regulated entertainment, late night refreshment and the supply of alcohol.
- The premises' main activity was the provision of shisha that took place at the rear of the premises.

- The premises had the condition relating to the external area at the rear being closed and cleared of patrons by 21:00.
- There were documents and footage that had been submitted relating to the entertainment provided under Section 177A of the Licensing Act. Under the review application, the Sub-Committee's discretion was engaged on the matter.
- Shisha smoking was not a licensable activity, but the area that the activity was being carried out was in a licensed area.
- The premises, as Rakkas, was first licensed in March 2012, it was varied in 2014. In 2016, there was a review application submitted and this related to noise and nuisance. That licence was later revoked by the Sub-Committee. This was then followed up in February 2021.
- The premises currently operated as a restaurant as offered regulated entertainment and late-night refreshment.

In response to questions, Ms Daliah Barrett informed the Sub-Committee that:

- The report had stated that the main activity of the premises was shisha smoking and this had been based on observation.

Presentation by the applicant

Ms Jennifer Barrett, Noise and Nuisance Officer (representing the review applicant), informed the Sub-Committee that:

- The Noise and Nuisance team had investigated complaints made regarding the operations undertaken at the premises.
- The Council had received 21 complaints since March 2022 regarding noise. In response, the Noise and Nuisance team had attended the premises and made observations at street level regarding public nuisance. Observations had also been made in relation to the rear area and the use of the rear area as a shisha area.
- The premises had been visited on occasions and a review had been applied for as there had been an observed number of breaches of the licence, especially the external area which had been used routinely after 21:00. There had also been recent breaches of the Health Act whereby the rear area was enclosed at a time that shisha was offered to patrons. Complaints had also been received from residents.
- Efforts had been made to mediate with the DPS at the time. The operators had said they were unclear of what was required of them regarding the use of the rear area.
- Noise and Nuisance had written to the premises stating their understanding of the use of the rear area.
- As part of the applicant's variation application, the applicant had stated that they felt the condition relating to the rear area was difficult to comply with.
- In 27 July 2021, the Sub-Committee recognised that there had been issues with the premises and the Sub-Committee at the time decided the outside space needed to be managed in a better way. Also, in response to concerns raised by residents, additional clarification regarding the external areas had been added as a revision to the licence.
- Residents had advised that there was a seasonal element to the use of the premises so complaints had not been received throughout December 2022, but she expected an increase in the summer months as rear area became more used.
- Noise and Nuisance officers attended on a number of issues and had difficulty in accessing the premises.
- Visits had been made to the premises in response to complaints in an attempt to establish if the rear area was being used for licensable activity.

- Officers had requested CCTV footage for three occasions whereby officers had seen unlawful use of the rear area.
- She requested that the Sub-Committee revise three conditions on the licence to ensure more clarity, partly to allow for better enforcement for any breaches of the licence.
- One specific condition that needed revision was the requirement for the DPS to provide CCTV footage so that any authorised officer would be able to request and obtain footage.
- The rear shisha area and mezzanine should be closed and cleared of patrons by 21:00. The condition needed revision so that it included notices for display in order to inform patrons of the requirement to close the area.
- The DPS had stated that premises staff struggled to clear the rear area because their patrons did not appreciate the need to clear the area by 21:00.
- The Sub-Committee should also consider the restriction of use of live, amplified or recorded music in the rear courtyard area and that licensable activity in the area should cease by 21:00.

In response to questions, Ms Jennifer Barrett and Mr Amir Darvish, Noise and Nuisance Officer, informed the Sub-Committee that:

- The premises was served daily by two security officers listed on the pavement outside sliding doors.
- Officers had approached the premises in response to complaints or as part of an investigative process and had requested access to the premises, but the doors were always shut and security staff would hold officers at the door whilst they got hold of the manager. Officers had displayed their badges and stated what they required and why they needed access. There had been three recent occasions where this had occurred.
- Premises staff had said that there had been a malfunction with the CCTV system.
- There was a generally positive approach from the licence holder and the management, but there was a level of frustration regarding the DPS as when officers visited the premises regarding the use of the rear area after 21:00, it had been met with some challenges. There was a suggestion that premises staff did not understand or appreciate the reason for the condition is that it has been discussed in consideration to the use of the rear area. Overall, there was a mixed feeling towards premises staff as officers attending the premises had been met with challenge, but interactions were more positive in arranged meetings.
- On occasion, security staff would hold the sliding door or physically put themselves in the doorway in an attempt to stop officers from entering the premises.
- When the DPS was informed that closing the rooftop was against the law in relation to the smoking activities carried out, the DPS had said that he would continue to use the roof in the manner it was being used. He had stated that he would consider withdrawing shisha from the menu in the quieter or colder months.
- The premises licence holder was informed during October 2022 that officers were continually observing breaches of the terminal hour for the use of the rear area. This was when the licence holder had raised the specific issue regarding what was meant by the external area and were subsequently informed that the Council's understanding of the external area and the outside smoking area were two different things.

In response to a question, Ms Daliah Barrett informed the Sub-Committee that the outside area used for shisha smoking was located at the rear of the property. The retractable roof, in effect, enclosed the area causing a potential breach of the legislation connected to the Health

Act. It was an issue which added to the matters raised. Within the Health Act, the area needed to be 50% open for smoking activity to take place.

In response to questions, Ms Jennifer Barrett and Mr Darvish informed the Sub-Committee that:

- Shisha smoking was not a licensable activity, but the offer of the shisha was incongruous with the other requirements of the licence. Either the rear area needed to be enclosed (to meet requirements) or area needed to be closed by 21:00, but if shisha smoking occurred in the rear area with the roof partially closed, then it would be a breach of the Health Act.
- The visit on 5 March 2022 which stated that the external area had been used at 19:22 was an error in the report and should actually state 21:22.
- Observations had been made at street level in the vicinity of the premises and in the vicinity of residential properties of any complainants. The Council also received anonymous complaints and investigations were held partly by observing the premises. When investigating complaints, the Council also tried to determine if there was a statutory nuisance, by visiting the premises and determining how residents were affected in their homes.
- Observations of public nuisance had been made without the need to measure any noise. The Noise and Nuisance team did not specify the number of decibels, but simply determined if the noise nuisance was giving rise to disturbance.
- Noise complaints had been received in 2023, but had not been included as part of the application.
- They had not spoken to the residents that had supported the premises.
- The Health Act breaches that had been observed late last year was an indicator of non-compliance of the conditions of the licence and the premises licence holder had stated that they were struggling to comply with conditions. It was thought appropriate to review the licence to specifically examine the issues.
- The review application had not been submitted in response to the variation application that had been submitted by the premises licence holder.
- People had been observed dining in the rear area and it could be considered more than just a shisha area.

Presentation by Interested parties

Councillor Zena Brabazon informed the Sub-Committee that:

- This was the third time she had to make a representation for the premises.
- The Harringay ward had several restaurants and in her six years as a councillor had addressed the issue three times.
- In her experience, she had never received so much correspondence and complaints about a premises in the ward.
- Regretfully, she had to support the review application. It was a responsible authority that had brought forward the application and if the premises licence holder was not going to comply with the conditions of the licence, it was unclear what other action a responsible authority could take.
- The premises, when established, the minutes of meeting from a hearing in July 2021 (found on page 172) of the agenda papers, stated that premises staff would not use the rear area as a shisha lounge, but that there would be an option for people to smoke.

- It was obvious this issue was an unsolvable conundrum.
- There was a mezzanine where people were smoking shisha and there were photos showing shisha paraphernalia.
- The rear area may have another function, but it was primarily used as a shisha lounge where the doors, windows and the roof would have to be open and this was why residents experienced noise and disturbance. It was also why they complained.
- If a premises licence holder did not understand the conditions of the licence, then this was a serious matter.
- The Sub-Committee needed to sanction the premises for not complying with conditions and for causing such aggravation to residents.
- The residents supporting the review application were individually written representations and were personal testimonies.
- The supporters of the premises had virtually the same representation.
- It was important for the Sub-Committee to take the weight of the representations accordingly.

Mr Ian Sygrave, resident, informed the Sub-Committee that:

- In his capacity as chair of the LGSCCP, he had been attending hearings in the area for over 20 years and the weight of evidence displayed some of the worst examples of repeated breaches of a premises licence.
- Firm action should be taken by the Sub-Committee to prevent yet more breaches from occurring in the future.
- Unless firm action was taken immediately, there was every reason to believe that the Sub-Committee's own previous decisions would be ignored again.
- The existing licence, granted in July 2021, should be examined and the refusal to grant longer hours in the variation hearing in the previous month made it clear that the Sub-Committee remained very concerned about noise nuisance from the rear area. This was why the Sub-Committee originally stipulated a 21:00 terminal hour for the use of the rear area.
- Since the premises opened last March, all concerns about noise proved fully justified and the Sub-Committee could see a catalogue of breaches across 40 pages in the agenda papers including repeated site visits by enforcement followed by verbal warnings, written warnings and warning meetings.
- The concerns of over 20 objectors, including two ward councillors, covered a further 50 pages and they contained specific details of noise and antisocial behaviour which residents had experienced. These were not identical, copied letters provided by a legal team, but individual responses from residents who had been suffering and had had enough.
- The Council's own Noise and Nuisance officers had witnessed not just one or two, but multiple breaches last year. Further, they had actually been hindered or prevented from entering the premises, despite their legal right to do so.
- The premises licence holder circulated an irrelevant questionnaire (or survey) which did not refer to the review or to the licensing objectives. As such, it had no bearing on the case. However, on the back of the questionnaire (or survey), the licence holder had produced an identical formulaic statement which had been circulated for anyone to copy. This could be found on pages 142 and 143 of the agenda papers to show support for the premises. This was in stark contrast with the detailed representations provided by those supporting the review application.
- Given the seriousness of breaches and the repeated warnings, the licence should be suspended for a period of time to be determined by the Sub-Committee.
- The only effective long-term solution was to deal with the root cause of the problem, namely the rear area which was still unauthorised by the Planning Authority. This area

must be fully sound insulated and a non-opening sound proof unit should be installed. This would ensure that no noise could escape from the rear of the premises at any time of the day or night.

- Consequently, residents would once again enjoy the use of their homes and gardens without intrusive noise nuisance from the premises.

Mr Andy Cheatle, resident, informed the Sub-Committee that:

- Residents had experienced many issues with the premises after its re-opening in March 2022.
- These issues had caused breaches of the licensing objectives and licensing conditions.
- He supported the review application but did not believe its recommendations went far enough. They did not encourage the premises to change its behaviour and comply with licensing obligations.
- There was a catalogue of issues and harms, but the key fundamental root cause was the rear extension. Noise escaped from the area, especially in the summer when windows were open.
- In relation to the surveys that were taken, local residents were accosted on the street to provide feedback and then had their feedback manipulated and formed into a petition.
- Many of the harms now experienced by residents were anticipated by the Licensing Sub-Committee in July 2021 when it was stipulated that the rear area of the premises should be closed to customers by 21:00, that no noise should be emanating from premises, that no fumes or odours that would cause a nuisance and that lighting should be directed away from residential properties. None of these conditions were being complied with.
- The starting point was to see the premises comply with its current licensing obligations, but it was not doing so.
- The noise in the rear of the premises needed to be addressed.
- All retractable windows and roofs should be shut at all times and additional soundproofing should be installed.
- The use of the rear of the premises should be stopped until soundproofing was installed. This would also help to align the Licensing and Planning approach to noise management at the premises.
- To date, the premises had shown no intention of meeting all its licensing obligations.
- The premises had been in breach of the licence from the beginning and was operating at 11 months so far.
- There appeared to be a wilful, clear and deliberate non-compliance with the licensing obligations and the premises should be at least suspended for a period of time and if the issues did not improve immediately, the licence should be revoked.

In response to questions, Councillor Brabazon, Mr Cheatle, Mr Sygrave, Ms Nicola Pollock, Mr Joel Hanley and Ms Deborah Potts, residents, informed the Sub-Committee that:

- Since March 2022, Councillor Brabazon had received several repeat complaints from residents. The Noise and Nuisance team were notified on each occasion. She arranged a meeting and despite the best efforts made, no positive changes had been observed at the premises.

- Mr Cheatle had not filled out the survey as per 162 of the agenda papers onwards. He was away on the weekend when the survey was carried out but some neighbours had completed it and had reported that it felt like bribery with free meals being offered by the licence holder's representative.
- The timing of the survey indicated that it was in response to enforcement action rather than concerns about residents. It was also the first time residents had heard from the premises.
- There had been some residents who had filled in the survey and confirmed that they heard loud noises from the premises and had been impacted by noise. Comments such as these had been made, but had been ignored. One resident had filled in a survey which had given a negative review, which was then later filed as a positive review.
- Councillor Brabazon stated that when people were concerned, they had made a cogent effort to provide an insight into their experiences, but she had not spoken to those supporting the premises.
- Mr Hanley stated that he had informed that he would not be supporting the premises and had received a 'dirty look'.

Presentation by the premises licence holder

Mr Duncan Craig, representing the premises licence holder and Mr Garip Toprak, the premises licence holder, informed the Sub-Committee that:

- Any removal of the right to provide regulated entertainment via section 177A of the regulations needed to be conducted on a more empirical basis. The methodology employed by the noise and nuisance team regarding noise at the premises had been outlined. The removal of regulated entertainment as per section 177A was only based on statutory nuisance where statutory nuisance had been established.
- The applicant did not have any issues regarding the proposed condition relating to CCTV footage. The condition put forward was sensible, proportionate and enforceable. He would prefer the condition to be changed to state 28 days, as a period of four weeks was a more specific period of time and if a responsible authority was not in a position to retrieve CCTV footage in that period, then a request for the footage could not be particularly important.
- They disagreed with the terms of conditions regarding the rear area and the use of the term 'outside' lacked specificity regarding the enforceability of that condition.
- An outside area would refer to an area which had no roof or walls and therefore a carpark would fit this description.
- The condition currently stated that the rear area used as a shisha lounge was to be closed and cleared up patrons by 21:00.
- Approximately three weeks ago, the premises licence holder submitted a variation application and the condition regarding the use of the rear area in its current state was disproportionate in relation to the operation of the business. The wording of the condition needed to be reconsidered.
- They felt that the representations in favour of the review did not reflect the full picture of the situation.
- There were a number of local residents who supported the premises and residents that lived very close to premises. Many of the objectors lived further away.
- If people were opposed to something, they were much more likely to engage with a process than when they were in support of it.
- Views of residents were taken because the licence holder felt very strongly about the premises as there was a number of local people who were supportive and saw it as a benefit.

- The licence holder was seeking to garner support, but Mr Craig but would not represent the applicant if those supporting the application had been brought to the meeting in an improper manor.
- The premises was authorised for licensable activity until 22:30 Sunday to Thursday and until 23:30 on a Friday and Saturday with closure time of half an hour later.
- Other licensed premises that operated in the area operated for significantly later hours. The area was also busy part of London.
- Although the area was a residential area, it was also a lively and active part of London.
- The Sub-Committee had a commitment to ensure that there was a balance between residents' needs, the needs of the licence holder to run a business and the needs of the wider community.
- It would not be fair to set up a business to fail.
- It would not be possible to place a condition to the licence which was so disproportionate that the business would be unable to function.
- The review application was simply seeking to impose two conditions on the licence – one which had already been accepted.
- Shisha was a part of the business, but not central to the business. The business was a restaurant. The quality of the food was excellent.
- The premises was fitted to a high specification.
- It was highly unusual of a review application to be met by such a significant number of representations in support of the premises. It was even more unusual and rare that residents would take time out of their day to attend an evening meeting. He would ask that the Sub-Committee give weight to what those residents had to say, especially as they lived close to the premises.

In response to questions Mr Craig and Mr Toprak informed the Sub-Committee that:

- Soundproofing work had been undertaken at the premises since autumn time. Many licensed premises operated differently in the summer than in the winter.
- The review application had been submitted from the beginning of December 2022. He had proof of invoices for work done regarding soundproofing. Whenever patrons started smoking, premises staff would open the roof and most of the time they would be eating. The premises had not received any complaints since November 2022.
- The soundproofing work had been undertaken after October 2022.
- The licence holder had stated that it was difficult to get people to move out of the rear area at 21:00.
- When officers visited the premises, the licence holder had explained to them the licensed area was one unit and therefore it was unclear as to why patrons needed to be moved from the rear area after 21:00.
- There were 53 people working at the premises.
- For a fine dining restaurant, it was unprofessional to ask patrons to leave at 21:00.
- The rear area was not enclosed and was at least 50% open, the licence holder had explained this to officers many times.

At this point in the proceedings, in response to a question, Mr Amir Darvish, Noise and Nuisance Officer, stated that he had visited the premises twice, he had found that the roof was closed. The rear area had customers and the majority of tables had shisha and even some e-cigarettes. He was there four to five minutes and a subsequent verbal warning had been issued. He visited on a Friday and a Sunday and the situation was similar on both occasions. He had explained to the licence holder that if the rear area closed at 21:00, then the premises could stop allowing the smoking of shisha between 19:00 to 20:00. The licence

holder's younger brother was present at the premises on the first night. On the second night, Mr Toprak was present and Mr Darvish's main communication had been with his younger brother. Mr Darvish had been stopped by security, but was able to walk into the premises when the door was opened as two patrons were leaving. He had not run into the premises, he made his observations, communicated with the licence holder and had a body camera.

In response to further questions, Mr Craig and Mr Toprak informed the Sub-Committee that:

- No officer had ever been denied entry into the premises.
- When Mr Darvish arrived, the licence holder was present on both occasions and had worn a face mask. Mr Darvish, when was asked to identify himself, tried to push inside and enter the premises. He had a camera with him and security staff were simply doing the job. The premises only allowed patrons over the age of 20.
- There had been an issue with the hard drive regarding the CCTV footage. The licence holder had a problem with accessing it using his password. The issue was raised with the service provider.
- The shisha smoking was ancillary to the business model and the main model of the business was fine dining.

At this point in the proceedings, Ms Daliah Barrett stated that the premises itself had advertised itself as providers of high-quality shisha and that the provision of shisha appeared to be a leading feature. The plan that was submitted to Licensing previously had outlined a ventilation system typical to shisha lounges and was part of the structure of the location. It was important that 50% of the area needed to be unenclosed and it was pertinent that the roof needed to be open in order to meet the requirements of the Health Act.

In response to further questions, Mr Craig and Mr Toprak informed the Sub-Committee that:

- The reason for the soundproofing was to reduce the noise partly due to officers having raised the issue.
- Soundproofing had been undertaken in the restaurant and the outside area and a limiter been placed for the music. No live music was played at the premises. Only recorded music was played and this was limited through a sound limiter.
- Most patrons did not smoke and the licence holder had been in the restaurant business for many years and did not smoke himself. The premises mainly sold food and sales equated to 80% food sales and 20% in shisha sales.
- Although supporting representations and representatives had been gathered in a staccato fashion, it was important that the Sub-Committee gave weight to what those supporting the premises had to say.

Ms Daliah Barrett stated that page 39 of the agenda papers had planning documentation. The proposed planning permission was that the area would be an enclosed conservatory for fine dining, but what was built instead was a shisha lounge. The Planning Authority had asked the licence holder to address the issues listed regarding the outside area.

In response to further questions, Mr Craig and Mr Toprak informed the Sub-Committee that:

- An area of the premises offering shisha smoking did not make that area or the premises a shisha lounge.
- No issues had been raised regarding the compliance and licensing conditions since November 2022 and this demonstrated improving patterns at the premises and licence holder being able to meet his responsibilities.

Mr Vasily Abraham, resident in support of the premises, informed the Sub-Committee that:

- He lived very close to the premises and did not know how far those supporting the application were from the premises but he had no noise issues with the premises.
- The business maintained good public relationships and regularly spoke to residents and this was rare for a licensed premises in the area.
- Patrons should have the right to smoke in the designated area and the smoke had not disturbed him despite living close by.

Ms Manuela Salieva, resident in support of the premises, informed the Sub-Committee that:

- The premises was a well-run place and did not have a problem with the premises despite being a mother of two children.
- She was happy to have the premises in the area.
- She could not hear any music, sounds or smell smoke and her windows were regularly open.

Mr Hasan Aksoy, resident in support of the premises, informed the Sub-Committee that:

- Sometimes he heard music, but not too much of it and he did not have any complaints regarding the premises.

In response to questions, Mr Aksoy informed the Sub-Committee that:

- He could see the premises from his window.

To summarise, Councillor Brabazon stated that there had been three separate hearings on the same issues regarding the premises. The licence holder had continued to breach licensing conditions. There had been noise and problems emanating from the area used as a shisha lounge which was supposed to be a conservatory and was subject to an enforcement appeal. Where shisha was being smoked, it was causing problems for those who lived behind the premises and noise could be heard by nearby residents. There was an extension to the premises which was being used as a shisha smoking area and therefore needed to have open windows which caused problems. There were also issues of waste and rubbish in addition to the premises having failed to comply with its conditions. It was not clear what else the Council could do to obtain compliance from the licence holder. The Sub-Committee should grant the review application so that there was an exercise in balance and proportionality between the business and interests of the residents. If shisha smoking was not a central component of the business, then the extended area should be easy to close off until the issue were resolved. She supported the residents' requests for the premises to be soundproofed. The premises licence holder should also be experienced enough to be able to uphold the licensing objectives.

To summarise, Mr Sygrave stated that he concurred with Councillor Brabazon.

To summarise, Mr Cheatle stated that there needed to be a balance between the needs of different elements such as provision of a Shisha area, but in an open space and noise management. The windows being open, although facilitated shisha smoking, created a noise nuisance issue. Residents suffered the consequences and so the review application should be granted and measures should be taken.

To summarise, Ms Jennifer Barrett stated that the review application has been submitted due to the use of the rear area and although shisha smoking was not a license for activity, it was a material consideration in relation to the premises which had been described as being ancillary to the business. The activity and potential to occupy consider amount of space. The rear area was mostly open and therefore measures to install soundproofing would have a limited impact. The Sub-Committee should consider the revised conditions put forward regarding the use of the rear area after 21:00.

To summarise, Mr Craig stated that those supporting the premises had spoken positively of the premises and lived nearby. Their views should be taken into account, but there had been some unfortunate suggestions made regarding the premises by those supporting the application. There were no issues with the CCTV condition and he would invite the Sub-Committee to consider the condition regarding the rear area fair and proportionate and not to impose an over-restrictive burden on the business.

At 9:35pm, the Sub-Committee adjourned to consider the application.

RESOLVED:

The Licensing Sub Committee carefully considered the Review application of an existing premises licence at RAKKAS, 365-369 GREEN LANES, LONDON, N4. In considering the review, the Sub-Committee took account of the London Borough of Haringey's Statement of Licensing Policy, the Licensing Act 2003, section 182 Guidance, the report pack and additional papers, the applicants and objectors written and oral representations.

Having considered the application and heard from all the parties, the Sub-Committee decided to impose the following conditions:

Annex 2 of the existing licence is amended as follows:

Paragraph 1

The rear lounge area (namely the ground and mezzanine floor extension with a retractable roof) shall be closed and cleared of customers by 21.00 hours.

Adequate and prominent notices shall be displayed to inform customers of this requirement.

A closable door shall be installed to the entrance of the rear lounge area and the area shall not be used at any time after 21.00 hours.

Access to the rear lounge area after 21.00 hours will only be permitted in the event of emergency evacuation becoming necessary.

The Licensee shall ensure that no customers are permitted to use the rear lounge area after 21.00 hours.

The premises licence holder shall take appropriate measures to ensure that patrons leaving the rear lounge area do so in a quiet and orderly fashion.

Paragraph 3(i)

Digital images must be kept for 31 days. The equipment must have a suitable export method, e.g CD/DVD so that Police can make an evidential copy of the data they require.

Copies must be made available to an Authorised Officer of the Council or Police Officer within 24 hours of any request, free of charge.

There shall always be a member of staff on duty who can operate the system, to allow Officers to view recordings and if required by a Police Officer, provide a copy of images immediately, free of charge to assist in the immediate investigation of offences.

If the system malfunctions and will not be operating for longer than one day of business, the Police and the Licensing Authority must be informed immediately.

REASONS

The Sub-Committee gave serious consideration to the submissions made by the Noise enforcement team, the supporters of the reviews, their supporters, and the License holder, his representative and supporters.

The Sub-Committee noted with concern that since the grant of the License there had been numerous breaches of the conditions of the licence. The license required no use of the rear lounge area after 9pm. However ample credible evidence was provided by residents and the Noise enforcement Team, that this was breached on numerous occasions.

Furthermore, the Noise enforcement team officer noted that there had been 21 complaints within 10 months all related to the rear lounge area. The premises owners had been obstructive when officers had attended to investigate on numerous occasions. Request for CCTV images were not complied with and the explanation given did not seem credible to the Sub-Committee. The noise complained of had been particularly bad during the summer when people's windows were open and noise carried. There were a large number of objectors to the licence continuing at all, from local residents and Councillors. From the papers and correspondence from the Planning department, there was also an ongoing clear violation of planning regulations showing a further disregard for the rules- in terms of the construction of the rear extension and use. The area is supposed to be 50% open if shisha smoking is taking place but at times is enclosed (i.e. less than 50% open if counting the use of retractable roof).

Notwithstanding the above, the Sub-Committee noted the explanations provided by the license holder, that there had been no noise complaints since around November 2022, that limiters had been put on amplifiers, sound proofing works had taken place, and most particularly had also heard from local residents who immediately neighbour the property and insisted that they were not affected by the noise. The Sub-Committee found their evidence to be credible.

The Sub-Committee also noted the review applicant was no longer seeking to impose extra conditions on live music played up to 21.00 hours.

In considering the licensing objective of preventing public nuisance, the Committee has to balance the rights of the licence holder with those of the neighbouring residents and arrive at a proportionate decision. In arriving at the decision above, the Committee gave very serious consideration to revoking or suspending the licence given the past flagrant breach of the existing licensing conditions. However, given the explanation provided by the licence holder the Committee was minded not to revoke or suspend, but grant the review application with the conditions proposed. The Committee is of the view this strikes the right balance.

INFORMATIVE

The Sub-Committee hopes that the licence holder will now abide by the licence conditions and noted that the noise complaints had arisen in the summer months. Failure to keep to the conditions may lead to a further review and more serious repercussions being imposed to uphold the Licensing objectives.

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.

7. NEW ITEMS OF URGENT BUSINESS

There were none.

CHAIR: Councillor Adja Ovat

Signed by Chair

Date7/2/2023.....