

MINUTES OF THE MEETING OF THE SPECIAL LICENSING SUB COMMITTEE HELD ON TUESDAY, 16TH APRIL, 2019, 7.00 - 9.00 pm

PRESENT: Councillors Vincent Carroll, Peter Mitchell and Liz Morris

19. FILMING AT MEETINGS

Noted.

20. APOLOGIES FOR ABSENCE

Apologies were received from Cllr Rice; Cllr Carroll substituted.

21. URGENT BUSINESS

N/A.

22. DECLARATIONS OF INTEREST

No declarations of interest were made.

23. SUMMARY OF PROCEDURE

Noted.

24. REVIEW OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003 - BELMEIS

Late documentation

The License Holder introduced late documentation. The late documentation was four photographs, which included two before and two after pictures taken of Bluetooth speakers being lowered from their previous stationed positions at the premises. The Applicant raised no objections to the late documentation and it was formally submitted to the Committee.

Licensing Officer

Daliah Barrett, Licensing Officer, introduced the application for the review of the Premises Licence for Belmeis, 488 Muswell Hill, Broadway, London, N10 - held by Clarke and Parker Fishmongers Ltd (t/a) Belmeis. The Licensing Officer outlined the report prepared as set out at pages 3-9. The application for review had been made by local residents.

The Licensing Officer noted the primary concern of the Applicants for the review was the noise nuisance which emanated from the Bluetooth speakers of the premises. The Applicants also had concern regarding the noise nuisances from the use of the courtyard after closing time and the smell from the food provided at the premises.

A representation had been received from the Noise Authority which was at Appendix 2, pages 41-70. The License holders had submitted their response to the review which was at Appendix 4, pages 71-84.

The Licensing Officer highlighted to the Committee that the Licensing Act 2003 created a general exemption that live unamplified music provided anywhere shall not be regarded as the provision of regulated entertainment under the Licensing Act 2003, if it took place between 8am and 11pm, regardless of the number of people in attendance.

The Committee had no questions for the Licensing Officer and next heard from the Applicants of the review.

Applicants

At the outset, the Applicants clarified that they did not seek for Belmeis to be closed. The Applicants sought for the premises to uphold the conditions on the Premises License.

The Applicants claimed that noise nuisance from the premises occurred on a daily basis with the bass from the music causing significant disturbance. They also claimed that the music continued after the closure of the premises was supposed to take place, in violation of the conditions on the premises license. They conceded that the noise disturbances caused from the music had improved but remained a nuisance. One of the residents, who was an acoustic professional, carried out an acoustic assessment and found that noise in a local flat doubled during the opening hours of Belmeis. The Applicants had liaised with the Council's Noise Enforcement team who had advised them to apply to the Licensing Authority for a review of the Premises License.

The Applicants sought Belmeis to introduce adequate soundproofing to minimise noise disturbances. They also sought for the condition on the premises license surrounding the courtyard not being used in the evenings, to be adhered to.

The Committee next heard from the Noise Authority.

Noise Authority

Rockwell Charles represented the Noise Authority and informed the Committee that he had interrogated the noise database regarding noise nuisance emanating from 488 Muswell Hill and found 101 complaints had been recorded over a 12 month period. The complaints primarily surrounded loud amplified music, recorded music and voices. Further, there had been six incidents of statutory noise nuisances. Belmeis had been issued with a noise abatement order and a fixed penalty notice in relation to noise nuisances.

Mr Charles noted that the conditions on the premises license and the noise control measures in place had been inadequate in controlling noise associated with live and recorded music.

The Noise Authority's recommendation was for the Committee to use its powers to remove live and recorded music from the premises licence.

The Committee next heard from the License Holder.

License Holder

The License Holder accepted that noise had been a concern for local residents at times. The License Holder explained that the premises had received numerous noise complaints since it began operating. Initially, the premises provided live jazz music from 7pm to 11pm twice a week. Following the noise complaints, the License Holder took the decision to no longer provide live amplified music. However, this did not have the desired effect and noise complaints continued to be received. The decision was then taken to remove live music entirely. This limited the number of noise complaints that the premises had been receiving but the noise complaints continued. The premises had also been receiving complaints from the smell emitted from the food served. The decision was taken to remove frying and provide cold tapas food only.

The premises then underwent improvement works that included some sound proofing being installed. The License Holder stated it would have been too costly to install soundproofing to the level a club might have soundproofing but accepted that, with hindsight, better soundproofing should have been invested in. At the premises, there were two small Bluetooth speakers. There had been only one but the License Holder was advised to have a second to make the sound distribution equal.

The License Holder felt the Council had been harsh in its enforcement of noise complaints. They stated they had been proactive and engaged when dealing with concerns and complaints that had arisen. They had requested access to carry out sound testing with residents but had been refused. The License Holder regretted that the residents had not approached Belmeis with their concerns so that an effective solution could be worked out together. The License Holder questioned the accuracy of the acoustic report carried out by the residents.

The License Holder informed the Committee that the constant complaints had had a negative impact on the business and had been personally tough on them. The License Holder stated they were unclear as to the maximum sound level that the premises was allowed to reach without fines being received. They accepted they had made mistakes along the way but questioned the imposition of fines at times by the Council and stated they had been heavy handed. They noted that noise had not been recorded at a nuisance level since January 2019, which, the License Holder stated showed the impact of their efforts taken to minimise noise disturbances.

The License Holder argued against removing background music from the Premises License and stated the Committee might as well close the venue. They claimed Muswell Hill was a difficult area for business and the premises was a tapas bar

offering cocktails. They stated the removal of background music would leave the premises little to offer its clientele.

The following was noted in response to questions from the Committee:

- Following receipt of the noise abatement notice in July 2018, the License Holder stated that they did not believe the music at the premises was ever exceeding the threshold level for what would be considered a nuisance. Since that time, the premises had ended amplified music and then live music entirely. They claimed that the volume of the music played had been lowered but complaints continued to be received.
- The License Holder had asked the Council what the maximum level music could be played at but received no definitive response. They argued they had engaged with the Noise Enforcement team and carried out their recommendations.
- The Noise Enforcement representative clarified that no dB noise level could be definitive in law. The issuing of the noise abatement was a serious matter and violating it could result in a criminal record and an unlimited fine being imposed. It was also clarified that the six incidents of statutory noise nuisance was for live, amplified and recorded music.
- The Noise Enforcement team had requested details of the insulation installed at the premises but these had not been received. This meant the team was unable to offer advice on the appropriate measures to mitigate noise concerns.
- The Acoustic Consultant, who carried out the resident's sound assessment, informed the committee that the noise levels recorded doubled when music was playing at the premises. He informed that sound insulation could be made better at the premises without much impact. Better soundproofing would have the best overall impact but he accepted that there would be a cost impact of better sound insulation. He stated that to negate the potential for noise nuisance, only better soundproofing being installed or a reduction in the noise level being imposed would be adequate.
- The License Holder agreed with the position of the Acoustic Consultant and welcomed working together to find a solution that worked for all.
- The Applicant informed the Committee that, since the premises stopped providing live music, the situation had improved. The Applicants concurred with the Acoustic Consultant and stated they wished for a reduction in noise levels or soundproofing be installed.
- The License Holder noted that since not having live music at the premises, the Noise Enforcement Team had not advised them noise levels were at nuisance levels.
- There was confusion as to the use of the courtyard. The License Holder seemed unaware that the condition on the premises license stipulated there was to be no access to the courtyard in the evenings.
- The License Holder claimed they had gone beyond any recommendation by the Noise Enforcement team by cancelling live music altogether.
- The Applicant confirmed that the smell had no longer been an issue since the premises had introduced its cold tapas menu.

- The Licensing Officer noted that there were two attempts made by the License Holder to make contact with the residents and carry out their own acoustic report. The Applicants stated there had been no formal request with dates or times listed and that was why they did not accept the two attempts by the License Holder.

The following was noted in response to questions from the Applicant:

- The License Holder claimed they adhered to the opening hours on the Premises License and there was always either the License Holder or his colleague present in the evenings. The colleague noted that music had sometimes been left playing when the premises had closed and staff were tidying up. However, the colleague claimed this would no longer continue.
- The License Holder would commit to limiting the sound of throwing bottles away.

Closing submissions

The Chair next invited parties to provide closing submissions and the following was noted:

- The Applicants sought for the License Holder to adhere to all the conditions on the Premises License.
- The Applicants sought for immediate action to be taken to soundproof the premises or conditions be imposed that would restrict noise levels.

The Chair closed by thanking the parties for their attendance and submissions. The Chair informed that the Committees decision would be made available within 5 working days.

RESOLVED

The Committee carefully considered an application to review the premises licence of Belmeis, 488 Muswell Hill, Broadway, London, N10. In considering the application, the Committee took into account, the London Borough of Haringey's Statement of Licensing Policy, the Licensing Act 2003, the Licensing Act 2003 section 182 Guidance, and the Report pack including the written and oral representations made by residents objecting to the premises licence and representations made by the License Holders.

Having heard from all the parties, the Committee decided to vary the premises license so as to provide that live and/or recorded music are licensable activities that can no longer be provided without permission on the premises license or on temporary event notices.

Reasons

The Committee accepted that the evidence provided to it, by residents and the responsible authority, concerning noise nuisance emanating from the premises, was

credible. The committee was satisfied that serious noise nuisance had taken place. Six incidents of statutory noise nuisance were substantiated and over 100 complaints about noise had been received by the responsible authority which had seen fit to serve a noise abatement notice. Despite service of a noise abatement notice, noise at the premises continued.

In addition, the Committee was not satisfied that appropriate measures had been taken by the License Holder to prevent sound disturbances occurring again in the future.

The Committee was mindful of the License Holders attempts to reduce the impact of noise by cancelling live music. It also recognised the license holder's concern over the impact that conditioning the provision of live and recorded music would have. However, the Committee concluded that the one of the licensing objectives – the prevention of public nuisance, had not been upheld.

Regulated entertainment was being provided under the Live Music exemption and this exemption is being removed by the LSC due to the considerable noise nuisance that was emanating from the premises.

The Committee decided to remove the provision of all live and recorded music for the provision of entertainment to the audience from the premises, as it considered the sound proofing at the premises to be totally inadequate and felt that no condition to limit sound or types of music would be appropriate.

Informative –

(1) The Committee noted the license holder's willingness to engage in a dialogue and seek advice about sound proofing and hoped that the licence holder would explore this further. The premises is able offer background music which is not regulated by the Licensing Act 2003 but must be at a low level so as not to interrupt normal conversation levels.

(2) The Committee accepted the concern by the Applicant's that there had been issues with the smell of food emanating from the premises. The Committee recognised the License Holder's attempt to reduce the impact from the smell of their food by providing tapas food only, which, the Applicant's agreed had improved the situation.

The Committee approached its deliberations with an open mind and only made its decision after hearing all the parties' representations. The Committee considered its decision to be appropriate and proportionate.

Premises Licence

Licensable activities authorised by the Licence:

Late Night Refreshment
Supply of Alcohol

The times the Licence authorises the carrying out of licensable activities:

Late Night Refreshment

Friday to Saturday 2300 to 0000

Supply of Alcohol

Monday to Thursday 1200 to 2300

Friday to Saturday 1200 to 0000

Sunday 1200 to 2200

The opening hours of the premises:

Monday to Thursday 1200 to 2330

Friday to Saturday 1200 to 0030

Sunday 1200 to 2230

Where the Licence authorises supplies of alcohol whether these are on and/or off supplies:

Supply of alcohol for consumption ON and OFF the premises

25. CONSIDERATION OF SUSPENSION OR REVOCATION OF A PERSONAL LICENCE FOLLOWING CONVICTION

Daliah Barrett, Licensing Officer, introduced the application to consider the suspension or revocation of a personal licence following a conviction of a relevant offence by the holder of that licence. The Licensing Officer outlined the public report prepared as set out at pages 109-111 and the private report as set out at pages 113-114.

The Licensing Officer highlighted that, following a change in legislation, there was a requirement for personal license holders to inform the Council if there had been any changes such as name change, change of address or relevant conviction against the holder. Failure to do so was an offence.

The Licensing Team became aware of a conviction by the License Holder and, despite numerous opportunities to declare their conviction, the Holder subsequently failed to do so.

Following questions from the Committee, it was noted:

- The License Holder was not presently a Designated Premises Supervisor (DPS) in Haringey.
- The License Holder had been offered the opportunity to attend but had declined.
- Personal Licenses did not lapse and would need to be either suspended or revoked.

RESOLVED

The Committee carefully considered an application to consider suspension or revocation of a Personal Licence, following a failure to disclose to the Council a conviction and change of address.

In considering the application, the Committee took into account, the London Borough of Haringey's Statement of Licensing Policy, the Licensing Act 2003, the Licensing Act 2003 section 182 Guidance, and the Report pack.

Having heard from all the parties, the Committee decided to revoke the Personal Licence.

Reasons

The Committee noted the seriousness of the conviction and the repeated failures by the License Holder to declare the conviction to the Council, despite numerous opportunities to do so.

The Committee noted with some concern, the licence holder's failure to attend the committee.

The Committee approached its deliberations with an open mind and only made its decision after hearing the parties' representations. The Committee considered its decision to be appropriate and proportionate.

(This is a redacted version of the decision – full decision in exempt minutes)

26. EXCLUSION OF THE PRESS AND PUBLIC

Resolved

That the press and public be excluded from the remainder of the meeting as the items below contain exempt information, as defined under paragraph 1, Part 1, schedule 12A of the Local Government Act 1972.

27. CONSIDERATION OF SUSPENSION OR REVOCATION OF A PERSONAL LICENCE FOLLOWING CONVICTION

As per item 25 and the exempt minutes.

CHAIR:

Signed by Chair

Date