

# **MINUTES OF THE MEETING OF THE SPECIAL LICENSING SUB COMMITTEE HELD ON WEDNESDAY, 14<sup>TH</sup> APRIL 2021, 10.00AM - 12.00PM**

## **PRESENT:**

**Councillors: Peter Mitchell (Chair), Viv Ross and Yvonne Say**

### **1. FILMING AT MEETINGS**

The Chair advised that the meeting would be live streamed on the Council's website.

### **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. HEARING TO CONSIDER AN APPLICATION FOR REVIEW AGAINST A PREMISES LICENCE - RAKKAS 363-365 GREEN LANES, LONDON N8**

Daliah Barrett, Licensing Officer, introduced the report, as set out on pages 1-4 of the agenda. Reference was also made to the additional information submitted by the Agent.

Philip Cone, Licensing Enforcement Officer, introduced his representation as detailed on pages 11-15 of the agenda. He referred to the prohibition notice issued on the 5 December 2020, which had received no objection or appeal.

PC Derek Ewart introduced the Police representation, as detailed on pages 43-48 of the agenda.

Maria Ahmad, Public Health, outlined her representation, as detailed on page 41 of the agenda. Public Health had concerns under the Prevention of Crime and Disorder, Public Safety and the Prevention of Public Nuisance licensing objectives. Public Health supported the request to suspend the premises licence and were deeply concerned by the Designated Premises Licence holder's lack of regard to the law to protect the public and uphold the licensing objectives.

Marlene D'Aguilar, Public Health, also added that the operators of the premises had given no due care and attention that they could have spread Covid during a time when the number of cases within the borough were increasing and had a total disregard for people's safety.

In response to a point of clarification from the Committee, the Police confirmed that there had been hot beverages, shisha pipes and gambling materials at the premises at the time of their visit.

In response to a question from Graham Hopkins, Agent, Philip Cone stated that officers had body worn cameras on their visits, however there was no photo evidence of the people inside the premises on the visits made.

In response to a further question from Graham Hopkins regarding social distancing during the incidents raised, Maria Ahmad stated that given the hot beverages present and layouts of the tables within the premises during that time, it was suggested that the 2m distance had not been adhered to. Daliah Barrett added that the issue of social distancing was irrelevant, given that on the 1 February 2021 the country was in a national lockdown and therefore the premises should not have been open, apart from for takeaway and deliveries.

It was also noted on the Police representation that on the 1 February 2021 the till had recorded 10 tables served on this date, which added to the evidence that the premises had been open and a number of people in attendance on that date.

Graham Hopkins, Agent, outlined his representation to the application for a review, as follows:

- Mr Ozbek had operated the premises since 2014, which was a restaurant and lounge catering for a maximum of 60 people, employing 15 members of staff.
- The dining service was currently operated as a takeaway and click and collect delivery service as well as a home delivery shisha service.
- There had been fewer staff on the premises during the pandemic, with 2 in attendance on the 1<sup>st</sup> February 2021 when the Police visit took place.
- Evidence was shown from the media company, detailing that they were paid by the operators on a weekly basis.
- Mr Ozbek denied breaking any rules on the 1<sup>st</sup> February 2021 and felt that there was insufficient evidence to back up the Police representation.
- The Police had not requested to view the CCTV footage before the time had elapsed.
- The media company had been booked in to attend the premises between 17.00 - 20.00, in order to take new photos and update the menu. The props for the photo shoot had been left on the tables and not cleared up after the session. Mr Hopkins confirmed that no socialising had taken place during this session.
- It was explained that the front door was open for customers coming to collect their food and that the rear door was closed, due to the rear of the premises being a building site.
- It was reiterated that staff were unable to void till receipts if a customer had failed to turn up and collect their order.

- The shisha pipes had been turned on for the photo shoot and there was no evidence that they had been used on the premises.
- It was only management that were permitted to open and close the shutters at the rear of the premises.
- It was felt that the Police had not met the test to hold the review and not passed the balance of probability test.
- Planning permission had been submitted for the larger premises and therefore the premises in its current form did not exist.
- It was felt that given the circumstances and lack of substantial evidence, a revocation or suspension of the licence was not appropriate.

In response to a question from the Committee regarding the witness statement, Mr Hopkins stated that the witness statement was not backed up by substantial evidence and that the Police officer in attendance had not actually seen anyone inside the premises during their visit. He added that individuals would not be able to exit via the rear of the premises as suggested, as this was currently a building site.

The Committee suggested that the provision of the relevant CCTV would be beneficial for both parties. In response, Mr Hopkins stated that the burden of proof was on the applicants and the Police and that the operators had not been asked for the CCTV footage.

In response to a question regarding the gambling materials found at the premises, it was explained that the poker table had been brought in as part of the photo shoot taking place at the premises, which they had subsequently decided not to use and had forgotten to take away. The Committee noted that the premises did not have a gambling licence.

Discussion took place surrounding the photo shoot at the premises and the Committee questioned why this had not taken place in the daytime, in natural light. In response, Mr Ozbek explained that the company had brought their own lighting set up.

Further questioning took place regarding the rear exit of the premises, as it was suggested that the barman did not know how to operate the shutter at the rear, however it was alleged that he had closed the shutter when the individuals had left the premises by the rear exit. In response, Mr Hopkins stated that no one else had a key for the premises apart from the Premises Licence Holder and reiterated that the rear garden was not in use and was a building site. The Committee were concerned about the fire risk posed by this position, in the event of a fire.

Further clarification was given regarding the till receipts and Mr Ozbek stated that the receipts were from delivery takeaway orders that had not been collected and that it was only management that were permitted to void items on the system.

Discussion took place surrounding the use of shisha pipes at the premises and also by delivery and whether these would be delivered hot, given that the 12 shisha pipes found on the premises during the Police visit on the 1<sup>st</sup> February 2021 were hot. In response, Mr Ozbek advised that the shisha pipes found at the premises were being used for the photo shoot and that the premises offered 12 different types. He added

that the shisha pipes would not be delivered hot as this would pose a health and safety risk and would be delivered in a bag by their courier.

The Committee questioned the proposed menu change and new photos taking place during a lockdown, given that the Government had advised operators to offer a reduced menu for takeaway. In response, Mr Ozbek stated that the company regularly took photos for the business and that the menu had been changed on a number of occasions. The menu had also been changed on Uber Eats, Deliveroo and their own website. Mr Ozbek also stated that pre-Covid, the company had visited every 2 weeks and that during the pandemic they had visited less frequently.

Further questioning took place regarding the CCTV and the Police confirmed that it was a requirement for the premises to provide CCTV as part of their licensing conditions. Mr Hopkins reiterated that the burden of proof was not on the operators of the premises.

The Committee raised concern that the CCTV was not available given that the operators would have been aware that an application for a review had been submitted. In response, Mr Hopkins stated that the CCTV footage was only kept for a period of 30 days and that the operators would have kept the footage if they had known a review application was coming.

Mr Cone suggested that the premises did not have any contract with any food delivery service and also questioned why there was a poker table found at the premises when they did not have a gambling licence and promoted themselves as a restaurant. Mr Cone also raised concern about the fixed penalty notice being paid and not challenged, if the operators were confident that the incident had not taken place.

In response, Mr Hopkins stated that the operators had felt that it was easier just to pay the fixed penalty notice. He stated that the premises did have an Uber Eats account and explained that they rented out the shisha equipment, as shown on their Instagram account. With regard to the poker table, Mr Ozbek stated that this was suggested as a prop by the media company and he trusted their judgement and ideas on new ways of marketing their establishment.

It was noted that the premises was currently undergoing major refurbishment and the Committee questioned whether an application had been submitted for this. In response, it was explained that the properties at 365-367 Green Lanes were being merged together in order to build a larger restaurant and bar/lounge. Daliah Barrett confirmed that a new premises licence would be required for this new premises. It was confirmed that a planning application had been lodged for these works.

In summing up, Mr Cone felt that the operators could have prevented the application for a review of the premises licence if they had submitted the CCTV footage. He also felt that the evidence presented by the Police was being challenged and dismissed. Given the comprehensive evidence presented in support of the review application, he recommended a suspension or revocation of the licence.

PC Ewart felt that there was sufficient evidence to support the application for a review of the premises licence. He also believed that there was sufficient evidence detailed in the representations to indicate that there had been people on the premises on the 1<sup>st</sup>

February 2021. PC Ewart felt that the licensing objectives had been undermined and that the operators had placed an added public health risk to the community and potentially added to the number of Covid cases in the local area. He added that he believed the Designated Premises Supervisor was not a fit and proper person and that he had no faith in the operation of the premises or that they would uphold the licensing objectives.

Public Health stated that it was important to take the public health risk seriously.

Mr Hopkins stated that the Designated Premises Supervisor was unaware of the review application being submitted otherwise he would have retained the CCTV footage. Mr Hopkins reiterated that the burden of proof was on the applicants and that there was no photo evidence. He also stated that there was a building site at the rear of the site and therefore individuals would not have been able to leave the premises from this exit. He believed that it would be disproportionate to revoke the licence as the premises as it currently stood no longer existed.

Mr Cone questioned whether Mr Hopkins or Mr Ozbek had viewed the body worn camera footage and Mr Hopkins confirmed that they had not. Daliah Barret stated that the representations detailed in the agenda carried significant weight and that the premises was still in existence and that the expanded area was subject to a further licence requirement.

## **RESOLVED**

The Licensing Sub Committee carefully considered the review application and representations put before it, the Council's statement of licensing policy, the Licensing Act 2003, and the section 182 Licensing Act 2003 guidance.

In light of the evidence it heard, the Committee decided it was appropriate and proportionate to revoke the licence.

## **Reasons**

Having heard evidence from the Responsible Authorities, namely the Local Authority Environmental Health/Trading Standards, Local Authority Public Health, and the Police, the Committee was satisfied that there had been a failure on the part of the licence holder to promote and uphold the licensing objectives relating to crime and disorder, public safety and public nuisance.

The Committee gave the following reasons for the revocation of the licence:-

- The Committee observed that although the explanations given by the Licence Holder for the breach of licensing objectives were convenient for him, they were clearly not credible.
- With regard to the CCTV, which was not provided to the Police, the Committee noted that the license holder sought to rely on the CCTV without providing it. If the licence holder believed that this evidence would have exonerated him then

he should have provided it an early stage rather than seek to rely on it at a time when it had ceased to be available.

- The Committee believed that a serious risk to public health could result from the unlawful mixing of separate households indoors, during a pandemic and national lockdown. Such high risk behaviour could not be ignored by the Committee.
- The Committee believed that the Premises Licence Holder had shown a wilful disregard of the licensing objectives and was not a suitable Designated Premises Supervisor. The licence holder had been operating for some time and was familiar with the obligations that the Licensing objectives impose with regard to operating responsibly but chose to ignore them.
- The evidence before the committee was that the licence holder had operated unlawfully during the Covid emergency more than once. It was notable that the licence holder elected not to challenge the fixed penalty notices imposed by the authority for operating unlawfully.

The committee found the evidence of the responsible authorities to be credible, but could not say the same for the evidence put forward on behalf the licence holder. The Committee had lost confidence in the licence holder's ability to comply with and uphold the conditions on his licence

Having considered the evidence of the police and other responsible authorities and the conduct of the licence holder, the committee was satisfied that there had been a failure to uphold the licensing objectives, and on this review, in response to the unlawful activities put before it, the committee was satisfied that it was appropriate to revoke the license.

The Committee only made its decision after considering all the evidence and was satisfied that the licensing objectives were being undermined. The revocation of the licence was an appropriate and proportionate response to the matters that were put before it.

### **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 Peter Mitchell

Signed by Chair .....

Date .....