

Licensing Sub-Committee

Meeting held on Thursday, 11 August 2022 at 10.30 am. This meeting was held remotely.

MINUTES

Present: Councillors Patsy Cummings, Margaret Bird and Nina Degrad

Also Present: Michael Goddard (Head of Environmental Health, Trading Standards and Licensing); Jessica Stockton (Solicitor and Legal Advisor to the Committee); Tariq Aniemeka-Bailey (Trainee Democratic Services Officer) and Jayde Watts (Trainee Democratic Services Officer)

PART A

117/22 Appointment of Chair

Councillor Nina Degrad nominated Councillor Patsy Cummings as Chair and Councillor Margaret Bird seconded the motion.

The Sub-Committee **RESOLVED** to appoint Councillor Patsy Cummings as Chair for the duration of the meeting of the Sub Committee.

118/22 Disclosure of Interests

There were none.

119/22 Urgent Business (if any)

There were no items of urgent business.

120/22 LICENSING ACT 2003 - Application for a premises licence at 19 High Street, South Norwood, SE25 6EZ

The Licensing Sub-Committee considered the Application for a Premises Licence at **19 HIGH STREET, SOUTH NORWOOD, SE25 6EZ** and the representations received as contained in the report of the Corporate Director, Sustainable Communities, Regeneration & Economic Recovery, the additional documentary and audio evidence submitted by the Parties to the hearing prior

to the hearing and the information incorporated in the supplementary documentation published as an addendum to the report.

The Sub-Committee also considered the representations made by the Applicant and the objectors and their representatives during the hearing. The Sub-committee noted that whilst not all those making representations were before the Sub-Committee at the hearing, it had the benefit of their written representations and had regard to these in reaching its decision.

The Sub-Committee, having reference to the licensing objectives under the Licensing Act 2003 (“the Act”) and the Council Licensing Policy, **RESOLVED to GRANT** the application as amended subject to conditions set out in the Applicant’s operating schedule, in Appendix A2 to the report and as detailed below in paragraph 13 on the basis that the Sub-Committee were satisfied that it would be appropriate to promote the licensing objectives to do so. The Sub-Committee considered that the objective of the prevention of public nuisance was particularly relevant in relation to the consideration of the matter.

The reasons of the Sub-Committee were as follows:

1. The Sub-Committee noted that the premises are situated on the A213 in a parade of shops with residential premises above and were surrounded by residential premises, including three blocks of flats nearby and a nursing home in close proximity to the premises. There was also a parade of shops on the other side of the road, also with residential premises above them.
2. As set out in the Council’s statement of Licensing Policy and in the Statutory Guidance to which the Sub-Committee must have regard in considering matters under the Act; the planning and licensing regimes involve consideration of different matters. The Sub-Committee noted that planning permission is currently outstanding in respect of the premises but that this would not preclude the Licensing Sub-Committee from making a determination regarding Licensing matters under the Licensing Act 2003. The Licensing Sub-Committee were clear that they are not able to make determinations pertaining to planning or building control matters – for example the nature or suitability of a building from a planning or building control perspective, the “change of use” arguments, the flue or siting thereof, the sufficiency of facilities and the parking situation are not matters for the Licensing Sub-Committee to consider or determine, nor is the Licensing Sub-Committee bound by decisions made by a planning committee, and vice versa. However, there are circumstances when, as a condition of planning permission, a terminal hour has been or is subsequently set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission could be liable to prosecution under planning law. Similarly, an operator who acts contrary to the conditions on their license under the Act could also

be liable for prosecution and their license could be subject to review. The Sub-Committee wished to make clear to residents that such a review could be triggered not only by responsible authorities under the Act, but also by residents where there was evidence that there had been a failure to adhere to conditions on the license or that the licensing objectives were being compromised by the actions of the operator at a licensed premises.

3. The Sub-Committee were also mindful of the statutory guidance which provides that the permitted capacity is a limit on the number of persons who may be on the premises at any time, following a recommendation by the relevant fire and rescue authority under the Regulatory Reform (Fire Safety) Order 2005 and the sub-committee noted that they had no representations from the London Fire Brigade as responsible authority in this regard even though they were consulted on the application as a responsible authority.
4. The Sub-Committee noted that the Applicant had been in discussion with the Police regarding the application and had consequently amended their application to reduce the proposed hours to those detailed in paragraph 1.2 of Appendix A1 of the report, with no seasonal variations to those timings and in addition, had amended their application to include that the conditions at Appendix A2 be placed on the license should the Sub-Committee be minded to grant the application. Consequently, there were no objections from the police in relation to the application.
5. The Sub-Committee noted that there were similarly no objections from the Pollution Team before them in relation to noise or other nuisance issues, however they did have before them concerns raised by residents that there was the potential for noise disturbance to be created for them simply by virtue of the operation of a premises license for the times requested, at the location.
6. The Sub-Committee had regard to the representations that indicated there were a number of families with young children in the surrounding area and the presumed detrimental impact which noise nuisance would have on them given the proposed late hours of operation. As provided in paragraph 2.22 of the Statutory Guidance, the Sub-Committee noted that the protection of children from harm includes the protection of children from moral, psychological and physical harm however, beyond the presumption by residents that the premises would result in noise nuisance, the sub-committee did not have before it any evidence relating to the proposed operation of the premises or the Applicant as operator which indicated that this would transpire or impact on the protection of children from harm objective. The Sub-Committee noted that the Applicant ran a restaurant across the road from this proposed premises and there had been no issues reported to the Sub-Committee with regard to the operation of that premises in terms of noise nuisance

or crime and disorder, which the Sub-Committee would have expected if it presented an issue for residents.

7. The Sub-Committee also noted the applicant had made provision, in the extensive operating schedule, for the following which the Sub-Committee considered indicated a willingness to work with residents and the community:

“A telephone number will be made available to any local resident or member of the public if any matters of concern arise in relation to the operation of the premises, and this will reinforce the assurances the management have already given to some local residents”

Residents are urged to make use of this facility if they experience issues so that this can be appropriately managed by the premises.

8. In respect of Prevention of Public Nuisance, the Sub-Committee noted the importance of focussing on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable, as is suggested by the Statutory Guidance. The statutory guidance specifically references the more sensitive period of the evening, namely between 11pm and 8am in this regard.
9. The Sub-Committee were aware, and had reference to the Statutory Guidance which provides that, beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in antisocial behaviour is accountable in their own right. However, as made clear in the statutory guidance, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, and to respect the rights of people living nearby to a peaceful night. The Sub-Committee noted that the Applicant had already offered, as part of the proposed conditions to have such conditions on the license if granted and would have a dispersal policy in place to secure the safe and appropriate dispersal of patrons from the premises. In addition, the applicant had proposed conditions around litter and waste storage designed to minimise nuisance to neighbours. Provision was also made that the placing of bottles into receptacles outside the premises by staff would take place at times that will minimise disturbance to nearby residents. The Sub-Committee considered that these were all positive noise nuisance mitigation measures in terms of the Licensing Act activities.
10. The Sub-Committee noted the audio evidence submitted by the Parties which demonstrated the low level of ambient noise which can be experienced by residents currently in the area after midnight. The sub-

committee noted in this regard that the Applicant had undertaken soundproofing of his premises, indicated that the premises was to be operated as a lounge and bar rather than as a nightclub and the proposals outlined by the Applicant during the hearing that no use would be made of outdoor rear areas at the premises or the alleyway, although smoking would be permitted to the front of the premises under oversight of security to ensure minimum disturbance in the area, and that the music in the ground floor areas of the premises would cease at 11pm at night whilst continuing in the basement areas of the premises.

11. The Sub-Committee were also pleased to hear that even where the Applicant let the premises for hire for occasional private functions, the ID checks proposed for the premises would still be taking place and management from the premises would still be in attendance to ensure that the venue was appropriately managed and license conditions adhered to, during the hire.
12. The Sub-Committee considered whether it would be appropriate to impose further conditions in order to address the concerns raised. The Sub-committee took into account the provisions within the Statutory Guidance at paragraph 9.44 regarding the imposition of conditions and noted that determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions) as well as the potential benefit in terms of the promotion of the licensing objectives. The above referenced paragraph also suggests that the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business.
13. The Sub-Committee were made aware via the representations that there is a door that leads from the main ground floor unit that opens direct on to the alleyway opposite two of the doors to residential units and the concerns that not only would any access or egress from this door cause noise nuisance but also that it could potentially be used to circumvent the security and safety measures which the Applicant proposed putting in place at the front entrance of the premises. The Applicant indicated to the Sub-Committee that this side doorway was only to be used for emergency exit purposes. The Sub-committee considered that the concerns of the residents regarding the use of the alleyway engaged their discretion in relation to potential public nuisance and the risk of this doorway being used by Patrons for access and associated safety concerns. The Sub-Committee considered that condition 19 agreed with the police, namely that "No customers shall congregate in the side/service alleyway which runs adjacent to the

premises to either smoke or drink. This area must remain clear at all times”, goes some way to addressing the residents’ concerns about the alleyway and the doorway access. However, the Sub-committee considered that it would be appropriate to impose a further condition in relation to the access and egress from this door. Accordingly, the Sub-Committee imposed the following condition:

“The door/s to the side of the premises shall only be used by patrons for emergency exit purposes.”

14. The Sub-Committee were impressed by the Applicant and his dedication to the community and the manner in which he had operated his restaurant across the road from this proposed premises and noted that there were no licensing issues raised in relation to this Applicant or in relation to the application under consideration in terms of the manner in which the applicant proposed to operate his premises. In this regard the Sub-Committee noted that the Applicant’s history of working with and in the community in the area and expressed desire that this proposed premises be operated to ensure that relationship continued.
15. The Sub-Committee wished to thank all participants for the manner in which they engaged with and supported the hearing in providing information to allow the Sub-Committee’s consideration.

121/22 **LICENSING ACT 2003 - Application for a premises licence at 77-79 Mitchley Avenue, Croydon, CR2 9HN**

The Licensing Sub-Committee considered the Application for a Premises Licence at **77-79 Mitchley Avenue, Croydon, CR2 9HN** and the representations received as contained in the report of the Corporate Director, Sustainable Communities, Regeneration & Economic Recovery.

The Sub-Committee also considered the representations made by the Applicant and their representative during the hearing. The Sub-committee noted that whilst those making representations were not before the Sub-Committee, it had the benefit of their written representations and had regard to these in reaching its decision.

The Sub-Committee, having reference to the licensing objectives under the Licensing Act 2003 and the Council Licensing Policy, **RESOLVED to GRANT** the application as amended, subject to the conditions set out in the operating schedule and those set out in Appendix A2 to the report on the basis that the Sub-Committee were satisfied that it would be appropriate to promote the licensing objectives to do so. The Sub-Committee considered that the objective of the prevention of public nuisance was particularly relevant in relation to the consideration of the representations on the matter.

The reasons of the Sub-Committee were as follows:

1. The Sub-Committee noted that the premises are situated on the A2022 in a parade of shops, comprising only two other premises with residential premises above and surrounding the premises on all sides with gardens of residential premises backing onto the rear of the premises.
2. The Sub-Committee had regard to the Council's Statement of Licensing Policy which provides that the Council will treat each case on its individual merits, however, in general, it will not grant permission for licensable activities beyond 2330 hours on Sundays to Thursdays and Midnight on Fridays and Saturdays in respect of public houses situated in areas having denser residential accommodation. The Council would expect good reasons to be given to support any application for extensions beyond these hours, including addressing possible disturbance to residents. The Sub-Committee were mindful that although this area was certainly one of denser residential accommodation, the proposed premises license was not for a public house but for a restaurant which sought on sales of alcohol, which sales would only be made with a table meal.
3. The Sub-Committee noted that following discussions with the Police and the Council's Trading Standards team, the Applicant had amended their application to have the conditions set out at Appendix A2 to the report placed on their license if the Sub-Committee were minded to grant the application.
4. The Sub-Committee noted the representations that indicated there were proposals to offer drinking and dining in the rear courtyard of the premises as well as on the pavement. The Sub-Committee were clear that this was not the application before them for consideration and in addition, any use of the pavement would, unless it was private forecourt, be subject to application for use under a different licensing regime if the Applicant wished to make use of it in that way.
5. In respect of Prevention of Public Nuisance, the Sub-Committee noted the importance of focussing on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable, as is suggested by the Statutory Guidance.
6. The Sub-Committee were aware and had reference to the Statutory Guidance which provides that, beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in antisocial behaviour is accountable in their own right. This was particularly relevant in relation to the apparent existing issue expressed by the objectors of "genital exposure and public urination" on the private road behind the premises. The Sub-Committee were clear that even if this is

an issue, this is not a matter within the control of the premises even where a license has been granted.

7. The Sub-Committee noted that the nature of the premises was proposed to be a fine dining restaurant which would only be serving alcohol with food and that alcohol sales would be ancillary to a table meal.
8. The Sub-Committee also noted that some of the matters raised in the representations were not matters which were within the remit of the Licensing Sub-Committee or Licensing Act– for example in relation to the change of use/appropriateness of use of the premises, which is a matter for planning and covenants, which are matters of private law.
9. The Sub-Committee considered whether it would be appropriate to impose conditions in order to address concerns raised in the representations. The Sub-committee took into account the provisions within the Statutory Guidance at paragraph 9.44 regarding the imposition of conditions and noted that determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions) as well as the potential benefit in terms of the promotion of the licensing objectives. The above referenced paragraph also suggests that the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. In light of the above and given the representations received and conditions already proposed to form part of the license if granted, the Sub-Committee did not consider that it was appropriate for the promotion of the licensing objectives to impose any additional conditions.
10. The Sub-Committee wished to thank all participants for the manner in which they engaged with and supported the hearing in providing information to allow the Sub-Committee's consideration.

122/22 **LICENSING ACT 2003 - Application for a premises licence at 290 Lower Addiscombe Road, CR0 7AE**

The Licensing Sub-Committee considered the Application for a Premises Licence at **290 Lower Addiscombe Road, CR0 7AE** and the representations received as contained in the report of the Corporate Director, Sustainable Communities, Regeneration & Economic Recovery.

The Sub-Committee also considered the representations made by the Applicant during the hearing. The Sub-committee noted that whilst those making representations were not before the Sub-Committee, it had the benefit of their written representations and had regard to these in reaching its decision. The Sub-Committee noted that the written representations comprised those which were in support of the proposed premises as well as those which opposed the premises license application.

The Sub-Committee, having reference to the licensing objectives under the Licensing Act 2003 and the Council Licensing Policy, **RESOLVED to GRANT** the application as amended, subject to conditions set out in the applicants' operating schedule and in Appendix A2 and A3 to the report on the basis that the Sub-Committee were satisfied that it would be appropriate to promote the licensing objectives to do so. The Sub-Committee considered that the objective of the prevention of public nuisance was particularly relevant in relation to the representations in opposition of the application.

The reasons of the Sub-Committee were as follows:

1. The Sub-Committee noted that the premises are situated on the A222 in a parade of shops with residential premises above and were surrounded by a number of commercial premises on both sides of the road. There were residential premises, to the rear of the premises along Fernwood Road and Sherwood Road and residential properties diagonally across the A222 along Blackhorse Lane. There are a number of other licensed premises in the area including takeaways, shops and restaurants.
2. The Sub-Committee noted that following discussions with the Police and the Council's Pollution Team, the applicant has amended their application to have the conditions at Appendix A2 and A3 to the report placed on their license if the Sub-Committee is minded to grant the application. These included conditions that there would be no external music played at the premises.
3. The Sub-Committee were pleased to note the engagement which the Applicant had undertaken with residents, businesses in the surrounding area and responsible authorities in considering how the proposed premises would impact on the area including the obvious consideration given to those living above the premises which the Applicant had demonstrated.
4. The Sub-Committee had regard to the Council's Statement of Licensing Policy which provides that: "Croydon has a diverse residential community and needs to be able to offer that community venues that meet its needs, offering as wide a range of entertainment, food and leisure as is possible" in addition, "The Council recognises that the diversity of premises selling alcohol, serving food and providing entertainment covers a wide range of contrasting styles and

characteristics and will have full regard to those differences and the differing impact these will have on the local community.”

5. In respect of Prevention of Public Nuisance, the Sub-Committee noted the importance of focussing on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable, as is suggested by the Statutory Guidance.
6. The Sub-Committee were aware, and had reference to the Statutory Guidance which provides that, beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in antisocial behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, and to respect the rights of people living nearby to a peaceful night. The Sub-Committee noted that the Applicant had already offered, as part of the proposed conditions to have such conditions on the license if granted.
7. The Sub-Committee noted that a number of those objecting had indicated that the premises was proposed to be operated as a “nightclub” however it is clear from the Application and the representations made during the hearing that this is not at all what the proposals for the premises entail. The premises is seeking to operate as a Deli with some artisan goods from local suppliers with space for patrons to sit down and have a drink at the deli if they wish to do so. To this end, the sub-committee specifically noted the following condition which had been agreed:

“The Premises will adopt a no vertical drinking policy; therefore, all alcohol drink purchases will be consumed whilst seated and be subject to table service”

8. The Sub-Committee noted that there was to be background music and occasional live unamplified music. The Sub-Committee were clear that unamplified live music or background music were not licensable activities in the context of this application unless these took place between 11pm – 8am.
9. The Sub-committee took into account the provisions within the Statutory Guidance at paragraph 9.44 regarding the imposition of conditions and noted that determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim

to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions) as well as the potential benefit in terms of the promotion of the licensing objectives. The above referenced paragraph also suggests that the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Having considered the proposed conditions in the operating schedule and the amendments made to incorporate the Conditions at Appendix A2 and A3, the Sub-Committee did not consider that it was appropriate to impose any additional conditions to support the licensing objectives.

10. The Sub-Committee wished to thank all participants for the manner in which they engaged with and supported the hearing in providing information to allow the Sub-Committee's consideration.

123/22 **Exclusion of the Press and Public**

This item was not required.

The meeting ended at 1.35 pm

Signed:

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Date:

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