

From: Barclay Road Residents

Sent: Friday, September 20, 2024 5:22 PM

To: Mckenna Lorna: H&F <Lorna.Mckenna@lbhf.gov.uk>; Licensing HF: H&F <licensing@lbhf.gov.uk>

Cc: Ward Panel Chair Fulham Town [REDACTED]; Cllr Campbell-Simon

Trey: H&F <Trey.Campbell-Simon@lbhf.gov.uk>; Cllr Nwaogbe Genevieve: H&F

<Genevieve.Nwaogbe@lbhf.gov.uk>

Subject: Supplemental for Tues 24 Sept Licensing Hearing reg 51 Fulham Broadway

Supplemental information for the licensing hearing 24 Sept 2024

51 Fulham Broadway SW6 1AE

Attached: 4-page Decision Letter of 21 February 2023 Lic hearing.

1. Promises made, but not kept

I attended the licensing hearing on 21 Feb 2023 and I recall the present Applicant, Mr Prabakaran Schanmugaratnam, promising to the Committee that he would bring 'value' to the situation, were he granted a Premises Licence. I have relistened to parts of the hearing and note that at 1.26:07 he responded to the Chair, Mrs Umeh, who was asking him various questions:

"By the way, please be assured that once I am in the business and I've taken it over it will be a completely different ball game, a completely different picture."

What he promised is reflected in point 16. of the Decision Letter, where it discusses compliance of licensable activities (my underline),

16.The Committee noted the poor licensing history of non-compliance was prior to involvement of the Applicant. The Applicant stated that although he has been the Leaseholder of the Premises throughout the period of breaches and non-compliance, he was not involved in the running of the business and did not take any profits from the business. The Applicant stated that, should the License be granted in this application, he will now take control of the business as a licence holder and Designated Premises Supervisor and will be responsible for the compliance of the licensable activities moving forward.

Our concern is that a breach did in fact occur on Mr. Prabakaran Schanmugaratnam's watch, when he was responsible for the compliance of licensable activities. The breach occurred not only in direct contradiction to his promises to the the Chair tonight (24 Sept), who was also the Chair of the 21 Feb 2023 Licensing hearing, but also in breach of his Premises Licence for 51 Fulham Broadway, which, although rejected by the Licensing Committee on 21 February 2023, was appealed and eventually a time-limited licence was granted via an agreement with the Magistrate's Court.

Background to this breach

The Agenda pack for tonight's hearing, on page 4, states:

"4.1 Enforcement History

On the 17th April 2024 the Licensing Enforcement Team visited the premises and identified a breach of condition. Alcohol was being displayed for sale contrary to the licence terms. An inspection sheet was left at the premises as a warning letter. On the 24th April 2024, the Enforcement Officers monitored the premises, and found no breaches were taking place."

For the Committee's information, 17 April 2024 was the Women's Super League 3-0 Chelsea vs Aston Villa match at Chelsea Football ground.

The Applicant might argue that he rectified the situation, that it was 'only' one breach, or that he forgot that he is not supposed to sell alcohol during certain specific hours, or after certain hours.

The reality is this: Neither the Met Licensing Police nor H&F Council have enough time and money to constantly monitor the ca. 1,000 licensed Premises in our Borough. This was made clear to the applicant at the previous 12 January 2022 licensing hearing, when the applicant said he greeted more in-person monitoring by Police, in order to help his staff understand their legal obligations with respect to the 2003 Licensing Act. It was a resident who made clear to the applicant that the Council's resources are not there to babysit a Premises regularly, let alone sporadically.

We find no comfort in our lack of confidence in this applicant. Unless the Council were to monitor this Premises on a very regular basis, which it cannot, how should the Licensing Committee have confidence in the Applicant's ability to comply with the sale of alcohol hours and specific Conditions relating thereto, and therefore confidence in his ability to fully uphold the licensing objectives? For this very reason, the Application should be rejected. More Conditions or clearer Conditions are not the answer in this case.

What would the judge say? The appeal judge would be sorely disappointed in learning of this breach. The judge saw to it that the Applicant was granted the ultimate life-line via a time-limited Licence in order for the Applicant to prove himself to the Council, Police and other interested parties.

At this point, it would be good to know that the Applicant understands the following from the Licensing Act:

- Breaching a condition of a premises license under the Licensing Act 2003 is a criminal offense. One might say the the Applicant was let off lightly with a warning letter on 17 April 2024.

Penalties: He could face a maximum fine of £20,000 and/or up to six months in prison for each condition he breaches.

License review: As he well knows from the Premises history, a responsible authority or interested party can apply to review his license if they can show that the licensing objectives are not being met.

License revocation: His license could be revoked, suspended, or he could lose hours or licensable activities. He knows this all too well from the Premises' history.

2. Decision Letter of the H&F Licensing Committee 21 February 2023, attached, 4 pages

As further background, I have submitted this decision letter with further history of this Premises, which includes two revocations of licences at this Premises, and which has involved various family members of the Applicant, and subsequently effectively banning certain members from being in any way involved in the business. The summary of between 2018 and November 2021 is at point 12 on page 2 of the 4-pg Decision Letter:

"12. The Committee noted that the Premises licence was initially revoked in December 2018 following an application for a review by the Licensing Authority after multiple licensing breaches and the sale of alcohol to a child. The revocation decision was appealed in early 2019. However, in September 2019 a consent order was agreed by the parties on the basis that the two individuals who managed the Premises previously should not be involved in any licensable activities at the Premises. The two individuals were specifically named in a condition added to the licence to prevent them from being involved with the Premises. In January 2020, during an inspection, one of the individuals named in the condition was found selling alcohol behind the counter and was also seen on CCTV purchasing alcohol from someone who the police later identified as a known shoplifter. The Licensing Authority submitted another application for a review in May 2020 on the grounds of prevention of crime and disorder, the prevention of public nuisance and protection of children from harm. The Premises licence was revoked for the second time by the Licensing Sub-Committee in July 2020 and subsequently appealed again. Further breaches were found in August 2021 which was [sic] included in the Appeal. The appeal was dismissed by Magistrates' Court in November 2021."

The Applicant clarified for the Committee at the Feb 21, 2023 hearing that he is the leaseholder of the property, 51 Fulham Broadway. Very concerning to note is that due to previous breaches, the Conditions agreed in September 2019 prohibit the Applicant's own mother Mrs Nageswary Shanmugarratnam from being involved in the business and entering the Premises. The exact wording of these Conditions are on the current licence Application being considered on 24 Sept 2024.

3. Request to reject

Fulham Broadway has this year suffered increased, serious crime at licensed Premises, including 51 Fulham Broadway, The Redback (closed, Unlicensed Music Events and squatters), McGettigan's (Police Review on 2 Oct) and the Fulham Broadway Bar and Grill (closed ongoing, squatters).

Fulham Broadway needs Premises Licence holders who uphold the law. The Applicant has, again, disappointed the Authorities, and put undue burden on finite resources to monitor his Premises during his limited licence period, a trial period of sorts that has not worked out as promised.

Selling alcohol when you are not supposed to sell alcohol allows the word out quickly around the neighbourhood that 'goods' are available out of hours. This info flies quickly and takes hold on social media. This was a safeguarding problem at this very Premises in the past, especially with the children from the Samuel Lewis Trust housing complex so close to the Premises.

The Applicant has proved that he does not have enough control over his own Premises and thus breaches of very clearly stated Conditions can easily occur. Selling outside of stated hours is a huge, huge breach; it is really what the entire Licence is about, ie during which hours you are allowed to sell alcohol and what you need to do to sell it correctly, within the law. The Applicant should have been very, very careful during the duration of his time-limited licence; he was not—reason enough and evidence enough to reject the Application.

Thank you to Councillors Umeh, Harcourt and Stanton here tonight, from residents of Barclay Road.

██████████ with and for Barclay Road Conservation Area Neighbourhood Watch

The London Borough of Hammersmith and Fulham

Decision of the Licensing Sub-Committee (“the Committee”)

21 February 2023

Broadway Food and Wine, 51 Fulham Broadway, London SW6 1AE (“the Premises”)

The Committee has considered an application for a new premises licence for the sale of alcohol off the premises under the Licensing Act 2003 (“the Application”)

The Committee has considered the committee papers and the submissions made by all of the parties, both orally and in writing.

In reaching its decision the Committee has had regard to the relevant legislation, the Secretary of State’s Guidance (“Guidance”) and the Authority’s Statement of Licensing Policy (“SLP”).

In summary, the Committee has decided, after taking into account all of the individual circumstances of this case and the promotion of the four licensing objectives to reject the whole of the Application.

Procedural Matters

1. On 10 November 2022, Mr Graham Hopkins of GT Licensing Consultants submitted an application on behalf of Mr Prabakaran Shanmugaratham (“the Applicant) for a new premises licence in respect of the Premises known as Broadway Food & Wine, 51 Fulham Broadway London SW6 1AE.
2. The Applicant applied for a new licence for the sale of alcohol off the premises only as outlined below:

Sale by retail of alcohol off the premises

Mondays to Sundays 10:00 - 23:00

Proposed Opening Hours of the Premises

Mondays to Sundays 08:00 - 02:00

3. The Metropolitan Police, a responsible authority, did not object to the Application but agreed with the Applicant in advance of the hearing that the licence should be time limited and for the inclusion of five conditions.
4. The Health and Safety Authority did not object to the Application but recommended a condition to be added to the Licence in the event that the Application was granted. The Applicant agreed in advance of the hearing to the inclusion of the condition.
5. The Trading Standards Authority did not object to the Application but recommended a condition to be added to the Licence in the event the Application was granted. The Applicant agreed in advance of the hearing to the inclusion of the condition.
6. One representation objecting to the Application was received from the Licensing Authority, on the grounds of the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm. Mr Adrian Overton attended the hearing on behalf of the Licensing Authority.
7. One representation objecting to the Application was received from the Head of Safeguarding Authority, on the grounds of the protection of children from harm.

8. Eight representations objecting to the Application were received from local residents on the grounds of the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm. [REDACTED] attended the hearing speaking on behalf of [REDACTED] and two other residents. [REDACTED] are local residents who also attended the hearing.
9. The Applicant attended the hearing and was represented by [REDACTED], the agent.

Reasons

10. In making its decision the Committee has taken into account all relevant sections of its SLP and the Section 182 Guidance, as well as local knowledge.
11. The Committee was mindful that Section 4 of the Licensing Act 2003 imposes a duty on the Licensing Authority, when carrying out its functions to determine the application with a view to promote the licensing objectives.
12. The Committee noted that the Premises licence was initially revoked in December 2018 following an application for a review by the Licensing Authority after multiple licensing breaches and the sale of alcohol to a child. The revocation decision was appealed in early 2019. However, in September 2019 a consent order was agreed by the parties on the basis that the two individuals who managed the Premises previously should not be involved in any licensable activities at the Premises. The two individuals were specifically named in a condition added to the licence to prevent them from being involved with the Premises. In January 2020, during an inspection, one of the individuals named in the condition was found selling alcohol behind the counter and was also seen on CCTV purchasing alcohol from someone who the police later identified as a known shoplifter. The Licensing Authority submitted another application for a review in May 2020 on the grounds of prevention of crime and disorder, the prevention of public nuisance and protection of children from harm. The Premises licence was revoked for the second time by the Licensing Sub-Committee in July 2020 and subsequently appealed again. Further breaches were found in August 2021 which was included in the Appeal. The appeal was dismissed by Magistrates' Court in November 2021.
13. The Committee noted concerns from the Licensing Authority who objected on the basis of the previous adverse enforcement history as stated above. The Licensing Authority expressed their concern that although the Applicant was not named on the previous licences for this Premises, they are concerned that the previous owners who are close family contacts of the Applicant may still have an influence and some involvement in the running of the Premises. Therefore, this may lead to further non-compliance in future. The Committee noted that although this Applicant was not the same as the previous applicants who had the multiple breaches, the Committee gave weight to the fact the Applicant is a close family member of the previous owners who could remain involved in the running of the Premises.
14. There were concerns raised by the local residents regarding antisocial behaviour on the residential estate close to the Premises and were objecting on the basis of the prevention of crime and disorder and the protection of children from harm. The local residents stated that the Premises has contributed to the public nuisance and anti-social behaviour in the area by selling cigarettes to children, exacerbating the vulnerabilities of the children in the area. One local resident stated they believed mothers on the residential estate would like the Premises to be banned due to the harm caused by selling alcohol to young people.

15. The local residents further raised concerns relating to the cumulative impact of licensed premises in the area. They stated the area already has multiple off licence shops. However, the Premises is not located in a cumulative impact zone and the Council does not currently have cumulative impact policy in place. There were concerns that the Applicant had not paid the debt owed from the costs awarded to the Council following the dismissal of their appeal in Court. The Applicant noted that he was not the Applicant during that Court matter therefore he was not liable. In any event, it was not a relevant Licensing consideration for the determination of this Application.
16. The Committee noted the poor licensing history of non-compliance was prior to involvement of the Applicant. The Applicant stated that although he has been the Leaseholder of the Premises throughout the period of breaches and non-compliance, he was not involved in the running of the business and did not take any profits from the business. The Applicant stated that, should the License be granted in this application, he will now take control of the business as a licence holder and Designated Premises Supervisor and will be responsible for the compliance of the licensable activities moving forward.
17. The Committee noted that the Applicant agreed to the conditions to improve the Premises in the last application and the changes have not been implemented since the last premises license application by the Applicant. The Committee queried the plans the Applicant intends to put in place as he made the same comments in the previous licensing hearing and has not implemented any of the recommendations. The Applicant stated that as he was not involved in the running of the business, he is reluctant to take control of the Premises without a licence in place to safeguard his investment. He stated that he is fearful that he will lose money if he takes over the Premises and cannot secure the licence. He stated the alcohol licence is a valuable part of the Premises to make the business viable.
18. The Committee noted from the Applicant that they liaised with Police and other responsible authorities and offered a full list of robust conditions to be added to the license should it be granted. The conditions proposed by the Applicant in advance of the hearing included conditions such as providing CCTV and not selling high strength beers to deter street drinkers. The Applicant stated he has attended training and accepted the additional conditions suggested. The Licensing officer Adrian Overton confirmed that he has worked with the Applicant in the past with training and confirmed the Applicant has attended meetings in relation to the application he made.
19. The Committee noted that the Applicant had agreed with the police in advance of the hearing to a time limited license of 12 months and for 5 conditions to be added to the licence. The conditions required Suganthan Sinnathurai, Mr Thayalan Ratnam and Mrs Nageswary Shanmugaratnam not be employed at the Premises or be able to enter the premises when licensable activities are taking place. This condition had been added to the previous applications and was breached. The conditions further required training for staff on a regular basis and record keeping of the training as well as for the sale of alcohol to be stopped on matchdays of Chelsea Football Club for a period specified before and after the match.
20. The Committee noted that the Applicant further agreed in advance to the hearing to one condition suggested from the Council's Health and Safety team and one condition from the Trading Standards team. The condition from the Health and Safety team agreed by the Applicant was that the Applicant would submit a safety management plan to satisfy the Licensing Authority that business can run safely and address the licensing objectives, provide a record of pre-opening inspection confirming the safety of the Premises for public use and a written confirmation that the documented safety management system will be provided on request to Council officers. The trading standard condition agreed was that

the Licence, if granted, would not come into effect until the written confirmation from the Licensing Authority, Police and Trading Standards team that Premises could operate within the terms and conditions of the Premises Licence.

21. The Committee noted that the Police and Trading standards had withdrawn their objection on the basis of the conditions agreed in advance of the hearing. However, the Committee noted that Trading Standards in their letter dated 8 December 2022 on page 46 of the Committee bundle had concerns and recommended a time limited Licence if the Application was granted.. The Committee further gave weight to the Licensing Authority who remained concerned about this application and did not withdraw their objection. The Committee gave weight to the Licensing Authorities concerns that that the Applicant is a family member of the previous owners who had committed several breaches and feared they would continue to be involved in the running of the business and licensable activities although the conditions have been put in place.
22. The Committee noted that the objections of the local residents were in relation to the protection of children from harm. The Committee noted the Premises failed two age restricted goods test purchases in August 2022 and October 2022 after the last premises licence application made by the Applicant was rejected. The Committee noted the concerns of the local residents and do not believe that the Applicant would be able to resolve the issues to promote the licensing objectives, for the reasons stated above.
23. Taking all the above into account it was the Committee's considered opinion that the Applicant as a licence holder would not be able to implement the changes required to promote the licensing objectives of the prevention of crime and disorder, the protection of children from harm and the prevention of public nuisance. The Committee considered it was appropriate and proportionate to refuse the whole application.
24. If any of the parties are unhappy with the decision, they are entitled to appeal to the magistrates' court within 21 days from the date of notification of this decision.

Licensing Sub-Committee
21 February 2023