

Licensing Sub-Committee

Minutes

Monday 12 March 2012

PRESENT

Committee members: Councillors Victoria Brocklebank-Fowler (Chairman), Michael Cartwright and Matt Thorley

Other Councillors: PJ Murphy (Interested Party)

Responsible Authorities: Police Sergeant Ratcliffe, Licensing Sergeant for Hammersmith and Fulham; Phillip Rathbone, Environmental Protection Officer, London Borough of Hammersmith and Fulham

Interested Parties who had made a valid representation: James Ball, Rosemary Pettit, Lady Fiona Savory, Annabel Clark, Robert and Michele Jaffe-Pearce, Frank Colcord

Applicants: Shazli Hamid, applicant, Aiden Griggs, counsel for the applicant, and Afsana Rahim, solicitor for the applicant

Officers: Owen Rees, Committee Coordinator, Janette Mullins, Legal Adviser, and Lewis Aldous, Licensing Officer

1. APOLOGIES FOR ABSENCE

There were none.

2. DECLARATIONS OF INTEREST

Councillor Murphy declared an interest as an interested party, as a local resident. He had made a representation as such.

3. MEZAZIQ, 163 GOLDHAWK ROAD, LONDON, W12 8EN (APPLICATION NUMBER: 2012/00083/LAPR)

The Sub-Committee received and considered an application for a new premises licence at Mezaziq, 163 Goldhawk Road, London, W12 8EN.

Main Points of Evidence

Licensing Officer

Lewis Aldous, Licensing Officer, introduced the application, and set out the order in which the papers had been presented.

The Chairman asked whether the applicant intended to show films during the day. Aiden Griggs, Counsel for the applicant, said that there was no intention to apply for a films' licence.

In response to a question from the Chairman, Mr Aldous confirmed that the premises were in the Shepherds' Bush Cumulative Impact Zone, also known as a saturation zone, due to the concentration of licensed premises. The Zone had been established following the Council's adoption of a Cumulative Impact Policy, under the Section 182 Guidance issued under the Licensing Act. The Zone made it incumbent on applicants to explain how a premises would not exacerbate the problems caused by existing provision before a licence could be granted.

He also confirmed that the premises did not have a garden, meaning that smokers would have to use the front of the premises, and that no tables and chairs licence had been applied for.

Responsible Authorities

Metropolitan Police

Police Sergeant Ratcliffe, Licensing Sergeant for Hammersmith and Fulham, said that there were three key concerns with the application. Firstly, he said that he objected to the proposed sale and use of shisha at the premises. He said that shisha was illegal, by virtue of failing to meet standards on advertising and health warnings on tobacco products, and had not had duty paid on it. Moreover, as a tobacco product, it could not legally be smoked indoors. He said that, while there were loopholes which allowed the importation of the product, at a practitioner level, police and council officers took a robust enforcement position.

Councillor Cartwright asked if shisha always contained tobacco. PS Ratcliffe said that it did, shisha being flavoured tobacco smoked through a hookah pipe.

He continued that the smoking of shisha was therefore antithetical to the prevention of crime and disorder, and could not be allowed. He said that premises allowing the smoking of shisha were also a source of related anti-social behaviour, as demonstrated by problems in Hetley Road, and that it had taken a number of months to see that problem premises were closed.

He said that this concern was key to the police's objection to the application.

He said that the second area of concern was the failure of the applicant to adequately address the demands of the Cumulative Impact Zone. He said that the third area of concern related to recent experiences of the premises. He said that he had attended the premises with a Council officer one evening, and had seen 2 young men enter. He had then knocked on the door for some time, and had received no response; he said that the doorway was covered by a CCTV camera.

He said that the smell of shisha emanated from the premises. He said that, later that evening, a police and environmental protection officer had attended the premises and been allowed entrance. Once inside, they smelled what they believed to be shisha smoke.

Finally, PS Ratcliffe said that decor of the premises, which included heavy drapes, could result in a fire hazard if shisha was smoked inside.

Environmental Protection

Phillip Rathbone, Environmental Protection Officer, said that, in addition to those concerns already cited, it was Environmental Protection's view that the hours requested would result in public nuisance. He said that, further to that, was a concern that the operation of the premises as proposed would have the effect of exacerbating the problems suffered in the Cumulative Impact Zone, while further spreading those problems to the west.

He then made a number of comments with regards to the proposals made by the applicants to the suggested conditions. He said that Environmental Protection would prefer that recorded music was turned off 1 hour before closure, rather than 30 minutes as suggested, that external doors should not be propped open and that the front area should not be used at any time.

Mr Aldous, on a point of clarification, introduced a map showing the area of pavement owned by the premises. Mr Rathbone said that Environmental Protection believed that any uses of this area by customers would result in a nuisance being caused. He noted that the use of tables and chairs would itself require a licence and that the Environmental Protection service would make further representations were such an application to be made. He said that, with regards to the removal of the bottles and glasses from the premises, he believed that the demands made by Environmental protection were compatible with the hours of operation of the trade waste scheme.

Finally he said that new ventilation or extraction would normally require planning permission and none had been applied for.

Councillor Cartwright asked whether anyone had visited the site.

Mr Rathbone said that he had not. Mr Aldous clarified that while a licensing officer would visit a premises seeking a variation, one would not do so for a new premises application, apart from checking that the notice was displayed, as the premises was not yet open to the public.

Interested Parties

The Chairman invited those interested parties present, who had made a valid representation, to make a statement if they wished.

Frank Colcord, a local resident, said that his objection had been made on the basis of the hours applied for, but that he was now also concerned about the use of the premises as a shisha lounge.

Fiona Savory said that the premises had begun operating, and that there had been what appeared to be customers coming and going late at night, entering the premises through a side door, to attend functions held in the lower ground floor which continued to the early hours of the morning. She said that she believed admission was by mobile phone, and that she had seen people consume vodka before entering the premises. She said that there was a smell of shisha from the premises, and that the premises were already causing disruption in the area. She said residents were keen to support a family restaurant operating at the site, but that this did not appear to be the intention.

Michelle Jaffer-Pearce said that she objected strongly to the application, and said that the premises appeared to be operating without a licence, holding private parties as a commercial enterprise. She said that those approaching the premises appeared to be furtive, and that they did not enter when they believed residents were watching; this was occurring on what she described as a hitherto quiet residential street.

The Chairman asked if the premises were operating as a club might. Ms Jaffer-Pearce said that there was a menu in the window, but that it was in small lettering and appeared basic.

Robert Jaffer-Pearce said that he had walked past the premises most evenings in recent months, and usually seen young people entering the premises; he said that he had overheard one group discussing the need to pay for entrance. He said that the customers tended to come by car, and drove very quickly. He said that he was concerned the premises would follow the example set by another nearby shisha lounge, which was the cause of considerable disruption.

Annabel Clarke said that she represented the Cathnor Park Action Group, and had experience of the problems associated with shisha premises elsewhere. She said that residents in Coningham Road were already reporting problems caused by the premises, and was concerned that if allowed to operate as a shisha lounge, would cause problems for a wide area.

Rosemary Pettit said that she chaired the Brackenbury Residents Association, and supported the comments made. She said that she had not been aware of the problems associated with shisha lounges until a couple of months earlier, and was now concerned about the impact of the premises on a wider area, following the problems in the area closer to the Uxbridge Road.

James Ball said that the restaurant had opened and noted that the signage showed one entrance as being for "meza cuisine" and the other for "meza lounge". He said that he had not been aware that the application covered the lower ground floor, and this had not been reflected in the text on the measures taken to meet the licensing objectives. He said that the hatch used to deliver barrels to the premises had been covered over with cones, and plastic bags. He said that the applicant had said that this was a result of instructions from the Council, but that light had been seen coming from below. He said that the door was now sealed shut.

He said that awnings installed at the premises were very large and would cover an extensive area of pavement. He said that if the space was used, pedestrians would be forced to the edge of what was a busy road.

Councillor Murphy, speaking as a local resident, said that there was considerable disappointment that the premises was not acting as a family restaurant as had been hoped. He said that the evidence was that the premises was acting suspiciously, and that it appeared that shisha was being used on the premises, in defiance of the law. He said that it was difficult to place faith in the applicant, given their conduct to date.

The Chairman asked Mr Aldous what the capacity of the venue was. He said that he did not know, and that the applicant was not obliged to specify where it was less than 5000. He added that fire inspections were carried out by the fire brigade, and usually completed after a licence had been granted; the fire brigade were consulted on the application and had made no comment.

Applicant

Mr Griggs said that he wished to put the application in context, and said that the premises had previously been a public house, and had been derelict for some time. He said that the applicant wished to invest in the area, in those premises and intended to run them as a family restaurant. He said that, while the premises lay within a Cumulative Impact Zone, residents did not have an in-principle objection to a family restaurant on the site. Further, he said that, as the premises would not serve alcohol, it would not exacerbate the problems which had seen the zone established, nor add to the saturation caused by licensed premises.

He said that there was disagreement regarding shisha. He said that if, as was said, it was illegal, the police had enforcement powers to stop it being sold or smoked. He said that, while the applicant disputed the version of events given by residents, that inherently criminal acts, such as smoking in a public place, could be stopped by the police if they so chose.

The Chairman noted that the first Licensing Objective was the prevention of crime and disorder. Mr Griggs said that while this was so, if criminal behaviour was said to have taken place, the police should have investigated it. He said that shisha was widely sold and widely consumed, and that it was on sale at premises in Westfield, for instance. If, he said, this was patently illegal as the police claimed, why was the sale of shisha allowed to proceed unchecked?

As for the behaviour associated with shisha lounges elsewhere in the borough, this could be addressed through the conditions applied to the licence. He noted that proposed conditions included a high-quality CCTV system, and that, while few problems or incidents were expected, the applicant would fully assist in resolving those that did, through use of the system. The Chairman noted that the conditions on CCTV appeared standard.

Mr Griggs said that the applicant wished to comply with the conditions requested with regards to litter, but that the difficulties were logistical.

The Chairman asked the applicant if he intended to sell shisha. Mr Shazli Hamid said that he did wish to sell shisha to patrons seated on the pavement outside the premises, during the summer months. He said that he had not carried out works on the outside area of the premises until the issue was resolved. He said that shisha was widely available for sale in the UK, and that import duty was payable when it was imported from overseas. There was also a UK manufacturer, Al Fakher, who would pay tax at source. He said that he understood that there were issues related to health warnings on the tobacco, but that the hearing was the first time he had heard shisha described as illegal.

He said that the premises were his first restaurant, but that his partner had previously operated an Indian food restaurant in Kensington.

The Chairman asked why the premises would not serve alcohol. He said that selling alcohol was in conflict with his religious principles, but that it would also bring other problems to the premises.

The Chairman asked if the applicant had brought a copy of the menu. He said that they had not, but said that the food would be Lebanese style fusion, with home made burgers, ice cream and chocolate mousse available, with 4 chefs working on the premises.

He said that the premises had started trading, was taking bookings, and had families coming in to eat there. He said that the premises would have young customers, and they were likely to come in fast cars, and that this was out of his control. He said that the food would be expensive and his target audience families and businesses. He said that he did not wish to ban young customers, but would always stress the need for respect for the premises' neighbours to them.

In response to a question regarding the premises, he said that he co-owned his share with his wife, though also had other partners.

He said that the lower ground floor area was open and had been used for bookings. He said that no shisha was smoked on the premises, but that incense was burnt, which, together with the smell of shisha smoked at nearby premises, may have given the impression that it was. He also said that an employee could have smoked a cigarette out of hours, which he could not control. He said that he planned to make the outside area of the premises a pleasant place, if the licence was granted, with decking installed.

The Chairman asked about the fire safety certificate. Mr Hamid said that all changes were made in consultation with the Building Control Officer, including the changes to the mechanical extraction system and the awnings. The Building Control Officer had not informed the applicant that any planning permissions might be required for the changes made.

Mr Hamid said that he had not expected the level of adverse reaction to the application, and had allowed the application to be made by his solicitor. He said that, when he became aware of the objections, he invited residents to a meeting, and after consultation with them, had amended the application in line with their wishes reducing the hours. He said that he wanted only slightly later hours on

Friday and Saturday and to be able to use the premises' outside area in summer. He said that there had been no complaints about music volume, which showed that the premises were not operating as a club. In response to a question from the Committee, he said that he would seek to sell shisha for £15 a pipe.

He said that, with regards to the incidents raised by PS Ratcliffe, he had been on the premises for the second of the incidents, and had invited the police to enter, though they had no warrant or right to do so. He said that the premises manager had heard banging during the first visit, and had later approached two police officers standing nearby to ask if it had been them.

At this point, with the consent of all parties, photographs were introduced by the applicant, showing the premises.

Mr Hamid then clarified that the hatch to the lower-ground floor had been damaged as a result of vehicles from a neighbouring business driving over it. The cones had been placed at the behest of Council officers to prevent accidents, with the black bag there to prevent rain leaking through the damaged area. The hatch had now been replaced with a steel gate, allowing the cones and bag to be removed.

Councillor Thorley asked if the lower ground floor would have a different use than the ground floor. Mr Hamid said that the lower ground floor would be used for group bookings of more than 20 people. He said that there had been a lot of bookings for the restaurant, including for the lower ground floor area. He said that a lot of family and friends had also visited the restaurant to bless its opening. Councillor Cartwright observed that residents had not observed many people eating on the ground floor.

The Chairman said that she was concerned that it was Mr Hamid's first restaurant. Mr Hamid said that Mr Kahim, his partner, had previously run an Indian restaurant, and that Mr Mustafa, manager of the premises, also had experience in the trade, and would do as instructed by Mr Hamid with regards to the Licensing Objectives. He said that the Head Chef, Mr Hamili, was also experienced. He said that people in the local area were supportive of the premises, and that they would have supported the restaurant if offered the opportunity.

In response to a question from Janette Mullins, the applicant confirmed that they were applying for a licence for the performance of regulated entertainment.

Summing Up

PS Ratcliffe said that the applicant had addressed the issues poorly, and that it was not credible that the smell of shisha came from other premises. He said that he believed that the application was a "Trojan Horse", to allow the establishment of a shisha lounge under the guise of a family restaurant. He said that shisha was very difficult to control, where premises were not licensed, but that the police took a proactive approach to tackling its use, with 7 out of 18 premises offering it closed in the previous 18 months. However, closing a premises could take a long time, 14 months in one case.

He said that he did not accept that the premises would cause no problems due to alcohol not being served; he added that the aim of the act was to prevent crime and disorder. As such, he felt the reliance placed on CCTV inappropriate.

He said that the applicant can and must control smoking at his premises, including by his employees, and that the possibility of noise break-out was reduced by the time of year, with most noise complaints occurring in the summer. He concluded that the applicant's suggested price for shisha was unrealistically high, and that price should not be the means of deterring underage smoking. He said that the Sub-Committee should either impose the conditions requested by the police, or refuse the application.

Mr Rathbone emphasised that the proposed late hours would draw the focus of the CIZ towards the west into what was a quieter residential area and lead to further demand for similar premises. He added that the plans submitted simply showed the shell of a building with very little detail. He explained that the sub-committee had heard that there were to be four chefs and fifty covers all on the ground floor as well as stores and customer toilets, yet there was no detail of how this could be fitted into the space available. Mr Rathbone also pointed out that there was nothing shown in the basement. He said that he felt that the proposals to promote shisha smoking outside the premises would inevitably result in a public nuisance, in terms of smell and noise. He said that he believed that the Brackenbury Arms had had no external use, and earlier closing times than those applied for.

As such, he said that, without the imposition of the conditions suggested by the police and environmental protection, the problems associated with the Cumulative Impact Zone would be moved farther west.

Mr Colcord said that the applicant had always been cordial, and that he was supportive of the idea of a family restaurant. However, he was concerned about the proposals regarding shisha, and the evidence given about it.

Lady Savory reiterated her disappointment with the way the premises had been run, adding that she had seen little evidence that the premises were operating as a family restaurant. She said that the menu did not appear to be as elaborate as stated, and that the chef had been put in place subsequent to the premises' refurbishment.

Ms Clarke said that the premises were close to a number of local schools, and that the Protection From Harm objective should also be considered.

Mr Ball said that it was not clear from the application that the lower ground floor would be used as part of the premises in the application, and this had affected his comments. He said it was clear that the premises were hosting activities downstairs with light, music and smells coming from that area. He conceded that he had seen patrons eating in the ground floor area since the 8th March, but said that the use of shisha would concern him, with the other nearby premises a notorious hotspot for anti-social behaviour.

Councillor Murphy said that the Sub-Committee had not heard whether shisha was an integral part of the business plan for the premises, and what the financial impact

would be if it was not sold. He said that the applicant had shown a lax attitude to enforcing the anti-smoking laws, and that it was unlikely that the volume of visitors reported could all be friends and family

Mr Griggs said that the conflict between residents and applicant was a source of sadness. He said that the application had already been amended to reflect the concerns they expressed, but that shisha had not been removed as it was part of the vision for the premises. He asked that the Sub-Committee give the maximum opportunity to run a family restaurant at the site, noting that other premises had late licences and that there was broad consensus that the revised times applied for were not exceptional or objectionable.

He said that a number of issues raised, some of which, parking, for instance, or customers drinking before entering, which were outside the premises' control. He said that the application should be judged on its own merits.

He said that the CCTV coverage would be of a high standard, and would be made available immediately in case of an incident. He said that, while other premises offering shisha might cause problems, this would not be the case if a licence was granted at the premises. He said that many of the issues cited by the resident objectors were a result of misunderstanding, and that the Sub-Committee should give a new restaurant operator the chance to operate a restaurant at the site.

The Sub-Committee retired at 9.06pm, returning at 9.27pm.

RESOLVED THAT

In the light of representations received and evidence heard, the Sub-Committee unanimously agreed to refuse the application

Full details of the decision are contained in the decision letter which accompanies these minutes.

Meeting started: 7.00 pm
Meeting ended: 9.28 pm

Chairman

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