

MINUTES OF THE LICENSING REVIEW (HEARING) SUB COMMITTEE

HELD ON WEDNESDAY 19 FEBRUARY 2014

APPLICANT: CITY OF LONDON POLICE
PREMISES: FENG SHUI, 1A PUDDING LANE, LONDON EC3R 8AB

PRESENT

Sub Committee:

Kevin Everett CC (Chairman)
Marianne Fredericks CC
Deputy John Barker OBE CC

Applicant:

Leo Charalambides, Counsel representing the Premises
Inspector Hector McKoy, City of London Police
Mr John Hall, City of London Police Licensing Officer

Premises:

Ms Mary McKenna, Barrister representing the Applicant
Mr Wei Li, Director of Feng Shui
Mr Johnny Zhu, Director of Feng Shui
Mr Arthur Yang, proposed new Designated Premises Supervisor (DPS)

Responsible Authorities and Other Persons:

Mr Richard Lambert, City of London Environmental Health Officer

In Attendance:

Mr Graham Packham CC
Mr Paul Chadha, Comptroller and City Solicitor's Department
Mr Steve Blake, Department of Markets and Consumer Protection
Mr Peter Davenport, Department of Markets and Consumer Protection
Miss Xanthe Couture, Town Clerk's Department
Miss Georgina Denis, Town Clerk's Department
Mr James Goodsell, Town Clerk's Department

Licensing Act 2003 (Hearings) Regulations 2005

A Review Hearing was held at 11.05am in Committee Room 3, Guildhall, London, EC2, to consider and determine, through review, measures regarding the premises licence for '1A Pudding Lane, London EC3R 8AB.'

The Sub Committee had before them the following documents:-

Appendix 1 – Report of the Director of Markets and Consumer Protection:
Application for Summary Review
Grounds for Review

Appendix 2 – s.53A Certificate

Appendix 3 – Copy of Current Licence

Appendix 4 – Plan of premises

Appendix 5 – Decision of Sub-Committee (Consideration of interim steps)
28 Jan 2014

Appendix 6 – Representations from Responsible Authorities:
Environmental Health (Pollution Team)

Appendix 7 – Map of subject premises together with other licenced premises in the area and their latest terminal time for alcohol sales.

Together with late papers circulated subsequent to the Sub Committee agenda being published:

Police evidence

- Witness Statements
- CCTV Schedule
- Exhibits
- Crime Reports
- CADS
- Intelligence Reports

Representation on behalf of premises

- Arthur Yang CV
- Johnny Zhu statement
- Lippy Liang representation
- Promoter reference and emails
- Club patron letter

The Hearing commenced at 11.05am.

The Chairman introduced the Sub-Committee members and confirmed CCTV footage provided by the Police and all papers, including those circulated late, had been considered by the Sub-Committee in advance of the hearing. Given the number of attendees, the Chairman asked those present to introduce themselves and state in what capacity they were attending the Sub-Committee.

The Chairman invited Mr Charalambides to present on behalf of the City of London Police. Mr Charalambides stated the Police were of the opinion that the incident which occurred on 19 January 2014 warranted submitting the application for summary review of the premises. He explained the evidence supplied by the Police highlighted incidences of serious crime and serious disorder which had occurred at the premises.

Mr Charalambides continued to explain that when the premises licence was granted the Police had been informed that the premises would operate as a restaurant with late-night licensable activities in order to cater to the Chinese business community within the City. Mr Charalambides explained that while the premises did hold Chinese events, it hosted events that catered to and attracted a late-night 'Urban music nightclub crowd'. Mr Charalambides explained that the premises did not have the capacity to successfully manage an 'Urban music nightclub crowd' without risk of crime and disorder.

Mr Charalambides continued to tell the sub-committee that the 'Urban' nightclub community knew Feng Shui had a reputation for poor management and some patrons frequented the venue because they were aware that they could get away with the kind of behaviour that encourages crime and disorder.

The Sub-Committee were asked to turn to page 14 of the Police evidence document pack, which highlighted an incident that took place on the 3rd November 2013. Mr Charalambides explained to the Sub-Committee that the incident was evidence that the premises were not able to successfully manage patrons of the nightclub nor prevent crime and disorder, as a large number of people had 'rushed the door'. On this and other occasions the Police had been called to restore order at the premises.

Mr Charalambides asked the Sub-Committee to note that on the same occasion, the London Transport Police had been called to assist night buses to navigate the street outside of the premises which had been blocked by patrons of Feng Shui.

In addition, the Sub-Committee were asked to turn to page 143 of the Police evidence and note that a patron had reported an incidence of a concealed firearm at the premises on the 20th of November 2013.

Mr Charalambides asked the Sub-Committee to note that the proposal from the premises did not include a substantial management plan and did not mention implementing a drugs policy, dispersal policy or door search arrangements. Mr Charalambides followed that the premises proposal did not contain the

information found in management policies of professionally operated nightclubs.

Mr Charalambides added that he felt the proposed new DPS did not have the experience required to successfully manage the premises if it continued to host urban nightclub events.

Mr Charalambides asked the Sub-Committee to consider removing the provision of performance of dance, provision of dance and recorded music in order to prevent the premises operating as a nightclub. Mr Charalambides asked the Sub-Committee to restrict the sale of alcohol to 00:00. The Sub-Committee were also asked to restrict the provision of late night refreshment from 23:00 to 00:00 and the premises opening hours from 08:00 – 00:00.

Mr Charalambides explained that if the Sub-Committee were to decide not to restrict licensable activities and to allow the premises to operate as a nightclub, the removal of the current DPS should be considered, as well as the condition that the licence would not permit the premises to use external promoters.

The Chairmain notified Ms McKenna that she could now question the Applicant. Ms McKenna took the opportunity to ask the Applicant if the premises CCTV footage included recordings of more than one incident, to which Mr Charalambides replied that the CCTV footage showed multiple incidents and the schedule of incidents was listed on page 17 of the Police evidence.

Ms McKenna asked the Sub-Committee to note that five incidents in the Applicant's evidence occurred on the 19 November 2014 and two incident entries had both occurred on the 27 November 2014. She asked the Applicant whether this was enough evidence to show the premises had a background of crime and disorder. Mr Charalambides replied to say that all the evidence including CCTV footage, crime reports and CADS reports provided evidence to show that the premises could not control the dispersal of patrons or manage security upon entry which resulted in crime and disorder.

Ms McKenna went on to ask the Applicant to confirm that they refused to consider the "skeleton outline" of the premises management plan. Ms McKenna also asked whether the Applicant disagreed that the proposed changes were a positive way forward. Mr Charalambides said that the Applicant was open to discussion, but did not believe the proposed management plan (p. 19 of the premises evidence) provided sufficient information to be a credible plan.

Ms McKenna asked the Applicant whether describing the premises as a magnet for disorder was an overstatement of the facts. Mr Charalambides said he did not believe it to be an overstatement. Ms McKenna followed by reminding the Sub-Committee that the premises held late night events since December 2012. Ms McKenna continued and asked the Applicant whether they agreed that as the nightclub has been in operation since 2012, the incidents reported in their evidence were related to only the patrons of one type of promoted event. Mr Charalambides said the primary problem was the lack of support in managing promoted events which therefore lead to crime and

disorder.

Ms McKenna asked the Applicant to further explain the method by which evidence of drugs use had been gathered, to which Mr Charalambides replied that a number of areas within the premises were swabbed by Police and results found samples of cocaine in the premises toilets. Ms McKenna asked if the drug testing had occurred on more than one occasion and Mr Charalambides replied that drug testing at the premises had only occurred once.

Inspect McKoy clarified for the Sub-Committee that the premises had been tested for drug use as part of an operation which involved testing a number of licensed premises across the City. Ms McKenna asked whether the operation had found drug use at other premises' in the City. In reply Inspector McKoy said he was unable to reveal the results of other premises. A Member of the Sub-Committee explained to Ms McKenna that the drug testing results of other premises was not relevant to the hearing.

Ms McKenna asked the applicant whether other venues around the premises closed at 3am and if these venues also had issues with crime and disorder. Mr Charalmabides confirmed that a number of venues in the area closed at 3am and explained although there were at times problems with regards to noise, there had been no problems of crime and disorder. Mr Charalambides continued to say that the crime and disorder problems in the area were only attributed to Feng Shui. The incidents reported by the public had been made specifically with regards to Feng Shui and no other premises in the area.

At 12:10 the hearing broke for a short recess.

At 12:30 the hearing resumed. Ms McKenna asked the Sub-Committee to note the contents of an email sent from a reputable promoter which was included in the Police evidence. Ms McKenna asked the Applicant whether the reputable promoter had described the management at Feng Shui as difficult to work with because of issues with the promoters pricing arrangements. Mr Charalambides replied to say that the reputable promoter did not find the premises difficult to work with because of pricing disagreements.

Ms McKenna asked whether the email was forwarded to the premises DPS when it was received by the Police. Ms McKenna continued to say that if the email was not forwarded was fair to comment that the management proposal was insufficient since the Police did not share feedback from promoters. Mr Charalambides replied to say that he regardless of not sharing the email the Applicant believed that the proposal supplied an insufficient amount of information to be credible.

A Member of the Sub-Committee asked the Applicant whether or not they were surprised that Feng Shui applied for a 5am closing time. The Applicant responded to say that the Police spoke to the premises about the licence application and gave advice on how to complete the licence application form. The Applicant continued that the premises told the Police the 5am closing time was to hold late night events for the Chinese community. The Police did not

disagree to the premises licence application because late night events for the Chinese community functioned well in Soho.

The Sub-Committee heard from Mr Lambert of the Environmental Health Office who submitted representations to be considered at the hearing. The Sub-Committee were told that the Environmental Health Office visited the premises on the night of an event, after having received complaints about the level of noise. Ms McKenna asked the Environmental Health Office to confirm if there was only one complaint and Mr Lambert explained that the office had received two complaints, one of which was verified by an Officer visiting the premises.

The Chairman invited Ms McKenna to present on behalf of the premises. Ms McKenna asked the Sub-Committee to note that the premises was faced with a review hearing on the 28 January 2014 and were served with Police evidence on 10 February 2014, therefore the premises had lacked a sufficient amount of time to properly study the evidence and create a detailed proposal

Ms McKenna explained the premises management wanted to respond positively to the Police concerns. Ms McKenna added that she tried to change the premises DPS in advance of the Review Hearing to someone who was more suited to manage late night licenced venues.

Ms McKenna asked the Sub-Committee to turn to proposed DPS CV (page 7 of the premises evidence) which explained that the proposed DPS (Mr Yang) was suitably educated and properly qualified to manage a night club. Mr Yang followed Ms McKenna and further explained to the Sub-Committee details of his education and employment background. He then explained the six points of the premises proposal which included the conditions that:

- A reservation form would be used to document how many patrons would be attending an event.
- All events would be assessed with the use of a risk assessment form.
- Meetings with the Police are to be signed and recorded by both the DPS and the Police.
- Due diligence would be carried out for each promoter and signed by the premises management, although the point was incorrectly written in the premises representations as due diligence to be signed by the Police.
- All feedback and follow up meetings with the Police would be accurately recorded and signed by both parties.
- Incident reports would be created for all incidents and signed by witnesses, security, the premises management and the Police.

Mr Yang continued to say that he believed the six steps would be necessary to take immediate and urgent action to improve the safety of events held at the premises.

Ms McKenna asked Mr Yang whether he would be able to work with the former management team, to which Mr Yang replied that he would and he planned to provide existing members of staff with appropriate training to improve the safety of events.

Ms McKenna told the Sub-Committee that the premises acknowledged that a proportion of the former patrons were connected to occurrences of crime and disorder, but felt the overall message from the Police was that there was no chance of improvement. Ms McKenna assured the Sub-Committee that the premises had learned an important lesson.

Ms McKenna also assured the Sub-Committee that the premises would only work with reputable event promoters in the future and had already begun to do so. Ms McKenna asked the Sub-Committee to turn to page 17, 19 and 23 which provided evidence that the premises had been in touch with other promoters in an attempt to distance themselves from past promoters.

Ms McKenna explained to the Sub-Committee that she believed the CADS report on page 187 of the Police evidence was a hoax call because the report states there was no trouble when the Police arrived at the premises. Ms McKenna also told the Sub-Committee that she believed many of the incidents reported in the Police evidence were domestic cases which involved patrons who were known to each other and therefore did not constitute the background of crime and disorder suggested by the Police.

Ms McKenna asked the Sub-Committee to note that the incident reported in the crime report 4491 (page 81 – 96) was duplicated elsewhere in the Police evidence. Ms McKenna explained that Police evidence seemed to show numerous incidents occurring in the premises, but in fact one incident had been reported by a number of people.

Following Ms McKenna's presentation Mr Charalambides took the opportunity to ask the premises if the DPS's designation was valid, to which it was explained that Mr Yang would have a valid DPS certification in due course. Mr Charalambides queried if Mr Yang could state the four licensing objectives. Mr Yang was unable to state them at the time.

At 13:39 the hearing broke for recess.

At 14:30 the hearing resumed. A Member of the Sub-Committee explained to the premises that the vast majority of nightclubs in the City did not have incidents of crime and disorder. The Member asked the premises whether they understood the level of crime that occurred at their premises in a very short time. Ms McKenna responded on behalf of the premises to say that they had taken the advice from the Police into consideration, and had given the Sub-Committee broad objectives as to how they planned to turn things around.

A Member of the Sub-Committee asked the premises to note that the vast majority of incidents were reported to the Police by the public and not by the

management team. A director of the premises said that the management did report incidences to the Police, to which a Member of the Sub-Committee commented that the CCTV footage showed there was 20 minutes between when an incident occurred and when the premises reported the incident to the Police.

A Member of the Sub-Committee asked the premises if they had seen and implemented the Licensing Policy and Guidance Notes provided online by the City of London Corporation. Ms McKenna replied to say that the premises did follow the search policy and the premises used three accredited companies to provide adequate door supervision. Ms McKenna continued that the premises hoped to increase the level of security for the nightclub.

A Member of the Sub-Committee asked the premises how much time the new DPS would be able to devote to managing the premises. A premises Director explained that Mr Yangs' business required little management and allowed him the flexibility to work at Feng Shui. The Director also said the DPS lived close to the premises and would be able to arrive at the premises at short notice.

The Chairman asked the Applicant to give their closing statement. Mr Charalambides said that the evidence provided by the Police demonstrated there were significant problems with the management of the premises and the hours of licensable activity. Mr Charalambides said that the new DPS had only a pending personal licence and although he had experience working at a hotel which held a late night licenced events, he did not have experience specific to the management of a nightclub with previous issues of crime and disorder. Mr Charalambides felt that based on his questions at the hearing, the proposed DPS did not know the licencing objectives or what Temporary Event Notices were.

Mr Charalambides concluded to say for each incident reported in the Police evidence, the premises door security and management staff had been aware and present. Mr Charalambides said this demonstrated that the quality of management at the premises was not appropriate to run a safe nightclub. Mr Charalambides suggested that the premises could reapply for late night licensable activities once it was adequately prepared and could demonstrate that the management plan took into consideration the licensing objectives.

The Chairman then asked the Applicant to give their closing statement. Ms McKenna informed the Sub-Committee that unfortunately the premises did not have the time to create a substantial proposal but had responded to the Applicant's concerns. Ms McKenna stated that some incidents reported in the Police evidence showed that no offences were committed and the reported domestic incidents provided some perspective of the degree of crime and disorder at the premises.

Ms McKenna continued that the Sub-Committee received from the premises multiple assurances that a number of reputable promoters were willing to work with the premises. She continued to say that the Applicant had used a strategy to intimidate the premises during the hearing. Ms McKenna asked the Sub-

Committee to give the premises an opportunity to improve and work with the Police with the condition that the premises only use safe event promoters

Members of the Sub Committee withdrew to deliberate and make their decision, accompanied by the representatives of the Town Clerk Department and the Comptroller and City Solicitor Department.

Having returned from the deliberation The Chairman informed those present that evidence presented by the City of London Police were of a serious nature and highlighted serious failings in the premises' management structure which resulted in the premises licence holder's inability to promote the crime and disorder licensing objective.

The Chairman said that the Sub-Committee were not convinced the premises fully appreciated the extent of the improvements required to ensure that the premises operated safely. Furthermore, the Sub-Committee were not satisfied that the current management team and the proposed DPS could implement the necessary safeguards to effectively promote the licensing objectives, particularly those relating to crime and disorder.

The Sub-Committee therefore decided to take the following steps in respect of the premises licence and:

Removed all licensable activities; except sale of alcohol. Therefore there should be no performance of plays, exhibition of films, live, and recorded music, performance of dance and provision of dance.

Restricted the times the licence authorises the sale of alcohol. Therefore the permitted hours are 10:00 – 00:00, from Sunday to Saturday.

Restricted the times the licence authorises the carrying out of late night refreshment. Therefore late night refreshment could take place only between 23:00 – 00:00, Sunday to Saturday.

Restricted the opening hours of the premises to 08:00 – 00:30, Sunday to Saturday.

The Chairman said that a full decision containing the Sub-Committee's reasons would be circulated in due course and thanked all parties for attending the Hearing. The Chairman also informed the parties that, should they be dissatisfied with the decision there was a right of appeal to the Magistrates' Court which must be made within 21 days of receipt of the written decision. The interim steps imposed at the hearing held on 28 January 2014 are to remain in force until the expiration of 21 days from the date of the summary review decision letter or the determination of any appeal.

The meeting closed at 3.52pm

Chairman

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COPY OF DECISION LETTER CIRCULATED

THE COMMON COUNCIL OF THE CITY OF LONDON

LICENSING SUB-COMMITTEE

Kevin Everett CC (Chairman)
Marianne Fredericks CC
Deputy John Barker OBE CC

Wednesday 19 February (11:00am - 3:52pm)

IN RE:

FENG SHUI
1A PUDDING LANE, LONDON EC3R 8AB
(WARD OF BRIDGE)

The Sub-Committee was addressed by Mr Leo Charalambides of Counsel for the Applicant and by Ms Mary McKenna of Counsel for the Premises. The Sub-Committee also heard from Mr Richard Lambert, Environmental Health Officer on behalf of the responsible authorities.

This was a substantive Review Hearing convened, following an Interim Steps Hearing, for premises known as Feng Shui, 1A Pudding Lane, London EC3R 8AB held on Wednesday 19 January 2014.

The Sub-Committee had before it an agenda pack including a Report of the Director of Markets and Consumer Protection, the application for summary review along with supporting evidence circulated by the Applicant subsequent to the publication of the agenda but prior to the commencement of the hearing, representations from responsible authorities, and papers circulated on behalf of the premises licence holder subsequent to the publication of the agenda but prior to the commencement of the hearing. During the hearing a paper was also circulated on behalf of the premises following agreement from the Applicant and the Sub-Committee.

The Sub-Committee considered the documentary evidence and CCTV footage provided on behalf of the Applicant along with oral evidence and

representations made during the course of the hearing. The Applicant submitted that the number and severity of incidents of crime and disorder which occurred at the premises during the early hours of the morning when it operated as a nightclub demonstrated that the management team were unable to responsibly stage and manage promoted events. The Applicant asserted that failings in the provision of adequate and effective door security coupled with the absence of management plans addressing the selection of suitable promoters, entry policy, drug policy, screening of patrons prior to entry and ensuring the safe and effective dispersal of patrons were major contributory factors to the unacceptable levels of crime and disorder associated with the premises. It was also alleged that the premises operators had shown a reluctance to co-operate with the police and expected the police to provide solutions to their problems as opposed to actively addressing the issues themselves. It was the opinion of the Applicant that the premises functioned adequately as a restaurant but was incapable of functioning as a responsibly managed late-night entertainment venue and lacked confidence in the qualifications and experience of the new DPS the Premises had proposed.

The Sub-Committee also considered the evidence put forward in the representations from responsible authorities and other persons. They noted that the Environmental Health Officer had received a complaint with regards to the level of noise when patrons left the premises. The Environmental Health Office had visited the premises on one occasion and confirmed an unacceptable level of noise had existed, particularly from vehicles belonging to patrons who had visited the premises.

The Sub-Committee went on to consider the evidence put forward on behalf of the premises licence holder which included a proposal to improve operational control of the premises. Further evidence that the premises were improving their management of the night club included a plan to change the DPS to someone who they felt was more qualified and appropriately experienced with managing a late night licenced premises than the previous DPS. The Sub-Committee also considered evidence that the premises had undertaken the directives of the Police to engage with responsible event promoters in order to distance the nightclub from past unsafe promoters, DJs and patrons.

The Sub-Committee considered the available options found in S.53C(3) of the Licensing Act 2003, these being :

- Take no further action;
- The modification of the conditions of the premises licence;
- The exclusion of a licensable activity from the scope of the licence;
- The removal of the Designated Premises Supervisor from the licence;
- The suspension of the licence for a period not exceeding three months;
- The revocation of the licence

The Sub-Committee felt it was clear from the evidence that the incidents over a prolonged period of time reported by the City of London Police which occurred when the premises operated as a nightclub were of a serious nature and highlighted serious failings in the management structure resulting in the premises licence holder's inability to promote the crime and disorder licensing objective. The Sub-Committee listened carefully to the submission of the premises licence holder but was not convinced that the premises fully appreciated the extent of the improvements required to ensure that the nightclub operated safely. Furthermore the Sub-Committee was not satisfied that the current management team and the proposed DPS would have the ability to implement the necessary safeguards to effectively promote the licensing objectives, particularly those relating to crime and disorder.

The Sub-Committee considered whether revocation or suspension of the premises licence would be appropriate, but in recognition of the fact that the premises could operate as a restaurant, the Sub-Committee concluded that this response would be disproportionate.

Based on the evidence heard, the Sub-Committee therefore decided to take the following steps in respect of the premises licence:

- Remove all licensable activities; except sale of alcohol.

Therefore there shall be no performance of plays, exhibition of films, live, and recorded music, performance of dance and provision of dance.

- Restrict the times the licence authorises the sale of alcohol. Therefore the permitted hours are 10:00 – 00:00, from Sunday to Saturday.
- Restrict the times the licence authorises the carrying out of late night refreshment. Therefore late night refreshment can take place between 23:00 – 00:00, Sunday to Saturday.
- Restrict the opening hours of the premises to 08:00 – 00:30, Sunday to Saturday.

If any party is dissatisfied with the decision they are reminded of the right to appeal, within 21 days of the date of this decision being communicated to them, to a Magistrates' Court. Any party proposing to appeal is also reminded that under section 181 (2) of the Licensing Act 2003, the Magistrates' Court hearing the appeal may make any order as to costs as it thinks fit.

K Everett
M Fredericks
J Barker