

MINUTES OF THE LICENSING (HEARING) SUB COMMITTEE

HELD ON 8 JULY 2013 AT 10:00 AM

APPLICANT: SWIZZLESTICK LIMITED
PREMISES: PAUSE, 80-84 LEADENHALL STREET, LONDON, EC3A 3DH

PRESENT

Sub Committee:

Edward Lord CC (Chairman)
Marianne Fredericks CC
Rev Dr Martin Dudley CC

City of London Officers:

Rakesh Hira – Town Clerk’s Department
Xanthe Couture – Town Clerk’s Department
Paul Chadha – Comptroller & City Solicitor’s Department
Peter Davenport – Markets & Consumer Protection Department
Steve Blake – Markets & Consumer Protection Department

Applicant:

Andrew Buchanan (Managing Director, Swizzlestick Limited).

Representations of objection:

Hugh Morris CC
Dhruv Patel CC
Richard Lambert
Yvonne Courtney

In attendance:

Adam Curtis
Jessica Judge

Licensing Act 2003 (Hearings) Regulations 2005

- 1) A public hearing was held at 10:00am in the Committee Rooms, Guildhall, London, EC2, to consider the representations submitted in respect of an application for the premises ‘Pause’, 80-84 Leadenhall Street, London, EC3A 3DH’.

The Sub Committee had before them a report of the Director of Markets and Consumer Protection, which appended copies of:-

Appendix 1: Copy of Application

Appendix 2: Current Premises Licence

Appendix 3: Current Conditions

Appendix 4: Conditions consistent with the operating schedule

Appendix 5: Representations from responsible authorities (1)

Appendix 6: Representations from Other Persons (5)

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

Appendix 8: Current Plan of Premises

In addition the following documents, which were circulated to all parties prior to the Hearing, were also considered:

- A report of information relating to the application compiled by the applicant Andrew Buchanan, Managing Director of Swizzlestick Limited.
- 2) The Hearing commenced at 10:00am.
 - 3) The Chairman opened the Hearing by introducing himself, the other Members of the Sub Committee, the officers present and the nature of the application.
 - 4) It was noted that no Members of the Sub Committee had any declarations.
 - 5) The application sought to extend the current terminal hour for the sale of alcohol to 03:00 hours and add the category of 'Anything of a Similar Description to Live Music Recorded Music or Performances of Dance' as follows:

<u>Activity</u>	<u>Current Licence</u>	<u>Proposed Licence</u>
Sale of Alcohol	Mon-Sat 11:00 – 00:00 Sun 12:00 – 22:30	Mon-Thu 11:00 - 00:00 Fri 11:00 – 3:00 Sat 11:00 - 00:00 Sun 12:00 – 22:30
Live Music, Recorded Music, Dance	Mon-Sat 13:00 – 00:00	Mon-Thu 13:00 – 00:00 Fri 13:00 – 03:00 Sat 13:00 – 00:00
Anything of a	Not currently licensed	Mon-Thu 13:00 – 00:00

similar nature to Live Music, Recorded Music or Dance		Fri 13:00 – 03:00 Sat 13:00 – 00:00
Late Night Refreshment	Mon-Sat 23:00 – 00:00	Mon-Thu 23:00 – 00:00 Fri 23:00 – 03:00 Sat 23:00 – 00:00

In addition the applicant wished to provide all licensable activities from their commencement on New Year's Eve until the terminal hour on New Year's Day.

- 6) The Chairman invited Mr Buchanan to provide an outline of the application and the concessions proposed. He highlighted that Swizzlestick Limited had been a business in the City for many years. Mr Buchanan stated he had requested the variation to the licence to increase the success of the business and remain competitive. This required Pause to develop as an exclusive private hire event club as opposed to a lunch and dinner venue.
- 7) Mr Buchanan outlined that on Wednesday evenings the clientele was predominantly corporate, Friday was considered "club night" and Saturdays attracted engagement parties and private functions. Pause had developed advertisements and had built third party affiliations to attract further business related to this clientele.
- 8) Mr Morris, who spoke on behalf of other persons making representations, explained that he welcomed a diverse economy and wanted businesses to be successful, but this premises had created noise nuisance and had disturbed residents over time. Mr Morris explained that there was no guarantee that the variation to the premises licence would ensure that noise breakout into the early hours of the morning would be within limits. There were frequent and routine levels of noise disturbance that had occurred over four years and infringed on residents' rights to peace and quiet. Mr Morris added that the applicant had circulated photos of the premises but they were not time or date stamped and therefore could not be used as evidence of the premises' dispersal policy in action.
- 9) In response to concerns raised by Members of the Sub Committee and Mr Morris over noise nuisance over many years, Mr Buchanan stated that Pause had been the holder of one premise licence for the past nine years, but different members of staff may have been present day to day. Mr Buchanan advised he had become Designated Premises Supervisor (DPS) three years ago.
- 10) Mr Buchanan pointed out that he had spoken with Mr Lambert, City of London (CoL) Environmental Health Officer, to address concerns over the requested variation to the licence. Appendix 5i highlighted that CoL

Markets and Consumer Protection Department had received complaints from standalone music systems used at the premises, and a condition had been sought that a standalone unit could not be used. This was in addition to the existing condition for a noise limiter.

- 11) The Chairman noted that the Sub Committee had received the report supplied by the applicant and had taken some time to review the information provided. He emphasised that it would have been helpful for the picture to be date and time stamped.
- 12) Mr Buchanan stressed that since he had become DPS of Pause 3 years ago, he had worked with residents and this was paramount to the success of the business. He reported that over the last 12 months the premises had carried out 42 late night events and during this period there had been no evidence of noise nuisance from either the Environmental Health Officer or the Police, except for one incident on 3 March 2013. Mr Buchanan explained this isolated incident had been due to a noise breakout from extra speakers that had been brought into the premises which was against company policy. As a result of that instance, the business had since taken steps to ensure noise disturbance was minimal.
- 13) Mr Buchanan stated that the variation to the premises licence sought was part of the marketing and business plan developed at the start of the year. In creating the business plan, consultation with the Police and the Environmental Health Officer had been undertaken to ensure any outstanding noise nuisance concerns had been resolved in relation to those concerns raised by Mr Morris and residents. Evidence included a number of email exchanges to ensure there were no noise breakout or dispersal issues. Events had also been cancelled in the past that would have caused public nuisance concerns.
- 14) It was noted the dispersal policy was maintained through the contracts established by the premises with event promoters and corporate parties. Mr Buchanan stated that some of the noise complaints may have been in relation to a venue located next door to Pause. He advised that noise breakout was always resolved, and following the 3 March 2013 noise outbreak incident he undertook to resolve it. Mr Buchanan explained that investigations with a contractor had been undertaken, and internal changes were made to the music system to ensure noise levels could be altered to ensure no noise breakout would occur.
- 15) The Chairman inquired if the applicant had spoken to residents directly and Mr Buchanan stated this had not happened as it had not been possible to obtain the contact details of residents and he felt it would have been intrusive to knock on the doors of residents. Letters had been sent after representations had been made. Mr Buchanan had also been in touch with Mr Figures, a resident who had made a representation following the application included in the report supplied by the applicant (Item 3.10 – Residents Feedback).

- 16) The Chairman explained that the Police would only make representations because of crime and disorderly behaviour, so the fact that no representation by the Police had been made was not indicative that there were no concerns. Mr Buchanan stated that the premises employed sufficient managers and security guards who did nightly patrols of the area. He explained that during consultation with the Environmental Health Officer there had been no incidences of nuisance. In regards to the photos of evidence provided as part of the report of information, Mr Buchanan stated he had not realised they were not date or time stamped as they were emailed to him at the end of the night when Pause closed. The Chairman advised that photos could be supplied at a later time with a date and time stamp but Mr Buchanan had none available to present to the Sub Committee.

- 17) The Chairman drew Mr Buchanan's attention to the City of London's Statement of Licensing Policy, Code of Good Practice for Licensed Premises and Model Conditions which stated that licensed premises holders should be in regular contact with residential neighbours when in a residential neighbourhood. Mr Buchanan stated that on the 16 June 2013 he was in contact with a resident regarding a noise disturbance. That night, Mr Buchanan had done noise testing on the premises and had found no noise disturbance, which indicated that the noise disturbance was from a residential dwelling.

- 18) In response to a query from the Chairman, Mr Buchanan stated that he did not wish to surrender condition 3.1 listed in Annex 3 of the existing Premises license, agreed at the previous hearing in 2007. This condition provided for the provision to extend the terminal hour of alcohol, regulated entertainment and late night refreshment until 02:00 hours on up to 30 occasions per calendar year with 7 day notice given to the Police. Mr Buchanan added that this permission was used for Saturday night events.

- 19) The Chairman queried if it was in fact 42 late night events that took place in the last year to which Mr Buchanan agreed, and stated these were used as a combination of temporary event notices (TENs) and the condition on the existing premise licence resolved at the previous hearing in 2007. The Chairman inquired if the private parties were bonafide private parties or were they also used by promoters. Mr Buchanan stated Pause was conscious of the aims of promoters, and when entering into a contract held meetings with the event promoter.

- 20) Mr Buchanan stated that a Promotion Event Risk Assessment Form 696 was obtained when Pause hosted promoted events. He added that 40% of promoted events required TENs that permitted the premises to be open until 03:00. These were a standard term that applied to all events. A Member of the Sub Committee queried as to whether food was required when promoted events took place and it was explained by the Applicant that it was potentially the case that no food would be provided

on the premises. If the external contractor violated the conditions stated in the contract for hire produced by the Applicant, the deposit would not be returned. The Sub Committee raised concern over the lack of consistency between the premise licence, City of London licensing policy and the terms and conditions agreed with event hire companies. Mr Buchanan stated if updates were required to the terms and conditions with event hire companies then this could be undertaken and include the requirement of food.

- 21) The Sub Committee stated it seemed the applicant had a lack of concern for the wellbeing of its customers and a lack of urgency in dealing with local residents. Mr Buchanan stated that his interest was in ensuring the license terms were met. The Sub Committee and applicant agreed the venue hire terms and conditions conveyed the premise license, operating schedule and conditions. Mr Buchanan stated the City of London's Statement of Licensing Policy, Code of Good Practice for Licensed Premises and Model Conditions was an item addressed at management meetings and Pause had been taking steps to receive positive points for enforcing positive practices.
- 22) In response to a question by a Member of the Sub Committee relating to whether the premises was purpose built to be a restaurant or a club, Mr Buchanan reported that the premises was a basement venue in the City with a sound system, and the only issue had been additional speakers. The sound system had been modernised to create sound limiting as found in other venues within the City. A Member of the Sub Committee stated there had been issues with other venues in the City and Mr Morris added that the noise complaints dated back further than four years. Members of the Sub Committee were concerned that the noise complaints dated back to 2007 and that the DPS had changed since that time with complaints unresolved.
- 23) Mr Buchanan stated since the previous hearing for a variation held on 30 November 2007, where the conditions had been agreed for a noise inhibitor, and to extend the terminal hour of supply of alcohol, regulated entertainment and sale of late night refreshment, the plan for Pause had been adapted to reflect a need to increase footfall and revenue levels (Premises licence - Annex 3). A Member of the Sub Committee inquired if the dispersal policy was the same for all company's venues and the applicant replied that they were slightly different.
- 24) In reply to a query from a Member of the Sub Committee on whether a meeting had taken place with Mr Figures as suggested by the report supplied by the applicant, Mr Buchanan replied it had not. Mr Morris stated the dispersal issues had not been resolved and was concerned that if the variations were granted, more disturbances would occur and felt the existing evidence of disturbances had not been dealt with. Mr Lambert stated that noise testing and the dispersal had been monitored and there did not seem to be any major issues.

- 25) Mr Buchanan stated he did not want to be another business that closed, and would work to change the terms and conditions of the event contracts and also engage with residents through a newsletter as suggested.
- 26) Mr Chadha stated that many of the conditions on the existing premise licence were not relevant or enforceable and it was agreed with the Applicant that these would be revised or removed.
- 27) Members of the Sub Committee withdrew to deliberate and make their decision; accompanied by representatives of the Town Clerk and the Comptroller and City Solicitor.
- 28) The Chairman said that a full decision would be circulated in due course and thanked all parties for attending.

The meeting closed at 11.45am

Chairman

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Decision letter circulated to all parties on 16 July 2013

1. This decision relates to an application made by Swizzlestick Ltd for a variation to a premises licence in respect of the premises 'Pause, 80-84 Leadenhall Street, London, EC3A 3DH'.

The application sought to extend the current terminal hour for the sale of alcohol to 03:00 hours and add the category of 'Anything of a Similar Description to Live Music Recorded Music or Performances of Dance' as follows:

<u>Activity</u>	<u>Current Licence</u>	<u>Proposed Licence</u>
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Anything of a similar nature to Live Music, Recorded Music or Dance	Not currently licensed	Mon-Thu 13:00 – 00:00 Fri 13:00 – 03:00 Sat 13:00 – 00:00
Late Night Refreshment	Mon-Sat 23:00 – 00:00	Mon-Thu 23:00 – 00:00 Fri 23:00 – 03:00 Sat 23:00 – 00:00

In addition the applicant wished to provide all licensable activities from their commencement on New Year's Eve until the terminal hour on New Year's Day

2. The Sub Committee considered the application and carefully considered the representations submitted in writing and orally at the hearing by the applicant, Environmental Health and those representing local residents.
3. In reaching the decision the Sub Committee were mindful of the provisions of the Licensing Act 2003, in particular the statutory licensing objectives, together

with the guidance issued by the Secretary of State in pursuance of the Act and the City of London's own Statement of Licensing Policy dated January 2013.

4. Furthermore, the Sub Committee took on board the duty to apply the statutory test as to whether an application should or should not be granted, that test being that the application should be granted unless it was satisfied that it was necessary to refuse all, or part, of an application or necessary to impose conditions on the granting of the application in order to promote one (or more) of the licensing objectives.
5. In determining the application the Sub Committee first and foremost put the promotion of the licensing objectives at the heart of their decision. In this instance, the most relevant of those objectives being the prevention of public nuisance.
6. The Sub Committee decided to grant the variation relating to 'Anything of a similar nature to Live Music, Recorded Music or Dance' as follows:
Mon-Thu 13:00 – 00:00
Fri 13:00 – 00:00
Sat 13:00 – 00:00
7. The Sub Committee decided **not** to grant the variation seeking the extension of permitted hours for licensable activities to 03.00 hours on Friday night/Saturday morning. The Sub Committee concluded that the applicant had not taken into consideration the possibility of noise and other forms of nuisance resulting from the dispersal of its clientele in the early hours of the morning and the effects that such nuisance would have on local residents and therefore permitting the variation would have undermined the licensing objective of prevention of public nuisance. Furthermore, the Sub Committee noted that the premises licence holder already had permission to operate until 02.00 hours Saturday night/Sunday morning on up to 30 occasions a year and was of the view that to grant the extension of hours sought would place an unreasonable burden on local residents. Whilst noting that the issues relating to the escape of noise from sound amplification equipment would appear to have been resolved, the Sub Committee was concerned that this was only a recent development and was relatively untested. The Sub Committee also noted that the applicant had not taken practical steps to consult with the local residents prior to submitting the application.
8. The Sub Committee considered the existing conditions, set out at Annexes 2 and 3 of the premises licence (points 1 – 4). The Sub Committee was of the view that these should be removed as they were no longer necessary or enforceable conditions. Points 5 and 6 on Annex 2 of the premises licence should also be removed and would appear in the permissions on the premises licence rather than as conditions. Condition 2 of Annex 3 would also be removed as this was now a mandatory condition.

9. The Sub Committee encouraged the applicant to take the City of London's Code of Good Practice for Licensed Premises and Traffic Light System into consideration with regard to the premises.
10. If the Sub Committee was wrong all parties are reminded that any responsible authority, business, resident or a Member of the Court of Common Council is entitled to apply for a review of the licence which may result, amongst other things, in a variation of the conditions, the removal of a licensable activity or the complete revocation of the licence.
11. If any party is dissatisfied with the decision, he or she is reminded of the right to appeal, within 21 days, to a Magistrates' Court. Any party proposing to appeal is also reminded that under s181(2) of the Licensing Act 2003, the Magistrates' Court hearing the appeal may make such order as to costs as it thinks fit.