

MINUTES OF THE LICENSING (HEARING) SUB COMMITTEE

HELD ON 25 JULY 2014

APPLICANT: Mr Bashir Ahmed
PREMISES: KYBER, 4 BURGON STREET, LONDON, EC4V 5DR

PRESENT

Sub Committee:

Peter Dunphy CC (Chairman)
Sophie Fernandes CC
Jamie Ingham Clark CC

City of London Officers:

Georgina Denis – Town Clerk's Department
Saimah Tahir – Town Clerk's Department
Paul Chadha – Comptroller & City Solicitor's Department
Peter Davenport – Markets & Consumer Protection Department

Applicant:

Mr Bashir Ahmed.

Witnesses:

Mr Ajaz Mir – Director of Join Me

Those making representations:

Mr Simon Barnes – Resident

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 'Kyber, 4 Burgon Street, London EC4V 5DR'.

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: Conditions consistent with the Operating Schedule

Appendix 3: Representations from Other Persons (1)

Appendix 4: Map of subject premises together with other licensed premises in the area and their latest terminal time for alcohol sales

Appendix 5: Plan of Premises

- 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. He explained that the hearing would determine whether the license application for Kyber – 4 Burgon Street, London, EC4V 5DR would be granted.
- 4) The Chairman followed by explaining the procedure by which the hearing would take place.
- 5) The Chairman asked Mr Barnes to outline his objection to the application. Mr Barnes explained that he had been resident of the local area for the past 10 years and detailed that a wall within his home backed on to the restaurant. Mr Barnes informed the panel that his main concern was the expiry of the premises licence in July 2013. Mr Barnes believed that since the expiry the restaurant had been operating under a number of Temporary Event Notices, but prior to the use of TENs the owner had not realised that the licence had expired. Mr Barnes informed the hearing that the actions of the premises owner demonstrated that he was incapable of responsibly conducting licensable activities. It was Mr Barnes belief that an adequately responsible owner would have realised long before submitting the current application that the licence had expired. Mr Barnes also gave account of a number of instances when the restaurant had closed late and he had been disturbed at home by noise from the kitchens. Mr Barnes concluded to say that he was concerned the owner of Kyber was not adequately concerned about the wellbeing of residents in the surrounding area which would result in the premises becoming a public nuisance.
- 6) The Chairman invited Mr Ahmed to support his application. Mr Ahmed explained that his colleague and owner of the premises Mr Mir was a Dutch national and therefore did not fully understand the City's licensing procedures. He explained that this was the reason why there had been a delay between the licence premises licence expiring and the application for a new licence. Mr Ahmed He explained that he had taken over a manager of the premises a couple of months before the hearing and was adequately responsible and would prevent the restaurant becoming a public nuisance. Mr Ahmed outlined his professional achievements for the Sub-Committee and explained that he was the owner of another restaurant in the City which he believed had an excellent reputation. Mr Ahmed believed that because he had experience of managing licenced premises in the City he was suitably responsible to manage Kyber and conduct licensable activities from the premises. Mr Ahmed said he understood why Mr Barnes had reservations and outlined for the Sub-Committee measures which he had taken to reduce noise, including working the City of London Corporation Environmental Health Officers to try and find a zero noise solutions with regards to equipment in the

premises kitchens. Mr Ahmed concluded to say that he was at the premises six days a week and apologised for the two instances when the premises had closed late.

- 7) Mr Mir followed and provided the Sub-Committee with a statement regarding his professional career and capability to responsibly run the premises. Mr Mir explained that he had 25 years of experience owning restaurants in Holland and Mr Ahmed had been colleagues for a number of those years. He had asked Mr Ahmed to manage the premises because he had knowledge and experience of conducting business in the City and could help Mr Mir resolve problems he was having managing the premises.
- 8) The Chairman invited Mr Barnes to pose any questions to Mr Ahmed. Mr Barnes commented that he did not believe Mr Ahmed was adequately responsible to conduct licensable activities and he did not take his responsibilities seriously. He also believed that Mr Ahmed had confused the environmental health issues and licensing issues relating to the premises.
- 9) The Chairman invited Mr Ahmed to pose any questions to Mr Barnes. Mr Ahmed commented in response to Mr Barnes previous statement that he did take his responsibilities as a licence holder seriously and that the premises was much improved since he took over management two months prior to the hearing. He also believed that his professional experience working in the City demonstrated that he could conduct licensable activities.
- 10) The Chairman invited other Members of the Sub-Committee to ask questions. Ms Sophie Fernandes asked Mr Ahmed to confirm that his licence application did not include an application for an off licence. Mr Ahmed confirmed that the restaurant did not provide a take away service and would not sell alcohol for consumption off the premises.
- 11) Mr Ingham Clark asked Mr Ahmed to explain the timeline of events between the hearing and Mr Mir's purchasing the premises. Mr Ahmed explained that Mr Mir had bought the premises over a year ago and found running the restaurant difficult due to communication problems because he was Dutch. To resolve the issue Mr Mir asked Mr Ahmed to manage the premises. Mr Ahmed had managed the premises for the last two months. Mr Ingham Clark asked Mr Ahmed to confirm that he was present at the restaurant 6 days a week. Mr Ahmed confirmed that it was true. Mr Ingham Clark then asked Mr Barnes when the last time he had a complaint regarding the premises. Mr Barnes said his last complaint was due to an incident in March/April 2014.
- 12) The Chairman asked Mr Barnes if he had any other comments regarding the licence application. Mr Barnes explained that he was still concerned that the premises licence had expired a year before and the owner had not realised. Mr Barnes informed the Sub-Committee that he believed

the premises had been serving alcohol without a licence. The Chairman explained to Mr Barnes that without adequate evidence his belief could not be taken into consideration when determining whether or not to grant a new licence, as it was an evidence based hearing. Mr Barnes asked Mr Ahmed and Mr Mir how they had managed to conduct business for a year without a premises licence to which they responded that they had been conducting business as a “Bring your own” restaurant and that patrons of the restaurant brought their own alcohol to meals.

- 13) The Sub-Committee said that they did not have any other questions for the premises or Mr Barnes.
- 14) The Chairman gave Mr Barnes an opportunity to summarise his case. Mr Barnes said that he was still under the impression that Mr Ahmed was not suitably responsible to promote the licensing objectives. Mr Ahmed concluded to say that he believed his experience working the City demonstrated that he was a responsible premises manager and could conduct licensable activities.
- 15) The Sub Committee withdrew to deliberate and make their decision; accompanied by the representatives of the Town Clerk and the Comptroller and City Solicitor.

All parties returned to the room

- 16) Before informing the hearing of the decision the Chairman explained that the decision was made on the basis of promoting the licensing objectives and only evidence submitted to the hearing was considered. The Chairman explained that the Sub-Committee had decided to grant the applicant a licence. The Licence will be granted under a number of conditions, the first that the premises opening hours be amended to close at 23:30 and not 00:00 as the applicant had not applied for late night refreshment. Other conditions of the licence included the premises installing and maintaining a comprehensive CCTV system and prominent signs displayed at all exits from the premises requesting that patrons leave quietly. The Chairman explained that as off sales had not been applied for the condition that there should be no sale of alcohol in unsealed containers for consumption off the premises will be removed from the licence.
- 17) The Chairman thanked all parties for attending.

The meeting closed at 11:00AM

Chairman

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Copy of Decision letter circulated to all parties on 31 July 2014

Applicant: Bashir Ahmed
Application: New Premises Licence
Premises: Kyber, 4 Burgon Street EC4V 5DR
Date of Hearing: Friday 25 July 2014 at 11:00AM

I write to confirm the decision of the Licensing (Hearing) Sub Committee at the hearing on 25 July 2014 in relation to the above-mentioned application. The Sub Committee's decision is set out below.

1. This decision relates to an application made by Bashir Ahmed, 39 Warren Road, Wansted E11 2LX for a new premises licence in respect of the premises 'Kyber, 4 Burgon Street EC4V 5DR'.

The application sought to provide the following activities:

<u>Activity</u>	<u>Current Licence</u>	<u>Proposed</u>
Supply of Alcohol	N/A	Monday to Saturday: 12:00 – 15:00 hours 18:00 – 23:00 hours
Recorded Music	N/A	Monday to Saturday: 12:00 – 15:00 hours 18:00 – 23:00 hours

The supply of alcohol would be for 'on' the premises only. With the premises open to the public between 12:00 and 00:00.

2. The Sub Committee considered the application and carefully considered the representations submitted in writing and orally at the hearing by those making representations and the Applicant.
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 and appropriate 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. The representations focused on the potential for

public nuisance resulting from the applicant's capacity to adequately manage the premises.

6. The Sub-Committee took into account the representations regarding the potential for public nuisance from the premises but concluded that the premises could, with the imposition of suitable conditions, operate without causing nuisance to local residents.
7. It was the Sub Committee's decision to therefore grant the premises licence, subject to the conditions consistent with the Operating Schedule set out below:

<u>Activity</u>	<u>Current Licence</u>	<u>Proposed</u>
Supply of Alcohol	N/A	Monday to Saturday: 12:00 – 15:00 hours 18:00 – 23:00 hours <i>(premises to be closed by 23:30 hours)</i>
Recorded Music	N/A	Monday to Saturday: 12:00 – 15:00 hours 18:00 – 23:00 hours <i>(premises to be closed by 23:30 hours)</i>

- The premises shall install and maintain a comprehensive CCTV system. All entry and exit points will be covered enabling facial identification of every person entering in any light condition. The CCTV cameras shall continually record whilst the premises are open to the public and recordings shall be kept available for a minimum of 31 days with date and time stamping. A staff member who is conversant with the operation of the CCTV system shall be present on the premises at all times when they are open to the public. This staff member shall be able to show the police or the Licensing Authority recent data or footage with the absolute minimum of delay when requested. (MC01)
 - A prominent sign shall be displayed at all exits from the premises requesting that patrons leave quietly. (MC15)
7. If the Sub Committee was wrong and the conditions prove insufficient to prevent a public nuisance associated with these premises, 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.
 8. If any party is dissatisfied with this decision, he or she is reminded of the right to appeal, within 21 days of the date of this letter, 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.

Yours faithfully

Georgina Denis

Clerk to the Licensing (Hearing) Sub Committee

Useful Numbers/Websites:

An 'Out of Hours' noise response service is available 24 hours a day by telephone:

0207 6063030

Licensing Policy and Code of Good Practice for Licensed Premises:

<http://www.cityoflondon.gov.uk/business/licensing/alcohol-and-entertainment/Pages/Licensing-policy.aspx>