

**MINUTES OF THE MEETING OF THE LICENSING SUB-COMMITTEE
HELD ON WEDNESDAY, 16 AUGUST 2017**

COUNCILLORS: (Chair) Derek Levy, Vicki Pite and Glynis Vince
PRESENT

OFFICERS: Ellie Green (Principal Licensing Officer), Victor Ktorakis (Licensing Enforcement Officer), Catriona McFarlane (Legal Services Representative), PC Martyn Fisher (Metropolitan Police) (for Indian Fusion item only), Elaine Huckell (Committee Secretary)

Also Attending Re: Indian Fusion application – Mark Altman (Joshua Simons & Associates), Ajahar Ali (Indian Fusion)

Re: Ponders End Smallholders Association (PEDSA) – William Haydes, Vivienne Nicholas, Vaughan Watson, Mr Corbett, Linda Marsh, Barbara Hart, Fay Bernard, M L Andrew – Vanell, L Hector, W Binns, E Sabk, G Samuels

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WELCOME AND APOLOGIES FOR ABSENCE

Councillor Levy as Chair welcomed all those present and explained the order of the meeting.

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DECLARATION OF INTERESTS

There were no declarations of interest regarding the Indian Fusion application. In respect of the PEDSA application non-pecuniary interests were declared by Councillor Vince as her husband owns shares in Green King, Councillor Pite declared that she had been invited but had not attended a meeting with members of PEDSA and Councillor Levy referred to one of his ward constituents being present at the meeting.

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INDIAN FUSION, 252A HIGH STREET, ENFIELD, EN3 4HB (REPORT NO.47)

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RECEIVED the application made by Mr Ajahar Ali for the premises situated at Indian Fusion, 252A High Street, Enfield, EN3 4HB, for a variation of a premises licence.

NOTED

1. The introductory statement of Ellie Green, Principal Licensing Officer, including
 - a. The application for consideration was for variation of a premises licence.
 - b. The premises was currently licensed for alcohol only until 23:00 daily, and close at 24:00.
 - c. Mr Ajahar Ali, the Premises Licence Holder (PLH) and designated premises supervisor at Indian Fusion was seeking to add late night refreshment at the premises until midnight daily and also the delivery of late night refreshment until 03:00 daily.
 - d. The premises was located in the Edmonton Cumulative Impact Policy Area, known as a CIP; therefore there was an automatic presumption against grant of applications outside the CIP core hours, namely midnight. As a result, the Police and the Licensing Authority objected to the application with regards to the hours. Two further representations had also been received by Other Persons against the application, these have been given references IP1 and IP2 in the report at Annex 6. Additional information provided by IP2 is shown in the supplementary report no 2.
 - e. Proposed additional conditions to be added to the licence should the application be granted in full or in part, have been accepted by the applicant.
 - f. It was for the applicant to present how their application will mitigate the impact that the policy outlines, and why this application should be an exception to the policy.
 - g. The applicant Mr Ali is not being represented legally today but has responded to some of the representations received, his written representation is presented in the Supplementary report.
 - h. Victor Ktorakis is here on behalf of the Licensing Authority, and PC Martyn Fisher on behalf of the Metropolitan Police.
 - i. Mr Altman is a licensing consultant who is here to represent his client (representation IP2), who wishes to remain anonymous.
2. The introductory statement of Victor Ktorakis (Licensing Enforcement Officer), including:
 - a. The premises was located in the Edmonton CIP area, and the location was already an area of concern regarding crime and disorder and public nuisance.
 - b. The onus was on the applicant to show why an application outside the CIP policy would have no negative cumulative impact in the locality.
 - c. The premises was located in a mixed commercial and residential area with residential properties nearby bedrooms were located near the

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- back of the premises. There was concern that residents could be disturbed by vehicles entering and leaving the premises late at night.
- d. The PLH had been advised by the Licensing Enforcement Officer on 27/06/17 that they had received evidence that they had been trading late night refreshment (LNR) without a licence and that he should not hand over any hot food or drink after 23:00, however an inspection on 30/06/17 by out of hours Licensing Enforcement Officers showed that this was still happening. A formal warning letter was sent to the PLH on the 3/07/17.
 - e. Representation is made on the grounds of prevention of public nuisance as the observations and alleged illegal trading has reduced the Licensing Authority's confidence in those running this premises.
3. The statement of PC Martyn Fisher on behalf of Metropolitan Police Service, including:
- a. The Police supported the Licensing Authority Objection and made representation on the grounds of prevention of crime and disorder.
 - b. That an incident took place when the applicant was a victim of a robbery in June of this year when taking a delivery of food to an address at 02:15 this was at a time the applicant should not have been trading.
 - c. The premises is near to flats and complaints have already been received about noise.
4. There were no questions put to the Licensing Authority or Police representative.
5. The statement of Mr Mark Altman (Joshua Simons & Associates) who was attending on behalf of an Other Person reference IP2, including:
- a. Representation is made on the grounds of prevention of crime and disorder and prevention of public nuisance
 - b. That trading had been carried out surreptitiously at the rear of the premises and with deliveries taking place after 23:00.
 - c. In the supplementary agenda 2nd pack there is a report which details the investigation carried out at the premises of Indian Fusion.
 - d. That the operation of a hot takeaway delivery service has been taking place since May this year and being advertised on websites
 - e. The applicant had referred in his letter to Ellie Green of the 07/08/17 of trading in a 'trial period' during the late night hours of 23:00 to 02:30 outside of normal opening hours. There was no 'trial period.' This was an offence contrary to the Licensing Act.
 - f. Where a CIP applies, it is incumbent upon the applicant to demonstrate an understanding of potential cumulative impact and setting out the steps they will take to promote the licensing objectives in their application. The applicant has not provided a statement on this.
 - g. That the application should be refused in its entirety
6. The applicant responded to questions as follows:

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- a. Councillor Levy referred to the need for an applicant to focus on steps to be taken to promote the licensing objectives, he asked if the applicant understood what was meant by a CIP? In response Mr Ali said that he explains these points in his letter to Ellie Green and he accepts the conditions suggested by Licensing and the Police should the application be granted in full or in part.
 - b. The applicant referred to the list of signatures that he has presented from local residents who have stated that they have not witnessed any noise or unsocial disturbances from the restaurant in the late night hours during a given period.
 - c. Mr Ali was of the opinion that one of the complainants was actually from a competing shop nearby
 - d. When asked by Councillor Levy what Mr Ali meant by the 'trial period'? and why he was operating a business outside of the licensing hours, Mr Ali responded that he had changed the business from a Chinese to an Indian restaurant but for financial reasons he decided to try selling fried chicken and pizza.
 - e. Mr Ali was asked by Councillor Vince why he was operating outside the licensing hours and had he notified the Licensing Authority? To which Mr Ali replied that he had not notified the Licensing Authority, he said he had known the opening hours but for his personal interest he needed to do this to survive.
 - f. In answer to Councillor Pite's question did you know you were operating outside the legal opening times, he agreed that he did.
 - g. Councillor Levy asked if Mr Ali could show any steps he had taken to pursue the licensing objectives and what active steps if any he had taken to ensure no public nuisance would occur. Mr Ali agreed that he had made a mistake before operating outside the legal time, he could ask drivers not to make so much noise and orders would be taken over the phone only. He confirmed that he did not operate electric cars.
 - h. Victor Ktorakis asked if the applicant would consider reducing his application to operate within the CIP boundary hours to midnight. However Mr Ali said he would want his application hours to remain.
 - i. It was noted that there had been a previous case where the CIP conditions had been waived. Each case would be judged on its merits.
7. The summary statement of Ellie Green, Principal Licensing Officer including:
- a. Having heard all the representations, it was for the licensing sub-committee to consider whether the variation application for Indian Fusion is appropriate and in support of the licensing objectives.
 - b. The licensing sub-committee could decide to either grant the licence in full, grant the licence in part, with amended times/ activities and conditions or to refuse the application.
 - c. The sub-committee's attention was drawn to the relevant Home Office guidance and the Enfield Licensing Policy, as set out on pages 3 -4 of the report.

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8. The summary statement of Mr Altman, including:
 - a. The applicant has not provided evidence of steps he would take to promote the licensing objectives.
9. The representative of the Police and the applicant did not wish to make a summary statement

RESOLVED that

1. In accordance with the principles of Section 100(a) of the Local Government Act 1972 to exclude the press and public from the meeting for this item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 7 of Part 1 of Schedule 12A to the Act.

The Panel retired, with the legal representative and committee administrator, to consider the application further and then the meeting reconvened in public.

2. The Chairman made the following statement:

In considering this application, the Licensing Sub Committee (LSC) was concerned that the written submission conveyed absolutely no steps that would be taken to promote the licensing objectives, or demonstrate that there would be no negative cumulative impact as a result of extended hours for late night refreshment.

The oral submission of the applicant at the hearing failed to offer any such steps either; and under questioning, Mr Ali the Premises Licence Holder (PLH), was still unable to provide any comfort or any confidence that he understood these licensing objectives at any level, and particularly how they needed to be pro-actively promoted in applications such as the one under consideration this morning.

The LSC was persuaded by the objections submitted by the Licensing Authority and the Metropolitan Police Service that the licence holder has already failed to prove compliance with the current licence; a fact actually volunteered by the PLH in writing on 2 August 2017, and admitted at the hearing itself.

Previously given advice and guidance had still not been sufficiently heeded.

The LSC recognised that on a subsequent visit by Licensing Enforcement Officers, the premises were closed at 23:00. However, the panel also heard evidence that the business was actively advertising and promoting sales of hot food from the rear of the premises.

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Even if a Cumulative Impact Policy (CIP) was not in place, the objections to such extension of hours as being sought would remain because of the concerns raised over the capacity of the licence holder even to operate the extant licence effectively.

However, where a CIP does apply, it is incumbent upon the applicant to demonstrate consideration and even a basic understanding of potential cumulative impact when setting out the steps, if any, they will take to promote the licensing objectives in their application.

On this occasion, there was no compelling case made for exemption from CIP – in fact, no case was made at all for the LSC to be persuaded otherwise.

As such, the application for extended hours to allow for the licensable activity of late night refreshment until 03:00 hrs was rejected by the Licensing Sub-Committee.

If, in the future, the Premises Licence Holder were to make another application supported by compelling reasons for extended hours, a Sub-Committee might come to an alternative outcome and we suggest Mr Ali seeks professional advice to assist him in this regard.

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PONDERS END SMALLHOLDERS ASSOCIATION, 82A CHURCH ROAD, ENFIELD, EN3 4NU (REPORT NO.48)

Councillor Levy welcomed members of PEDSA to the meeting and explained the order of the meeting. Declarations of Interest were noted (Please see under item 2)

RECEIVED the application made by Mr Bill Haydes for a review of the Club Premises Certificate held by Ponders End Smallholders Association at the premises known as and situated at Ponders End Smallholders Association, 82A Church Road, Enfield, EN3 4NU.

NOTED

1.The introductory statement of Ellie Green, Principal Licensing Officer, including

- a. The review application is being made by Mr Bill Haydes, who had been a member of the club (PEDSA) for the review of the Premises Certificate.
- b. The application relates to the prevention of crime and disorder licensing objective and is made on grounds of allegations that the club is carrying on illegal financial activity. The application and grounds for review was shown at p61 of the agenda pack.

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- c. That the review was also originally based on the public nuisance licensing objective but this claim had now been withdrawn.
 - d. Representation of the Licensing Enforcement Officer, Charlotte Palmer was included at p505 of the agenda and Mr Victor Ktorakis was here on behalf of the Licensing Authority.
 - e. Additional information relating to independent legal advice is given at p7 of the supplementary agenda.
 - f. The applicant Mr Haydes, together with Mr Watson and Ms Nichols (who refers to themselves as the 'New Committee') are in attendance and so too is Mr Corbett who is representing PEDSA, the certificate holder.
2. The statement of Mr Haydes, the applicant together with Ms V Nichols and Mr Watson including:
- a. The application relates to the prevention of crime and disorder – reference was made to the Application for Review documents, shown at Annex 6 which refers to non-compliance of the Licensing Act 2003.
 - b. Members of PEDSA had not been given information about the finances of the club.
 - c. A fine had been made regarding late submission of accounts but this had not been disclosed to members.
 - d. The balance sheets and financial statements for the club should have been disclosed before the club's AGM and an annual return should have been submitted to the Financial Conduct Authority (FCA).
3. The applicant together with Ms V Nichols and Mr Watson responded to questions including:
- a. It was questioned whether the applicant considers that because the club had not complied with its own rules it should not be considered as a valid club. Mr Watson agreed and referred to the fact that the disclosure of financial information had not been forthcoming.
 - b. When asked by Cllr Levy whether they considered themselves to be members of PEDSA they answered yes.
 - c. Confirmed that PEDSA financial statements were obtained by purchase from the Financial Conduct Authority (FCA).
 - d. Acknowledged that Annex 11 (supplementary agenda) from the FCA stated that the society had complied with the requirement to submit annual returns and accounts however the 2016 return was now overdue.
 - e. It was asked why this Licensing Sub Committee was being asked to adjudicate between one group of people against another and whether it may have made more sense to try other arbitration sources rather than asking for the premises certificate to be revoked? it was answered that financial information had not been disclosed and although FCA now say that only the 2016 financial records are outstanding previously financial information had not been disclosed.

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- f. When asked how PEDSA is organised it was stated that it was divided between those that are full members and those that are only members of the clubhouse.
- g. When asked what may be the short term and long term consequences of reviewing the certificate it was answered by Ms Nicholls that it may be necessary to look at alternative ways of dealing with the club house such as no longer selling alcohol.
- h. Catriona McFarlane mentioned that the club may wish to surrender the Club premises Certificate and instead apply for a Premises Licence in which case there would be no requirement for the Committee to demonstrate that they meet the qualifying club criteria. It was asked if this group had obtained legal advice and this was answered in the negative.

3. The statement of Viktor Ktorakis, on behalf of the Licensing Authority including

- a. This was a complex case, it is not for this Committee to decide whether the club is making a profit or loss.
- b. Evidence suggests that PEDSA is not complying with its own club Rules and that the current rules do not meet the requirements of the Licensing Act 2003.
- c. It would be necessary for the Rules to be updated within a 6 week deadline and to the satisfaction of the Licensing Authority then the Licensing Authority would be satisfied that the club meets the requirements of a 'qualifying club' and would withdraw its representation supporting the review application.

Councillor Levy asked if a six week period was appropriate for making changes and it was agreed that it was.

4. Statement of the Premises Certificate Holder - Mr Corbett (PEDSA) including -

- a. Disputes that Mr Haydes, Ms V Nichols and Mr Watson are members of the association (PEDSA) Mr Corbett referred to the legal advice given in Annex 10 (page 7 of the supplementary agenda) that the 'new committee' has no legal standing as they were not elected during an AGM and they have failed to pay their subscription fees.
- b. There is only one Committee for PEDSA i.e there are not different ones for the Clubhouse and for the Allotments. They had been going as one association since the 1920's.

5. The Premises Certificate Holder together with members of PEDSA responded to questions as follows

- a. In response to a question about how the Committee had failed to meet the club rules regarding the submission of accounts. It was answered that as soon as the Committee were aware that it was necessary for accounts to be submitted to the FCA or a fine would be incurred then they rushed to get this done.

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- b. Councillor Levy asked if the association had considered the possibility of surrendering the Club Premises Certificate and instead applying for a Premises Licence, Mr Corbett said the club members had not requested this.
- c. It was agreed that the present club 'Rules' were outdated and would be updated, Mr Corbett was fully aware of the time frame to do this.
- d. Confirmed that all other licences as required were held by the club.
- e. The review application relates to the prevention of crime and disorder licensing objective. It was queried why the club had taken so long to publish accounts. It was acknowledged that there had been failures in the past but that when it was known that accounts had to be submitted to the FCA then this was done as soon as possible.

6. The summary statement of Ellie Green, Principal Licensing Officer including:

Having heard all the representations, it was for the Licensing Sub-Committee to consider the steps listed below to be appropriate for the promotion of the licensing objectives:

- to modify the conditions of the certificate;
- to exclude as qualifying club activity from the scope of the certificate;
- to suspend the certificate for a period not exceeding three months;
- to withdraw the certificate;
- to decide that the licensing review was not made out.

7. The summary statement of the Applicant including;

- a. The club was in breach of its loan agreement with Greene King as it was obtaining goods from other suppliers.
- b. That an AGM was not being held annually by PEDSA
- c. Members of the club do not know if fines had been paid to the FCA and for how much
- d. That there was no official treasurer for the club only a bookkeeper. This had led to a lack of expertise and the reason why annual returns have not been submitted in time.

8. The summary statement of the Premises Certificate Holder including;

- a. There was an oversight in submitting accounts to the FCA but as soon as this was apparent it was arranged for this to be done as quickly as possible. They were now compliant.
- b. There is no requirement for the club to have a Treasurer, instead they have a bookkeeper.

1. Viktor Ktorakis, on behalf of the Licensing Authority did not wish to make a summary statement.

RESOLVED that

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1. In accordance with the principles of Section 100(a) of the Local Government Act 1972 to exclude the press and public from the meeting for this item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 7 of Part 1 of Schedule 12A to the Act.

The Panel retired, with the legal representative and committee administrator, to consider the application further and then the meeting reconvened in public.

2. The Licensing Sub-Committee RESOLVED that the Licensing review was not made out

3. The Chairman made the following statement

Having considered all the submissions written and oral, from all parties, the Licensing Sub-Committee (LSC) determined that on balance, the review case brought by Mr Bill Haydes was not made out on the grounds of the sole licensing objective in contention – being prevention of crime and disorder (PCD).

The only allegation of criminal wrong doing seems to be that the Club had been convicted of specifically failing to file their audited accounts with the Financial Authority, on time and over a number of years.

Whilst the LSC considers this to be a serious failure, undermining to a certain degree our confidence in the organisation, the FCA itself states that Ponders End Smallholders Association (PEDSA) is now up to date with the exception of the 2016 accounts – which, as of today, are currently sixteen days late.

On this basis, the LSC is satisfied that the PCD Licensing Objective is not undermined sufficiently that it needs to take any of the steps available to it appropriate for the better promotion of the licensing objectives under the Licensing Act 2003.

We note that the Licensing Authority (LA), as part of the review, has separately considered and is still considering the issue of whether the PEDSA meets the Club Premises Certificate (CPC) criteria; and have in fact already given the club clear advice set against a timetable to resolve these issues to its – the Licensing Authority's – satisfaction. The implications for the validity of the CPC and the qualification status of the club as a whole, as well as alternative licensing options, were noted from the written submissions, and reiterated by questions raised during the hearing.

The Licensing Sub-Committee is not minded to take any further steps in this regard, as the Licensing Authority has the powers to deal with this situation.

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Advisory Note

The Licensing Sub Committee (LSC) was very disappointed to note there is a deep rooted and acrimonious dispute of longstanding between current and future members of the Ponders End Smallholders Association (PEDSA). However, all of the points in dispute between the respective parties, some of which played out during the hearing, are not those upon which the LSC is able to adjudicate.

However, the LSC recommends that the disputing factions seek to resolve their issues for the benefit of and in the best interests of all members of the Smallholders Association – which, after all, has managed to succeed for almost 100 years. We urge both parties before us today, going forward, to work collectively in the best interests of the Club and all of its members, and to do this as smoothly and effectively as possible without needing to involve the Metropolitan Police Service or the Licensing Authority beyond the administrative relationship to do with the current Club Premises Certificate and/ or any future Premises Licence as may be applied for.

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MINUTES OF PREVIOUS MEETING

RECEIVED, the minutes of previous meetings of the Licensing Sub-Committee held on 3 and 19 July 2017.

AGREED, that the minutes of the meetings of the Licensing Sub-Committee held on 3 and 19 July 2017 be confirmed and signed by the Chair as a correct record.