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LICENSING SUB-COMMITTEE - 20.10.2021

MINUTES OF THE MEETING OF THE LICENSING SUB-COMMITTEE HELD ON WEDNESDAY, 20 OCTOBER 2021

COUNCILLORS

PRESENT Doug Taylor (Chair), Birsen Demirel and Jim Steven.

ABSENT

OFFICERS: Ellie Green (Principal Licensing Officer), Charlotte Palmer (Senior Licensing Enforcement Officer) Balbinder Kaur Geddes (Legal Adviser) and Metin Halil (Democratic Services)

Also Attending: Leon Christodoulou – Police Authority

1 WELCOME AND APOLOGIES FOR ABSENCE

NOTED

Councillor Taylor as Chair welcomed all attendees to the meeting. Sub-committee members confirmed their presence. Officers, applicants and representative, confirmed their presence. The Chair explained the order of the meeting.

2 DECLARATION OF INTERESTS

NOTED there were no declarations of interest in respect of the item on the agenda.

3 HAYATY LOUNGE LIMITED, 303 GREEN LANES, SOUTHGATE, N13 4XS

RECEIVED the application made by Mrs Abdelmegid Nessrin Anter El Sherbiny for a premises licence at the premises known as Hayaty Lounge Limited and situated at 303 Green Lanes, Southgate, N13 4XS.

NOTED

1. The introduction by Ellie Green, Principal Licensing Officer, including:
 - a. The application was for a new premises licence relating to a premise named Hayaty Lounge Limited at 303 Green Lanes, N13 4XS.

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- b. The premises have not held a licence previously, but the husband of the current applicant did apply for a licence in 2011 but was subsequently withdrawn due to objections.
 - c. The applicant is Ms Abdelmegid El Sherbiny and is the wife of Mr Ayman El Sherbiny, who was present; their son Mr Mustafa El Sherbiny was also in attendance. Mrs El Sherbiny is also the Director of Hayaty Lounge Limited.
 - d. This new application is for a Shisha Café seeking various regulated entertainment and late night refreshment between 10:00am – 1:00am daily.
 - e. Mr El Sherbiny confirmed, before the meeting started, that they are only seeking regulated entertainment outside only till 11:00pm. But that they still want the full hours up to 1:00am. It would be a licensable activity because there is no alcohol being sought on this application.
 - f. However, the responsible authorities, namely the Police and Licensing Authority object to any hours sought after 11:00pm and the applicant has not agreed to the reduction in those hours. But they had agreed to conditions set out in Annex 4 detailed from page 89 of the report.
 - g. Present at the meeting was Mrs El Sherbiny (applicant), Mr El Sherbiny (Husband) and their son Mustafa El Sherbiny. There was no legal representation present. Sergeant Leon Christodoulou representing the Police and Charlotte Palmer representing the Licensing Authority were also present.
 - h. In response to an enquiry by the Chair, Ellie Green (Principal Licensing Officer) clarified that the LSC were only considering what the conditions are at Annex 4. The LSC, if they wish, could consider any additional conditions once they had heard representations and could add to these or not. Within Annex 4 the conditions are agreed and there are no conditions the Licensing Authority are proposing that the LSC are required to consider.
2. The statement of Mrs Abdelmegid El Sherbiny (applicant) made by Mr Ayman El Sherbiny on behalf of the applicant including:
- a. Mrs Abdelmegid El Sherbiny (applicant) confirmed that she has understood that Mr Ayman El Sherbiny (Husband) would be speaking on her behalf.
 - b. The applicant is looking to close the premises at 1:00am which is for the inside and basement of the premises. The outside area and the garden to close at 11:00pm.
 - c. They would ensure no noise would be heard outside and only speaking inside the premises so as not to annoy the neighbours. This was what the applicant was looking for.
3. The applicant and her representatives (husband and son) responded to questions as follows:
- a. In response to the Chair's question about the history of noise complaints from the premises in the past, with enforcement

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taken, and how would the applicant ensure this would not be replicated. Mr El Sherbiny clarified that the applicant was not in the UK at the time of these noise complaints. Mustafa El Sherbiny (Son of applicant) further clarified that the applicant would be aware of any outside noise and nothing like this would ever happen again. There would be no noise or music in the back garden again. No complaints would be made as the premises would be stopping all music by 11:00pm.

- b. Legal interjection - Balbinder Kaur Geddes (Legal Representative) stated that Mustafa El Sherbiny said that he would talk on behalf of the applicant. He could therefore answer the questions on her behalf as the applicant and to translate for her as Mustafa El Sherbiny was acting as her representative.
- c. Councillor Demirel asked for confirmation that there would be no live music/performances after 11:00pm even though the premises would be open till 1:00am. Mustafa El Sherbiny clarified that there would only be low level background music inside the premises after 11:00pm.
- d. Councillor Steven stated the premises had opened for business during the Covid period and were told not to have more than 6 people inside the premises but there was more than 6 present. Alcohol was also being sold in the premises at that time. The applicant's representative clarified that nothing like this had happened at all. Alcohol was not sold in the premises at all. The premises only sold soft drinks, tea and coffee.
- e. Charlotte Palmer (Senior Licensing Enforcement Officer) asked the following questions to the applicant:
 - Did the applicant work at the premises?
 - Who ran the premises daily and who dealt with customers?
 - Why was Mustafa El Sherbiny (son) not making the premises licence application and Mrs Mustafa was making the application in her name who doesn't work at the premises.

Mustafa El Sherbiny clarified that the applicant only provided shopping for the premises and did not serve customers. The premises were managed by Mustafa El Sherbiny and Mr Ayman El Sherbiny, who have done so for the past 3 years. The premises licence was being made by the applicant because this was an Arab/family thing as the older member of the family.

- f. Charlotte Palmer asked if the applicant realised that as the named PLH she would be legally responsible for ensuring all conditions are complied with and the proposed hours are not breached. Did the applicant understand the responsibility for being a PLH? Mustafa El Sherbiny clarified that the applicant knew this.

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- g. Charlotte Palmer asked the applicant how she would ensure that the conditions and times are complied with if she was not even working at the premises?

Legal Interjection: the applicant to reply to the question through her son, Mustafa El Sherbiny, after translation.

Mustafa El Sherbiny clarified that the applicant does go to the premises but not all the time. The applicant tells Mustafa El Sherbiny what to do at the premises. The applicant is his mother, she is not there every day, only coming to the premises in the morning and leaving in the evening.

- h. Charlotte Palmer asked if the applicant had read the conditions herself and if she understood what she must do to demonstrate compliance? In response Mustafa El Sherbiny said that the applicant knows what she must do at the premises.
- i. In response to Charlotte Palmers enquiry about the agreed conditions and if the applicant can tell the LSC what she has agreed to do to ensure the licensing objectives are upheld. Mustafa El Sherbiny responded that the applicant has only agreed about the closing time of the outside area at 11:00pm but to close the inside premises at 1:00am. The Legal Representative clarified if the applicant understands the proposed conditions, the implications of those proposed conditions and is able to adhere to those conditions as detailed from page 89 of the agenda. Charlotte Palmer, as an example read out condition 8 (page 90) regarding noise levels and further added if the applicant could explain to the LSC what she would do in relation to ensuring that this condition is complied with and to demonstrate what she would be doing to ensure compliance? In response, Mustafa El Sherbiny said that the applicant will ensure that if the premises closes at 1:00am there would be no music at all and all customers would leave the premises and the shutters would come down straight away after closing. So, the outside area would close at 11:00pm, there would also be security and no live music after 1:00am. All customers would leave at 1:00am immediately and the premises would be closed.
- j. Charlotte Palmer was dissatisfied with the applicants answer (as above) regarding condition 8. Stating that the applicant was referring to the proposed hours and her enquiry was about demonstrating compliance for the noise condition (8) which was about carrying out sound checks and record keeping. Charlotte Palmer then clarified what the model answer should have been regarding compliance of condition 8 (noise levels). In response to Mustafa El Sherbiny stated that he did not understand Charlotte Palmer's question about condition 8 and the applicant demonstrating compliance, Charlotte Palmer again clarified that condition 8 was agreed by the applicant and again stated what condition 8 was and the measures needed to demonstrate compliance. Mustafa El Sherbiny responded that the applicant

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will know everything about condition 8, the music checks and keeping records and she would be responsible for that. The applicant would be at the premises every day while it is open.

4. The statement of Leon Christodoulou on behalf of the Police Authority including:
 - a. The police Authority have real concerns with this application and had been unable to contact the applicant. They had only managed to have a conversation once and only now knew who is responsible for the premises and what the premises would be used for.
 - b. Concerns last year and this regarding Covid breaches and noise concerns. Concern also whether the premises are being used as a nightclub rather than a café.
 - c. The police do not feel re-assured that Mustafa El Sherbiny (son) would be taking over the management of the premises as he had been involved with the premises over the past 3 years, during these Covid breaches, and are not reassured that anything would change.
 - d. The applicant doesn't have an understanding how the business will be run still. If the premises are to be run as a café, why does it need to be run until 1:00am and why is the applicant considering having security. It is not clear how noise issues would be dealt with. The Police would have liked to have these conversations with the applicant.
 - e. There had been an out of hours incident in September 2021 at the venue whereby alcohol was consumed at the location despite not having an alcohol licence. This serious allegation was still being investigated.
5. The Police Authority responded to questions as follows:
 - a. In response to the Chair's enquiry about the timeframes to contact the applicant, it was advised that contact with the applicant was last made on the 15 October 2021. This was with Ayman El Sherbiny and that his son Mustafa El Sherbiny would be taking over the business as he had experience and had been involved with the premises over the past 3 years. Several attempts had been made to contact the premises through a mobile phone number but to no avail.
 - b. Mr Ayman El Sherbiny stated that when the business was started it was a café and then became a take-away restaurant for 2 years but was un-successful. The venue was then changed to a Shisha Bar but then the pandemic hit us, so we tried to turn the premises back to a professional restaurant.
In response to the objection and nuisance that was referred to, management would make sure that noise will be controlled by the applicant and Mustafa El Sherbiny. They would understand how to do this correctly. Mr El Sherbiny was trying to change his behaviour and to get things right in order to survive. In response, Leon Christodoulou advised that the Police were concerned that

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Mr El Sherbiny has had 3 years to show and provide that he could run the business. It was accepted that there had been changes and different ways the premises had to adapt, but there had still been various breaches. Including an admission that one member of staff did not have a work visa that was being employed by the premises. The Police Authority confirmed a lot of rule breaking had occurred and did not understand what would be changing if the licence was granted.

6. The statement on behalf of the Licensing Authority by Charlotte Palmer (Senior Licensing Enforcement Officer):
 - a. The Local Authority was pleased that all the recommended licensing conditions had been agreed but they still did not agree with the hours for late night refreshments or regulated entertainment. There was still some confusion as to what regulated entertainment is being offered by the applicant. Background level music is not licensable or require a license for recorded music.
 - b. This premises have an extensive history of breaching legislation and causing noise disturbance to local residents.
 - c. The owner of the premises and directors have changed over the years, but Mr El Sherbiny has always been involved in running the business. The Licensing Authority had never met the current director and applicant for the premises or received any communications from the applicant, until today which was a concern.
 - d. Mr El Sherbiny (current manager) was prosecuted and found guilty in 2011 of repeatedly breaching a noise abatement notice, repeatedly providing licensable activities without a licence and breaches of the Health & Safety Act 2006, allowing customers to smoke in an enclosed space. In 2018, Mr El Sherbiny was again prosecuted and found guilty of offences under the Health & Safety Act 2006, Licensing act 2003, Town & Country Planning Act 1990 and the Environmental Protection Act 1990. This history has led to a lack of confidence in the ability of those running the business abiding to legal requirements.
 - e. The Licensing Authority considered submitting an outright objection to this application but was appreciative of the last 18 months which has been a difficult time for businesses with changing Covid regulations.
 - f. Licensable activities were again seen to be taking place without a premises licence/temporary event notice being in place in September 2020.
 - g. In August 2021, a noise complaint was received regarding loud music coming from the premises every night for the last 2 weeks from 10:00pm to 1:30am.
 - h. If the applicant is able to demonstrate full compliance for the licensed times and conditions in this representation, over a 6 month period, the Licensing Authority would have more

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confidence in their ability to trade in a manner that would not cause a nuisance to local residents. Until then the Licensing Authority continues to object to the applied required hours, late night refreshments and regulated entertainment.

- i. As heard today, Mr El Sherbiny does not want to be involved with the running of the premises so it may be appropriate to add a further condition stating that Mr El Sherbiny shall not be involved in any way with the operation and management of the business or be permitted to work in the business in any capacity if that is his true intention.

The applicant could advise whether they would agree to this wording.

7. Charlotte Palmer (Senior Licensing Enforcement Officer) responded to questions as follows:

- a. In response to the Chair, nothing has been heard to date to change anything in Charlotte Palmers introductory statement. The Licensing Authority were even more concerned as the applicant did not seem to understand conditions they have agreed to.
- b. Charlotte Palmer clarified how she had arrived at the proposed hours of the intended licence.
- c. Mustafa El Sherbiny stated that there was no difference between closing at 11:30pm and 1:00am, only 1.5 hours. Their customers usually came at 10:00pm. They have regular customers who have been coming to the premises for the last 7-8 years. If the premises must close now at 11:30pm they will be losing money and customers and not be able to run the business as they want to. Charlotte Palmer responded why there were people at the premises at 1:00am and what activities were taking place at 1:00am? If no licensable activities are taking place how would that activity be different the premises did not have the licence. Mustafa El Sherbiny responded that these were regular family customers having business meetings at that time with soft drinks and Shisha but if they had to close at 11:30pm the business wouldn't work. It was advised that if no licensable activities are taking place then conditions and times cannot be breached. Non-licensable activities could continue past the licensable hours i.e. soft drinks and cold food. Any licensable activities would have to stop by 11:00pm i.e. hot drinks/hot food and music/entertainment, if the licence is agreed. There should be no change to the premises existing customers if the premises are only selling soft drinks and cold food. If the premises were to serve hot dinks/hot food or carry out entertainment outside those hours they would be in breach of their licence, if agreed.
- d. Mr El Sherbiny stated that Covid had a big impact on the premises. They are trying to obtain new customers between 11:00pm – 1:00am coming to the premises. They had served

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customers hot drinks/hot food as a substitution of their shisha business for which they had lost 60% of business.

Legal Interjection: The legal representative stated that this was something the premises were not entitled to do because they did not have a licence beyond 11:00pm. At no stage prior to this application are you legally entitled to do that and would caution what Mr El Sherbiny had said because the LSC would need to take that into consideration when it makes its decision if you're potentially acknowledging that this is how you have been operating which seems to be in breach of the law.

In relation to this application, Mr El Sherbiny's submission should be that he would operate within the law and that is what the LSC will consider.

8. The summary statement from Ellie Green, Principal Licensing Officer, that having heard from the representatives of all the parties and received all the written evidence, it was for the sub-committee to determine the appropriate steps to take. The relevant guidance and policies were highlighted. Financial implications are not a consideration in the licensing regime.
9. The summary statement of Leon Christodoulou on behalf of the Police Authority, that there are concerns around security. Why would a local community café need security? The Police were still not reassured due to the history of breaches, the Covid breaches and the behaviour of individuals serious allegations. How could the Police be reassured that this is going to change?
10. The summary statement from Charlotte Palmer, Senior Licensing Enforcement Officer, that in order to prevent public nuisance the Licensing Authority continues to object to the 1:00am licence and recommends the terminal hour of 11:30pm for all licensing activities ceasing at 11:00pm. The sale of hot food/hot drinks is only considered to late night refreshments between the hours of 11:00am – 5:00pm. This recommends that there be no late-night refreshments on the licence.
11. The summary statement of Mr El Sherbiny on behalf of the applicant, in response to licensing officers' concerns regarding the applicant's capability of running a licensed business, it was advised that the applicant had raised 2 children on her own for 15 years whilst Mr El Serbiny was travelling through Europe. The applicant is very confident in herself and can do better running the business for the future. Speaking on behalf of the applicant, Mr El Sherbiny agreed with the proposed condition suggested by Charlotte Palmer, to state that Mr El Sherbiny would not be involved in the business in any capacity. Mr El Sherbiny would only be an adviser as the head of the family to advise, guide and provide feedback on how to run a small business.

He confirmed that his son, Mustafa, worked for him at the premises for the past 3 years but operationally not on the side of the Law. The applicant and Mustafa El Sherbiny would ensure everything ran smoothly at the premises. The applicant is only asking for the ability to provide late night refreshments to serve hot food and hot drinks. The applicant would take

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away live music and entertainment if they could serve hot food and drinks inside the premises within the licensable hours.

Referring to the mentioned security/CCTV at the premises, this had been recommended by Charlotte Palmer in an e-mail to the applicant to aid customer dispersal from the premises.

The applicant was trying to ensure that things ran smoothly at the premises. They had lost 60% of their income and this was the only way for them to keep normal living standards.

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 Chair made the following statement (**Final Decision Notice attached to these minutes**):

“The Licensing Sub-Committee (LSC) having listened to and considered written and oral submissions made by the Metropolitan Police, the Licensing Authority and by the Applicant and Mr Ayman El Sherbiny and Mr Mustafa El Sherbiny and in particular the evidence concerning previous activities at the premises concerning noise nuisance and breaches to the law as set out by the Licensing Authority and the Metropolitan Police which arose whilst Mr Ayman El Sherbiny and possibly Mr Mustafa El Sherbiny were in control of the premises. The Applicant has not been able to demonstrate to the LSC that she has an understanding of the obligations of holding a licence and the licensing objectives of the Prevention of Crime and Disorder, Public Safety, the Prevention of Public Nuisance and the Protection of Children from Harm or demonstrate that she would be able to adhere to the proposed licensing conditions outlined at Annex 4 (pages 89-91 of the Document Pack). Further, the LSC, notwithstanding Mr Ayman El Sherbiny’s assertions that he would not be involved in the running of the business and that it would be the Applicant who had control, does not from the oral submissions heard today and given the past history of the premises appear to be the case; notably, both the Licensing Authority and the Metropolitan Police have stated that any contact concerning the premises has been with Mr Ayman El Sherbiny and not the Applicant. It appears to the LSC that Mr Ayman El Sherbiny is likely the de facto person in charge of the business albeit he does not hold a legal office at Companies House concerning the business.

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Whilst the LSC is sympathetic to the financial position of the Hayaty Lounge Limited particularly given the past 18 months during the COVID pandemic, however, the LSC is not permitted to take into account any financial considerations in making its decision.

On balance the LSC has made the decision to Refuse the Application in its entirety.

The LSC has taken into account the statutory guidance and the London Borough of Enfield's Policy Statement in making its decision and has made its decision in promoting the four licensing objectives and in particular that of the Prevention of Crime and Disorder and Prevention of Public Nuisance.

It should be noted that the Hayaty Lounge Limited can continue to operate at the premises for any unlicensed activities and that there are no time limits for unlicensed activities. Further, an application can be made for licensable activities and it is recommended that the Applicant and her family consider who would be the appropriate licence holder for any such application and it may be appropriate for co-operation with the Metropolitan Police and Licensing Authority in any such application.

3. The Licensing Sub-Committee resolved to Refuse the application.

**LONDON BOROUGH OF ENFIELD LICENSING AUTHORITY
LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005
DECISION NOTICE**



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Application was made by **MRS ABDELMEGID NESSRIN ANTER HASSAN** for the premises situated at **HAYATY LOUNGE LIMITED, 303 GREEN LANES, SOUTHGATE, N13 4XS** for a New Premises Licence.

The Licensing Sub-Committee **RESOLVED** that the application be **REFUSED**.

Reasons:

The Chairman made the following statement:

“The Licensing Sub-Committee (LSC) having listened to and considered written and oral submissions made by the Metropolitan Police, the Licensing Authority and by the Applicant and Mr Ayman El Sherbiny and Mr Mustafa El Sherbiny and in particular the evidence concerning previous activities at the premises concerning noise nuisance and breaches to the law as set out by the Licensing Authority and the Metropolitan Police which arose whilst Mr Ayman El Sherbiny and possibly Mr Mustafa El Sherbiny were in control of the premises. The Applicant has not been able to demonstrate to the LSC that she has an understanding of the obligations of holding a licence and the licensing objectives of the Prevention of Crime and Disorder, Public Safety, the Prevention of Public Nuisance and the Protection of Children from Harm or demonstrate that she would be able to adhere to the proposed licensing conditions outlined at Annex 4 (pages 89-91 of the Document Pack). Further, the LSC, notwithstanding Mr Ayman El Sherbiny’s assertions that he would not be involved in the running of the business and that it would be the Applicant who had control, does not from the oral submissions heard today and given the past history of the premises appear to be the case; notably, both the Licensing Authority and the Metropolitan Police have stated that any contact concerning the premises has been with Mr Ayman El Sherbiny and not the Applicant. It appears to the LSC that Mr Ayman El Sherbiny is likely the de facto person in charge of the business albeit he does not hold a legal office at Companies House concerning the business.

Whilst the LSC is sympathetic to the financial position of the Hayaty Lounge Limited particularly given the past 18 months during the COVID pandemic, however, the LSC is not permitted to take into account any financial considerations in making its decision.

On balance the LSC has made the decision to Refuse the Application in its entirety.

The LSC has taken into account the statutory guidance and the London Borough of Enfield’s Policy Statement in making its decision and has made its decision in promoting the four licensing objectives and in particular that of the Prevention of Crime and Disorder and Prevention of Public Nuisance.

It should be noted that the Hayaty Lounge Limited can continue to operate at the premises for any unlicensed activities and that there are no time limits for unlicensed activities. Further, an application can be made for licensable activities and it is recommended that the Applicant and her family consider who would be the appropriate licence holder for any such

application and it may be appropriate for co-operation with the Metropolitan Police and Licensing Authority in any such application.

Date Notice Sent : 21 October 2021

Signed :



Principal Licensing Officer

APPEAL

Under the Licensing Act 2003 you have a right of appeal against this decision within 21 days of receiving this notice. Any appeal should be made in writing to the North London Magistrates Court at the following address :

North London Magistrates Court
Highbury Corner, 51 Holloway Road, London, N7 8JA