

BEFORE THE BRENT LICENSING SUB-COMMITTEE

IN THE MATTER OF AN APPLICATION FOR STANDARD REVIEW PURSUANT TO SECTION 51
OF THE LICENSING ACT 2003

BETWEEN:

THE COMMISSIONER OF POLICE OF THE METROPOLIS

Applicant

v

O BOMBEIRO, 25 PARK PARADE, HARLESDEN, NW10 4JG

Respondent

OPENING NOTE

*Counsel for the Applicant: Mr Tom Beardsworth
For the hearing on: 20th April 2023*

Introduction

1. This is an application under section 51 of the Licensing Act 2003 to review the license of a premises, namely the ‘O Bombeiro’ restaurant at 25 Park Parade, Harlesden. The application is for an order under s. 52(4)(a) of the Act to modify the conditions of the license.
2. The committee may note that at the time the bundle was compiled, the police’s request was for the premises license to be revoked [p. 12]. The position now has changed: while a revocation would be amply justified on the facts, the Commission submits that the licensing objectives in section 4 of the Act are best-served by allowing O Bombeiro to keep its license but modifying the conditions. Such an approach is also fairer to O Bombeiro.

Procedural History

3. A three-month Closure Order under section 80 of the Anti-social Behaviour, Crime and Policing Act 2014 was made on the 4th April 2023. It was made by DJ Jabbitt at Willesden Magistrates Court following a contested hearing at which O Bombeiro was represented by counsel and at which Mr Nunes, the owner, gave evidence.
4. DJ Jabbitt made the order being satisfied that “a person has engaged or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises”. He

made a finding on the civil standard that the premises had been used habitually as a base for drugs supply which Mr Nunes did know about.

5. The court was required to give notice of the decision to “the relevant licensing authority” under s. s. 80(9) of the same Act. However it is understood that no notice was sent by the court to Brent; rather it must have been sent by the police. The procedural consequence of that is that the application today is made under s. 51 and 52 of the Licensing Act, not s. 167.

Adjournment request

6. It is understood the Respondent is requesting an adjournment.
7. The basis of the adjournment request is not yet known. That said, it is submitted that the committee should be wary of any application made on the basis of late instruction of lawyers. The Respondent was represented at the Closure Order hearing on the 4th April; and being so represented, the Respondent may be taken to have been advised that subsequent licensing review was inevitable and imminent.
8. If an adjournment is granted, the committee should seek to re-list the hearing at the earliest opportunity, being mindful that under s. 52(11) a determination to modify conditions does not take effect until the end of the period for appealing against the decision. A long adjournment before the first-instance licensing review would potentially take that period beyond the final day of the Closure Order.

Legal Framework

9. Section 4 of the Licensing Act 2003 sets out the general duties of licensing authorities:

4 General duties of licensing authorities

(1) A licensing authority must carry out its functions under this Act (“licensing functions”) with a view to promoting the licensing objectives.

(2) The licensing objectives are—

- (a) the prevention of crime and disorder;*
- (b) public safety;*
- (c) the prevention of public nuisance; and*
- (d) the protection of children from harm.*

(3) In carrying out its licensing functions, a licensing authority must also have regard to—

- (a) its licensing statement published under section 5, and*
- (b) any guidance issued by the Secretary of State under section 182.*

10. Section 52 of the Act requires the relevant licensing authority to consider an application made under Section 51 by way of a hearing. The authority “must, having regard to the application and

any relevant representations, take such of the steps mention in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.”

11. The steps are:

- (a) to modify the conditions of the licence;
 - (b) to exclude a licensable activity from the scope of the licence;
 - (c) to remove the designated premises supervisor;
 - (d) to suspend the licence for a period not exceeding three months;
 - (e) to revoke the licence;
- and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.*

12. As indicated, the Commissioner’s application is to modify the license conditions as set out below. Reliance is placed on the licensing objectives (a) *the prevention of crime and disorder*, (b) *public safety* and (c) *the prevention of public nuisance*.

Factual Background

13. O Bombeiro is advertised on its street frontage [p. 11] to be a “Restaurant Tapas Bar”. The Premises Licence Holder and Designed Premises Supervisor is Francisco Jose Pinto Nunes.
14. O Bombeiro’s current license is from page 3 of the bundle. Notably, the terms of the license permit the supply of alcohol until 03:30 on Thursday to Sunday, as well as on every Wednesday between 1st June and 1st September, Valentines Day and the various public holidays and national days itemised on page 4. The opening hours are until 04:00 on those days.
15. A s. 23 Misuse of Drugs Act warrant was executed at the premises on the 30th March 2023. During that search a dark rucksack was found at the back of the premises containing five blocks of cannabis resin, a knife, clingfilm and scales [p. 54; p. 58; p. 1-4 of the supplementary bundle]. CCTV collected from the premises showed an “IC6” (Arab or North African ethnicity) male entering the premises that evening with the dark rucksack, depositing it at the back under a table and then walking off. The criminal investigation is on hold while police try to identify the IC6 male [p. 1 of the supplementary bundle].
16. The CCTV is available to the committee, should it wish to see it. A plan of the premises is at page 7 (the final page) of the supplementary bundle.
17. Mr Nunes’s son was on the premises at the time. He was issued with a penalty of £90 for a small amount of cannabis on his person [p. 58].
18. PC Ghazvini’s statement from page 37 gives a sense of the problems at various premises along Park Parade for some time. To similar effect, Inspector Le Geyt’s evidence [p. 52] is that

drugs-related activity at other premises on Park Parade migrated to O Bombeiro after other drug-search warrants and Closure Orders at the other premises.

19. The Crime Reports cited in PC Ghazvini's statement illustrate instances of anti-social behaviour for many months in or immediately outside O Bombeiro. Also of note in that respect is the statement of Steve Thurlow [p. 45] and the two anonymous statements from local residents [p. 47-50].

The Applicant's Suggested Modifications

20. The principal aim of the police is to diminish unlawful and anti-social activity on Park Parade. A flourishing Portuguese restaurant selling food and drink is not contrary to that aim if that is indeed the only activity in which it is engaged.
21. The overwhelming inference from the matters stated above is that O Bombeiro has been used as a drugs repository and distribution point for dealers in the immediate vicinity and local area. Within the restaurant itself, the problem lies in the discreet back area of the premises which cannot be seen from the street and is separated from the seated areas where customers dine at the front of the restaurant by a corridor.
22. The following proposed modifications of the license are aimed, first, at eliminating general access to the back of the premises and second, at reducing the risk of anti-social behaviour occurring or escalating late at night.
23. The proposed modifications with respect to the first aim are as follows:
- a. No access to the premises is permitted save for: customers sitting down in the front seated area or corridor of the restaurant, staff and visitors with a legitimate business purpose in attending the premises (e.g. deliveries of food and drink, maintenance and decoration etc)
 - b. Customers are prohibited from accessing the back of the premises beyond the corridor save for access to the toilets or access to the back yard in an emergency (e.g. a fire)
 - c. A sign at the end of the corridor is to be erected stating this prohibition
 - d. No furniture or attractions are to be present in the back room. Tables and chairs, the pool table, fruit machine and other paraphernalia is to be removed.
24. The proposed modifications with respect to the second aim are as follows:
- a. Alcoholic beverages are to be served only as an ancillary to food
 - b. Seven days a week, without exception through the year, the end time for the sale of alcohol, other refreshments and live or recorded music is to be 23:30. The opening hours of the premises are to end at 23:30.

- c. CCTV to cover all areas of the restaurant and back yard save for the toilets
25. For the avoidance of doubt, it is proposed that the current 'Annex 2' conditions are maintained.

Costs

26. In the event the Commissioner's application succeeds today, no order for costs is sought. The Commissioner reserves his position in the event of an adjournment and/or an appeal.

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London
12th April 2023