

## **London Borough of Brent**

**Decision of the Alcohol and Entertainment Licensing Sub-Committee following a hearing  
on 9<sup>th</sup> May 2023 at Brent Civic Centre, Engineers Way, Wembley HA9 0FJ, via Zoom**

### **NOTICE OF DECISION**

#### **PREMISES**

O Bombeiro  
25 Park Parade  
NW10 4JG

#### **1. Members of the Sub-Committee**

Councillors Long (Chair), Collymore and Mahmood

#### **2. The Application**

The application is for the review of a premises licence, number 160050, following a closure order. The closure order was made on 4<sup>th</sup> April 2023 by Brent Magistrates' Court under the Anti-Social Behaviour, Crime and Policing Act 2014 for a period of three months, ending at 4pm on 4<sup>th</sup> July 2023. This application was triggered automatically under the terms of s.167 of the Licensing Act 2003.

The matter was adjourned at a previous hearing because the council had not received notice of the closure order from the magistrates' court, as is required by s.167 of the Licensing Act.

#### **3. Representation**

The Metropolitan Police was represented by Calla Randall of Three Raymond Buildings and PC Phil Graves, Inspector Andy Le Geyt, and PC Haitam Oulkadi.

The Licensing Authority was represented by Linda Legister and Anu Prashar.

Mr Francisco Jose Pinto Nunes, Licence Holder, attended and was accompanied by his son, [REDACTED].

#### **4. The Hearing**

Cllr. Long opened the meeting and all attendees introduced themselves. Ms Linda Legister introduced the application.

Ms Randall stated on behalf of the Metropolitan Police that whilst revocation would be justified on the facts, the police now take the view that the licensing objectives would be better served, and it would be fairer to the licence holder, for them to seek modification of the conditions. She referred the sub-committee to the steps open to it under s.167(6) of the Licensing Act, which it must take if it considers it appropriate for the promotion of the licensing objectives under sub-s.5(b).

The current licence permits the supply of alcohol until 3am on Thu-Sun as well as certain other days and public holidays when the opening hours are until 4am. A s.23 Misuse of Drugs Act warrant was executed on 30th March and various items were recovered. CCTV showed a male entering the premises with a dark rucksack in which five blocks of cannabis resin, a knife, clingfilm and scales were found, depositing it at the back under a table, and then walking off. [REDACTED] was issued with a penalty of £90 for possession of a small amount of cannabis (on his person). Ms Randall stated that the various reports showed drug-dealing activities causing problems on that street for some time and that the activities moved to these premises when other cafes were subject to closure orders. The owner of one of those closed premises has been noted to be present in O Bombeiro on multiple occasions. 15 police reports in less than six months [43-49] concerned these premises and she summarised some of their contents.

Relying on the history, Ms Randall described the premises as subject to frequent issues of crime and disorder. In suggesting modifications, the aim of the police was to diminish unlawful activity and anti-social behaviour. A thriving Portuguese restaurant selling food and drink is not contrary to those aims, if that is all it is doing. However, the necessary inference from all the crime reports is that this has not been a simple, lawful restaurant business but has acted as a drugs repository and used as a base for dealers, as the District Judge making the closure order found. Within the restaurant, the problem lay with the back area of the premises which cannot be seen from the street. With that in mind, the modifications proposed have two aims: (1) eliminate access to the back of the premises to ensure illegal activity cannot take place in that hidden area and (2) reduce the risk of anti-social behaviour starting or continuing late at night given the presence of alcohol.

Ms Randall reminded the committee of the test under s.167(5) and stated that restricting access to the restaurant would promote the licensing objectives. Many of the crime reports refer specifically to seeing people dealing drugs at the back of the restaurant, which she described as an ideal place for illegal activity. Limiting the hours during which alcohol is served and ensuring alcohol is served only with food would limit late night anti-social behaviour which was clearly taking place before, based on the CRIS reports and anonymous witness statements.

In response to questions from Cllrs Long and Mahmood, Inspector Le Geyt stated that the police believed O Bombeiro was operating lawfully when the other closure orders were made. There are other cafes in that road which have not had problems, but O Bombeiro seems to have been used to continue the problem. The outdoor area is also hidden from the street. It is a small walled yard with decking and no other way out of it, but illegal activity appears to be taking place. If the pool table were to be replaced with tables for the restaurant, the visibility problem would persist. There are smaller tables without tablecloths in the corridor and those tables seem to be open to individuals not eating. Mr Nunes needed to know who was going in and out and give him an element of control. If someone is there of whom he is not aware, they currently have legitimate reasons for going back to play pool. If the licensing objectives prohibit it, he has a reason to refuse. Adding tables, in Inspector Le Geyt's view, would just facilitate illegal activities.

Inspector Le Geyt stated that there are very few restaurants open until 4am and that not all of the problems have been in the middle of the day. It is also a matter for reasonableness of police presence: if there are no officers there and no one calls, the police simply will not know about problems.

PC Oulkadi stated that they had been informed about drug-dealing at all hours and an allegation that a man ran into the restaurant, discarded a knife and hid in the back room at about 10.30pm. He showed the sub-committee CCTV of the man leaving the rucksack.

In response to questions from Ms Meredith, Inspector Le Geyt confirmed that there had been no problems with O Bombeiro before the closure of the other premises and stated that he would have to look at reports for examples of antisocial behaviour after 11.30pm.

The licence holder asked no questions of the police.

Mr Francisco Nunes stated that since the other shops have closed in around August last year, they have had more people coming in but have asked them not to. They have had to put locks on the toilet doors so now customers have to ask permission from the front to use the toilets. [REDACTED] stated that they ask people outside not to stand there and smoke. They agree to move on but then reappear. He and his dad could not get them to go away. The police could but never came to move them. There had been threats to his father and to smash the windows. They had to lock the front door. If anything, the area has got worse recently, with people now dealing freely on the street. They had always cooperated with the police and given camera footage, and the whole restaurant except the kitchen and inside the toilets is covered by cameras. The owner of one of the closed cafés comes over quite frequently to get takeaways for his wife. When they saw the fight start outside, they closed the restaurant and Mr Nunes called the police. He described a council camera outside, which is often fixed on large crowds in the street outside.

The corridor area is used for dining as well when the front is full. If customers just want a snack or drink, or are waiting for a table, they use the corridor. They try not to let people smoke outside the front because there they mix with people on the street, but instead let them use the back yard to smoke. The crowds are not specific to O Bombeiro. Lots of people stand opposite doing laundry, and between the chicken shop and estate agent.

In response to questions from Cllr Mahmood, Mr Nunes said that the man with the rucksack is a local and has been around for a few years. He was surprised the police had not caught him before: he is still at large and still goes to the area. During the week there will just be three people there – Mr Francisco Nunes, his son and the chef – with more at the weekends. At 3pm they always keep the door closed because they are not busy and do not have enough staff for more.

In response to questions from Cllr Collymore, [REDACTED] confirmed that he smoked cannabis recreationally and does not have a medical condition. Mr Francisco Nunes stated that he was not aware of any Harlesden traders group. He is not scared of the drug dealers because he does not interfere with what they are doing – they are coming to the premises to have a snack but not to sell. He tells people loitering outside to move on but after 15 minutes or so they come back. There are four or five separate groups that gather, some parking opposite, and they are not loitering outside O Bombeiro in particular. When asked if he was under duress from the dealers, Mr Francisco Nunes said no.

In response to questions from Cllr Long, Mr Francisco Nunes said that on some days it would be worth opening in the daytime but on others it would not. One other member of weekend staff has a personal licence. [REDACTED] has his but is waiting for the checks. On weekdays, there would be one person waiting tables (Mr Francisco Nunes), the chef in the kitchen, and one other – usually [REDACTED] in the evening and his cousin during the day.

Not many people come in just to have a drink. Mainly it is food and at the weekends it is always reserved. Food is full meals, though some tapas. At the weekends it is full of couples and families. At the moment, if someone having a meal wants to use the toilet, they have to get the key from staff. There are some takeaways but just to individuals collecting. They wait in the corridor, possibly sitting and having a drink or a coffee, while waiting to pick it up. That space is used to wait for the tables at the front or, when the front is full, sometimes dining with tablecloths. They are thinking about refurbishing the back room, removing the pool table and refurbishing it to make it a bit brighter. They got rid of some groups of youths by closing the pool table.

During the week they could close at 11.30pm but on Fridays and Saturdays they have a lot of parties and would lose the business if forced to close earlier. It is weddings, christenings and so on, booking to eat, drink and listen to live Portuguese music. They use the front and the back of the restaurant, and in summer the garden too. On boxing day they had a long table in the back room but that is for bookings only at the moment. When the garden is in use for dining, customers are not allowed to smoke there. The flats above can see directly into the back garden and have raised issues a couple of times over the years but very few. The garden closes at 11pm when it is in use, to stop the noise.

██████████ said they wanted to put security in at the weekends and maybe take bookings only at the weekends. When customers enter the restaurant, they are seated by staff rather than just sitting down themselves.

When selling drinks after midnight, the licensing conditions require SIAs. That is not currently happening because it is usually families and events. They had contractors from a security agency when there were issues a few years ago but not currently. ██████████ pointed out that they have never really had any problems. If things heat up they nip it in the bud. There is not room for dancing to the music; customers just listen.

In response to questions from Ms Meredith, Mr Francisco and ██████████ confirmed their position in relation to the conditions proposed by the police as follows:

- a) They did not agree that there be no access to the back area of the premises and garden. They would modify it and keep it as part of the restaurant but they would lose customers, particularly because The Fork promotes premises with an outside area. They agreed to remove the pool table and fruit machine but wanted to place tables and chairs in the refurbished back room.
- b) They agreed to serve alcohol only as an ancillary to food.
- c) They agreed to close at 11.30 on weekdays but at weekends and on the nights before bank holidays they wanted to open at least until 2am (with customers out by 1am).
- d) The CCTV already covers all areas of the restaurant and back yard except for the kitchen and inside the toilets but they agreed to have it checked.

Ms Randall pointed the sub-committee to the anonymous witness statement dated 9<sup>th</sup> February 2023, which refers to gatherings outside and loud music from O Bombeiro between 2am and 3am. ██████████ stated that there is a problem of anti-social behaviour on that road. The latest music could have been on was 1.30am.

Ms Randall summarised her case by saying that the proposed modifications are appropriate to ensure the licensing objectives are promoted. Those concerning the back area of the restaurant are appropriate because it is clear from the multiple CRIS reports and the dropping of the backpack in that area that that part of the restaurant is where drug-dealing takes place.

It is hidden and can't really be seen from the front of the restaurant. Shutting it off is proportionate and fair to O Bombeiro because they would keep most of their customers. As Inspector Le Geyt pointed out, it would also make it easier for the licence holder to control who is in the restaurant. Refurbishment would not prevent the problem because it is still a hidden area and illegal activity could still take place. Preventing customer access would reduce crime and disorder. The second group of modifications was aimed at reducing anti-social behaviour. There were multiple incidents of anti-social behaviour, not all time-stamped but one at least refers to 2-3am. If it takes place earlier in the evening, there is nothing to suggest that would stop when it gets later but there is less likely to be direct evidence in the early hours with fewer police patrols and almost no civilian witnesses. To modify the conditions of the licence in the ways suggested would promote the licensing objectives.

Mr Francisco Nunes said by way of summary that he accepted some reduction in opening hours and O Bombeiro might get the blame but the trouble comes from the street. The back needed to remain open so that customers could access the garden to smoke rather than going out to the front. It could be better monitored and refurbished but should remain open.

## **5. Determination of the Application**

Pursuant to section 167(5) of Licensing Act 2003, the sub-committee had regard to the representations and considered which of the steps listed in section 167(6) (if any) it considered appropriate for the promotion of the licensing objectives namely:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

In making its decision the sub-committee also had regard to the Home Office Summary Review Guidance and Brent's licensing policy. In addition, the sub-committee took account of its obligations under section 17 of the Crime and Disorder Act 1998.

## **6. Decision**

The sub-committee listened carefully to the representations made by the parties at the hearing and took into account the written representations.

The sub-committee decided that it was appropriate to allow the licence to continue but to add a number of conditions to it for the following reasons:

- 1) The police provided evidence of serious problems with the premises but the vast majority, if not all, of those problems appear to relate to drug dealing. There was no evidence of issues of anti-social behaviour prior to the closure of other premises on

the same road. There was little evidence of issues of anti-social behaviour in the early hours of the morning other than that related to drugs.

- 2) The evidence did seem to establish serious drug-related problems and a focus on the rear area of the restaurant, which is not visible from the front. With that in mind, the sub-Committee considered it appropriate to add conditions to the licence to promote the licence objectives and prevent that anti-social behaviour. However, the sub-Committee was not satisfied that every condition suggested by the police was proportionate or appropriate to promote the licensing objectives in circumstances where, prior to the closure of other premises and movement of drugs to these premises, there were no documented problems.
- 3) The Committee was concerned by the behaviour of the licence holder and his failure to notify the police or other responsible authorities of the problems at the premises. The sub-committee would encourage him to cooperate more fully in future; the situation escalated as a result of the lack of contact with the police and other authorities. It also reminds the licence holder of the condition in the current licence that SIAs be booked from 8pm onwards on any day where the premises remain open after midnight. The licence holder may wish to consider other measures to ensure the safety of himself and his business, such as altering his opening times to save money and avoid problems during the day.
- 4) For the avoidance of doubt, the existing annex 2 conditions shall remain in place. The new, additional conditions will be as follows:
  - a) No access to the premises is permitted save for: customers sitting down for a meal, customers performing personal takeaway collections, staff, and visitors with a legitimate business purpose in attending the premises (e.g. deliveries of food and drink, maintenance and decoration etc.).
  - b) A stand or barrier shall be erected inside the front of the premises, together with a sign advising customers to wait to be seated. Customers are prohibited from passing that stand/barrier unless being seated by a member of staff or returning to a table having smoked outside the front of the restaurant;
  - c) Customers are prohibited from accessing the back of the premises beyond the corridor save for access to the toilets or back yard, unless they have a booking and have provided their name and details. Customers with a booking are permitted to access the back of the premises only for sit-down dining.
  - d) No attractions are to be present in the back room. The pool table, fruit machine, televisions and other paraphernalia must be removed. Furniture is only permitted in the back room if and insofar as is necessary for seating and serving customers with bookings for sit-down dining.
  - e) Customers are permitted to access the outdoor area at the rear of the premises only for sit-down dining. The outdoor area must close at 23:00 every day of the week.

- f) No smoking shall be permitted anywhere on the premises, save for the area outside the front where no more than six persons shall be permitted to smoke at any time.
- g) Alcoholic beverages are to be served only as an ancillary to food.
- h) From Sunday to Thursday, without exception through the year (save as provided below), the end time for the licensable activities is to be 23:30. The opening hours of the premises are to end at 23:30.
- i) On Friday and Saturday evenings, and every Sunday prior to a bank holiday Monday, the end time for the sale of alcohol is to be 01:30 the following morning. The opening hours of the premises are to end at 02:00 on those days.
- j) CCTV to cover all areas of the restaurant and back yard save for the toilet cubicles and kitchen.

## **7. Right of Appeal**

The applicant and any person who made relevant representations has the right to appeal against this decision pursuant to section 181 and schedule 5 of the Licensing Act 2003.

If you wish to appeal you must notify Brent Magistrates' Court within a period of **21 days** starting with the day on which the Council notified you of this decision.

**Dated 17 May 2023**