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TUESDAY, 24 JULY
2018

MINUTES OF THE LICENSING (HEARING) SUB-COMMITTEE

HELD ON TUESDAY 24 JULY AT 3.00 PM

APPLICANT: Gremio de London Ltd
PREMISES: 26A Savage Gardens, EC3N 2AR

Sub Committee:

Mr Peter Dunphy (Chairman)
Deputy Kevin Everett
Mr Graham Packham.

Officers:

Leanne Murphy - Town Clerk's Department
Paul Chadha - Comptroller and City Solicitor
David Smith – Director, Markets and Consumer Protection
Jon Averbs - Markets and Consumer Protection
Robert Breese - Markets and Consumer Protection

Given Notice of Attendance:

Applicant:

Mrs Beverley Hurley	
Mr Leo Charalambides	FTB Chambers representing Beverley Hurley & 16 other residents

License Holder:

Mr Max Alderman	Director, Gremio
Mr Anthony Thomas	Business Partner, Gremio

Making representations:

Mr James Rankin	FTB Chambers representing the Responsible Authorities
Mr Gideon Stothard	Planning Authority
Mrs Siobhan Marshall	Environmental Health
Mr Andre Hewitt	Licensing Authority
Mr Nigel Bedford	Fire Authority
Ms Marianne Fredericks CC	Ward Member for Tower
Mr Keith Mansfield	Resident
Mr David Gillott	Resident - Crutched Friars RA
Mr Timothy Jordan	Resident
Mr Geoff Boyd	Resident
Pepys Street RTM	Resident
Mr Mark Field MP	Resident
Mr Alan Perrin	Resident
Mr Nigel Lall	Resident
R Robinson	Resident
Mr Mark Leverick	Resident
Mr Lopa Sarkar	Resident

Mr Ivan Morozov	Resident
Mr Mark Stewart	Resident
Mr John & Lynn Wood	Resident
Ms Jayne Evans	Resident
Mr Paul Pavlou	Resident
Resident	Resident
Mrs Luida Mahalski	Resident
Mr Anthony Mahalski	Resident
Frank & Margaret Robotham	Resident
Adrian & Carol Hall	Resident
Mr Nicholas Jepson	Resident
Mr Anthony Agoro	Resident
Mr Mark Rowan	Resident

In Attendance:

Mrs Beverley Hurley
 Mr Leo Charalambides
 Mr Max Alderman
 Mr Anthony Thomas
 Mr James Rankin
 Mr Gideon Stothard
 Ms Sue Bacon
 Mrs Siobhan Marshall
 Mr Andre Hewitt
 Ms Marianne Fredericks CC
 Mr Timothy Jordan
 Mr Geoff Boyd

Licensing Act 2003 (Hearings) Regulations 2005

A public Review Hearing was held at 3.00PM in Committee Room 1, Guildhall, London, EC2, to consider the representations submitted in respect of an application for a recorded music license in respect of Gremio de London Ltd, 26A Savage Gardens, EC3N 2AR, the applicant being Mrs Beverley Hurley.

The Sub Committee had before them the following documents:-

Hearing Procedure
 Report of the Director of Markets & Consumer Protection
 Hearing Procedure
 Report of the Director of Markets & Consumer Protection
 i) Application for Review
 ii) Photographs in support of review application
 Appendix 2: Premises licence including conditions and plans
 Appendix 3: Representations from responsible authorities
 i) Environmental Health
 ii) Planning

- iii) Licensing
- iv) London Fire Brigade

Appendix 4: Representations from Other Persons

- i) Pepys Street RTM
- ii) Gillot (Crutched Friars RA)
- iii) Marianne Fredericks CC
- iv) Mark Field MP
- v) Alan Perrin
- vi) Nigel Lall
- vii) R Robinson
- viii) Geoff Boyd
- ix) Mark Leverick
- x) Lopa Sarkar
- xi) Ivan Morozov
- xii) Mark Stewart
- xiii) John & Lynn Wood
- xiv) Jayne Evans
- xv) Keith Mansfield
- xvi) Paul Pavlou
- xvii) Resident
- xviii) Luida Mahalski
- xix) Anthony Mahalski
- xx) Frank & Margaret Robotham
- xxi) Timothy Jordan
- xxii) Adrian & Carol
- xxiii) Nicholas Jepson
- xxiv) Anthony Agoro
- xxv) Mark Rowan

Appendix 5: Licence holder representation

Appendix 6: Map of subject premises together with other licensed premises in the area and their latest terminal time for alcohol sales

1. The Hearing commenced at 3.00 PM.
2. At the commencement of the Hearing, the Chairman invited the Applicant and those making representations to set out their objections against the Premises Licence Holder. Mr Charalambides summarised the grounds for the review and outlined the evidence provided in support of the claims. Mr Charalambides advised that the concerns of the Applicant were supported by a large number of residents and four responsible authorities, which necessitated a review of the premises licence.
3. Mr Charalambides highlighted that the Premises Licence Holder had already made a frank admission of the factual inaccuracies contained in the original application. It was noted that the City of London Corporation's Statement of Licensing Policy made clear that there was an expectation for applicants to carry out a full assessment of the local area for the operating schedule, and therefore it was surprising that the Premises Licence Holder had not recognised the residential buildings behind the premises. Mr Charalambides argued that the Sub Committee never would have approved the original application had they of been

aware that the premises was surrounded by residential not commercial properties as the proposed terraced area overlooks resident's properties and would hold a severe environmental health impact from noise and light disturbance and smoking.

4. Mr Charalambides advised that the City of London Corporation's licensing policy was based on statutory guidance and provided clear instructions of what was expected from applicants in their applications. He noted that S.182 guidance gave a clear expectation that resident's sleep would not be affected during the hours of 23:00 and 07:00 which would affect the residentially populated area. This was reflected in the Statement of Licensing Policy.
5. Mr Charalambides felt the solution to addressing the concerns of all parties was to 1) review the licensed hours and return the premises to restaurant conditions only, i.e. for drinking hours to cease at 23:00 hours on Monday to Saturday and 22:30 on Sunday with 30 minutes to close; 2) no use of the outside terrace except for fire safety; 3) that all windows and doors be restored to their original condition and kept closed to ensure no noise or light disturbance to residents; 4) that the capacity be 150 including staff as per the advice of the Fire Authority. Mr Charalambides concluded that the lack of clarity surrounding the use of the premises as a restaurant or late-night drinking establishment made it very difficult to appreciate the impact and recommended restaurant conditions to preserve the balance in the area which needed to be weighted by community impact. Mrs Hurley was happy with the conveyed view of her legal representative.
6. Mr Rankin advised that he was representing all four responsible authorities, none of which had objected to the original application as there was an expectation that the information provided by an applicant be honest which meant that issues had not been picked up the first time. Mr Rankin drew the Sub Committee's attention to the objection by Environmental Health which detailed public nuisance concerns and noted the photograph supplied marking the close proximity of the Applicant's bedroom window to the door of the premises which now had no wall to provide privacy.
7. Mr Rankin noted that they were not requesting that the licence be revoked, but that restrictions be enforced based on the extreme proximity of residents to the premises and that both terraces be removed. He stated that Environmental Health had carried out sound readings and concluded that public nuisance would be caused and that residents would be affected by the immediacy and nuisance from noise, light and smoking from the terrace. Mr Rankin proposed that the terrace be removed from the licensed area, and that conditions be imposed on the premises licence relating to the opening of windows and doors except in cases of emergency and a requirement that the brick wall that had been removed be reinstated.
8. Mr Rankin also highlighted the objection from the Planning Authority which noted that the change of use of the premises from a restaurant to a bar with terrace areas legally required a change of use license approval which the Premises Licence Holder did not have. Mr Rankin advised that enforcement proceedings might occur based on the works that had already taken place with a request for reinstatement of the wall. He stated that this was the position of the Planning

Authority due to the extreme proximity of the terraces to resident's properties and suggested that the Sub Committee also take this view.

9. Mr Rankin advised that the Fire Authority had identified a number of concerns including fire risks caused by the type of decking used, the shared use of the fire exit, the width of the fire exit, and risks from the cluttered passage out of the premises which had a number of air conditioning units and equipment preventing clear passage.
10. Mr Rankin summarised that the four responsible authorities recommended that the capacity of the premises be restricted to 150 people not 220, prevention of the use of the terraces, that hours be restricted to restaurant hours and that the use of windows and doors be restricted to emergency use only.
11. Ms Fredericks provided background information on the original restaurant which operated at the premises and had a licence until 11pm. This focused on the lunchtime trade and was rarely open later than 7pm. Ms Fredericks drew attention to the original plan provided by the Premises Licence Holder which she advised did not give a correct arrangement of the previous restaurant or the current state of the premises and felt that the Sub Committee had therefore been misled in the first Hearing.
12. Ms Fredericks advised that she had attended the Hearing but was only permitted to speak on behalf of the Hilton Hotel, who had objected, as her own objection was not received by the deadline for submitting representations. Ms Fredericks suggested that inadequate advertising by the Premises Licence Holder during the application process had prevented residents from objecting. She stated that the Premises Licence Holder was duty bound to research the area, local businesses and residents and failed to understand how over 100 flats could have been missed.
13. Ms Fredericks supported the recommendations to pull back the hours to restaurant timings, prevent use of the terrace and to reinstate the wall that had been removed on the basis of public nuisance and security for the residents. She also considered the concerns of the Fire Authority regarding escape from the premises in case of fire and the strength of the upper terrace to be highly concerning and highlighted the importance of a clear dispersal and management policy.
14. Mrs Marshall (Environmental Health) gave context to the sound figures she had obtained at the premises advising that the sound had reached 64db during a three-minute monitoring exercise. She advised that construction sites were given a limit of 65db meaning that significant noise volume would emanate from the terraces in this area and reflect off the enclosed walls. Mrs Marshall advised that ten people had been in the proposed terrace area in April and the noise from their conversations had been noticed by the residents in their flats.
15. The Chairman offered Ms Bacon, Mr Stothard and the residents in attendance the opportunity to speak. They all confirmed they were happy with the summaries presented to the Sub Committee on their behalf.

16. The Chairman asked Mr Alderman and Mr Thomas if they had any questions based on the comments so far. Mr Thomas stated that it was disappointing that the concerns brought today had not been provided 12 months ago as they could have been dealt with at that time. He was also surprised that Mrs Hurley, who lived next door, was unable to see the notice but that a local hotel did and managed to send an objection. Mr Charalambides stated that incorrect coloured notices, publishing in the wrong newspaper and two false statements had prevented an adequate response from residents or the responsible authorities but highlighted that licensing was forward-looking and that fresh circumstances were being considered following an admission of wrongdoing by the Premises Licence Holder.
17. Mr Thomas questioned how none of the responsible authorities had found fault with the initial application but did now. Mr Rankin advised that the authorities relied on the fact that the information in an application was correct.
18. The Sub Committee queried whether the new door inserted next to Mrs Hurley's bedroom window had originally been a functional door. Ms Hurley advised that this had originally been bricked up but there was a small door that was occasionally used by staff.
19. The Chairman invited Mr Alderman and Mr Thomas to set out their case. Mr Thomas introduced his application by explaining that whilst this was a new application, the premises had been licensed since at least 1969 and was largely surrounded by Fenchurch Train Station. He explained that the lease was purchased from Network Rail and most of the agreements for the premises were already in place including the timber clad terrace. Mr Thomas noted that they were not aware that the small window next to the door was a bedroom window.
20. Mr Thomas advised that the plan provided in the papers proved that the current layout predated Gremio and was mostly unchanged except for the back of house area to the kitchen and dining area for seated eating. He also confirmed that there would be a 50/50 share between food and drink at the premises.
21. Mr Thomas highlighted the difficulty in explaining licensable activity which had not yet commenced. He advised the Sub Committee that he and Mr Alderman had operated approximately 50 premises across London since 1999, had a good reputation and had followed the statutory requirements in respect of the notices which he insisted were blue. He explained that previous operations at the premises had been poor and saw this as a prime spot for future proofing, wanting the local residents to be customers. Mr Thomas advised that the work that had taken place to date was mainly to strip out the poor works to the archways from the 1980s and confirmed that the outdoor area to the rear of the premises had been used in the past approximately 15 years ago.
22. It was noted that the business operators were keen to find a solution as they had already invested significantly into this project and works were currently on hold. To alleviate concerns by residents, Mr Thomas offered to close all windows and doors by 10pm, agreed to insert a sound limiter and work with the neighbouring businesses to see if the units and equipment belonging to them and situated in the

rear outdoor area could be removed. He also advised that they were consulting with Network Rail to see if they could use the Ladbrokes site entrance.

23. Mr Alderman advised that the inaccurate information contained in the original premises licence application which stated that only commercial properties surrounded the premises had been a genuine mistake and he had admitted this at the Hearing in 2017 when Ms Fredericks raised this issue. Mr Alderman advised that he had sought advice regarding advertising from the City of London Corporation and that notices were published on blue paper but that the notice on the door had been bleached.
24. Mr Alderman advised that the premises would operate as a tapas style bar and that the whole concept would be changed if they were required to operate as a restaurant offering sit down meals. He therefore hoped to retain operating hours to at least midnight and stated that an appeal would be made if the decision was made to change to restaurant conditions. Mr Alderman hoped to retain use of the terrace and agreed to reducing the hours in which the terrace could be used for licensable activities and enforcement of no smoking on the terrace. He advised that the original plan had been for smokers to congregate at the front of the building but was advised to change this at the last Hearing, noting a change to the operating schedule would be needed to facilitate a different site for smokers.
25. Alderman indicated that he was open to sensible conditions considering the business was not operating yet. He highlighted that this was one of a number of businesses in the area which came with their own issues and had taken on the lease on the basis that the licensing application last year was successful.
26. The Chairman asked if there were any questions based on the comments in support of Gremio de London Ltd. Mr Rankin queried if the business partners had looked at the previous licence or plan of the previous restaurant at the premises. Mr Thomas advised that he was already familiar with the premises. Mr Rankin noted that even the most recent licence at the premises had not included licensing of the terraced areas.
27. Mr Rankin enquired as to whether the Premises Licence Holder would consider forsaking use of the terraced areas altogether. Mr Thomas agreed only to restrict the hours to 9pm. In response to a query regarding reducing the terminal hour, the Premises Licence Holder agreed he would consider this but no lower than midnight plus 30 minutes.
28. Mr Rankin also enquired as to whether a capacity limit of 150 people would be accepted. Mr Alderman advised that they would accept any recommendations from the Fire Authority but that plans were in place to make changes to allow for a capacity of 220 people which would be certified prior to opening the business which was standard practice.
29. The Sub Committee asked whether there would be one or two leases. Mr Thomas confirmed there was one lease.

30. Mr Charalambides noted that Mrs Hurley had advised that foam used for soundproofing in the arches had been removed from the brick. Mr Thomas advised that this was below a railway line and that any noise caused by the business would be significantly less.
31. The Sub Committee requested if the premises licence holder could provide an indication of the expected capacity in the three sections of the premises. Mr Thomas advised that this would be weather dependant but of the 220-person capacity there would be an approximate one third split in each area except in summer where 50-60 people would be expected in the terraced area. The snug area would generally be used for private parties of 10-20 people.
32. The Chairman then invited all parties to sum up their case. Mr Thomas and Mr Alderman stated that they did not deliberately mislead the original Sub Committee as suggested and immediately changed their application when the mistake was brought to their attention. They had never experienced any problems with applications in 19 years of working in this industry and did not understand how some people including Ms Fredericks were aware of the application, but residents nearby were not. Mr Thomas clarified that the site was taken on in good faith and the arches were taken back for restoration purposes. Mr Thomas believed the business would be good for the area and did not understand why they were being treated like irresponsible operators when there was no evidence of this. Mr Alderman noted that there had been more conditions proposed in the original application and they were happy to revisit these to have a more detailed operating scheme.
33. Mr Rankin summarised that an experienced Environmental Health Officer had given a detailed explanation of the concerns regarding the terrace which were missed the first time due to incorrect information in the application. He argued that the terrace needed to be removed and the hours of the business cut back as there were no number of conditions that could solve the problems that would impact the local residents.
34. Ms Fredericks concluded that she had never seen such a comprehensive list of experts providing evidence in one case and gave particular attention to the concerns raised by the Fire Authority. She noted that the original Hearing could not factor all concerns properly as it was based on false information and that this development had been extremely stressful to residents, particularly to Mrs Hurley. Ms Fredericks also stated that the Premises Licence Holder had only secured licensing approval and not planning consent for the terraces. She noted that a variation could be considered at a later date once the business had proven itself with restaurant conditions.
35. Mr Charalambides stated that there was concern that a licence had been given to people that disregarded the rules and found it concerning that Mr Thomas claimed that it was not for them to know and advise what was present in the immediate locality of the premises despite the City of London Corporation's guidelines to research the local area. He advised that the residents were still giving the Premises Licence Holder a chance to operate but did not feel the application clearly explained what the plans were for the business which was led only by

professional interest. Mr Charalambides highlighted that ten people engaged in a business meeting at the premises which caused noise disturbance to the residents. He also noted that despite the clear concerns identified and the investigated and expertly tested evidence, the Premises Licence Holder had no revised operating plan or model of management, no considered response or reference to the City of London Corporation's recommended models. Mr Charalambides therefore concluded that the licensable hours should be reduced to 23:00 hours on Monday to Saturday and 22:30 on Sunday, that the terrace is removed, no use of the doors or windows except in cases of emergency and restaurant conditions be imposed to limit impact on residents.

36. The Sub Committee considered the application and carefully deliberated upon the representations submitted in writing and orally at the Hearing by those making representations and the Premises Licence Holder. In reaching a 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 2017. The Sub Committee placed the licensing objectives relating to the prevention of public nuisance and public safety at the forefront of its considerations.
37. In determining whether a public nuisance would arise, the Sub Committee relied upon the definition of "public nuisance" contained in Halsbury's Laws of England which defines public nuisance as "one which inflicts damage, injury or inconvenience on all the Queen's subjects or on all members of a class who come within the sphere or neighbourhood of its operation. The character of the neighbourhood is relevant to determination of the question of whether a particular activity constitutes a "public nuisance". As such, the Sub Committee were satisfied that the representations made by the Applicant and those parties in support of the application fell within the definition of "public nuisance".
38. The Sub Committee determined at the outset that, based on the evidence placed before it during the course of the hearing, it would not be necessary or appropriate to consider revocation of the premises licence.
39. The Sub Committee noted that this was a new business and, whilst noting that there were other licenced premises in the area, were conscious of the fact that the premises was located in a residential pocket of the City with close proximity to residential property. The Sub Committee accepted the residents' concerns as to the potential for noise disturbance and the invasive nature of the terraced area. The Sub Committee gave careful consideration as to whether it was possible, with the imposition of suitable conditions, for the terraced areas to operate without causing a public nuisance but concluded that, based on the evidence submitted, it was inevitable that a public nuisance would occur if use of the terraced areas was permitted. The Sub Committee were particularly concerned by the significant concerns raised by the Fire Authority which could not be ignored. It was also noted that the terrace areas had never been licensed in the past, forming part of the demised premises but not the premises licence.

40. In light of the concerns raised in respect of public nuisance and public safety, the Sub Committee decided that the use of the terraces for licensable activities could not be permitted and access to the terraces should be prohibited except in cases of emergency.
41. The Sub Committee then went on to consider the other representations made during the course of the Review Hearing and whether or not it was necessary or appropriate to place any further restrictions on the premises licence. The Sub Committee felt there was a viable business model and did not feel that imposing restaurant only conditions was necessary. The Sub Committee concluded that, with the imposition of suitable conditions and a slight reduction in the terminal hour for licensable activities, it would be possible for the Premises Licence Holder to operate the premises in accordance with the licensing objectives. The Sub Committee sought to strike a balance for residents and business.
42. It was the Sub Committee's decision to amend the permitted hours for licensable activities as follows:

Activity	Current Licence		Following the Review	
Supply of Alcohol	Mon-Wed	11:00-00:00	Mon-Wed	11:00-00:00
	Thurs	11:00-01:00	Thu-Sat	11:00-01:00
	Fri-Sat	11:00-02:00	Sun	12:00-00:00
	Sun	12:00-00:00		
Late Night Refreshment	Sun-Weds	23:00-00:00	Sun-Wed	23:00-00:00
	Thurs	23:00-01:00	Thu-Sat	23:00-01:00
	Fri-Sat	23:00-02:00		
Recorded Music	Sun-Weds	12:00-00:00	Sun-Wed	12:00-00:00
	Thurs	12:00-01:00	Thu-Sat	12:00-01:00
	Fri and Sat	12:00-02:00		

43. The Sub Committee then considered the issue of conditions and concluded that it was necessary and appropriate to impose additional conditions upon the licence so as to address the concerns relating to public nuisance.
- There shall be no sale of alcohol in unsealed containers for consumption off the premises (MC18).
 - All doors and windows shall remain closed at all times during the provision of licensable activities save for entry or exit, or in the event of an emergency (MC13).
 - That capacity be limited to 150 persons (including staff).
44. The Sub Committee also recommended that the Premises Licence Holder liaise with the Environmental Health, Planning and Fire Authorities to satisfy their conditions as a matter of urgency.
45. The Chairman thanked all parties for their attendance and explained that written confirmation of the decision would follow.

The meeting closed at 5.35 pm

Chairman

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