

MINUTES OF THE LICENSING (HEARING) SUB COMMITTEE

HELD ON 3 SEPTEMBER 2013

APPLICANT: JONATHAN DALTON
PREMISES: PELT TRADER ARCH 3 DOWGATE HILL EC4N 6AP

PRESENT

Sub Committee:

Edward Lord OBE JP (Chairman)
Jamie Ingham Clark CC
Revd Dr Martin Dudley CC

City of London Officers:

Xanthe Couture – Town Clerk's Department
Paul Chadha – Comptroller & City Solicitor's Department
Peter Davenport – Markets & Consumer Protection Department

Applicant:

Represented by Jennifer Leitner (Bloomsbury Leisure Group), Piers Warne (TLT Solicitors) and James Turner (Manager, Pelt Trader) all representing Jonathan Dalton

Representations of objection:

Timothy Straker QC, speaking on behalf of CBRE Ltd and Cannon Bridge Properties Ltd

In attendance:

Mark Wheatley CC
Josh Abrim, CBRE Ltd
Kevin Burke, Director of Security Europe, NYSE Euronext

Licensing Act 2003 (Hearings) Regulations 2005

A public Hearing was held at 10.00am in the Committee Rooms, Guildhall, London, EC2, to consider the representations submitted in respect of an application for the premises 'Pelt Trader, Arch 3, Dowgate Hill, EC4N 6AP'.

The Sub Committee had before them a report of the Director of Markets and Consumer Protection, which appended copies of:-

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|-------------|---------------------------------------------------|
| Appendix 1: | Copy of Application |
| Appendix 2: | Current Licence |
| Appendix 3 | Conditions consistent with the operating schedule |

- Appendix 4: Representations from Other Persons (7)
- Appendix 5: Map of subject premises together with other licensed premises in the area and their latest terminal time for alcohol sales
- Appendix 6: Plan of Premises

In addition the following documents, which were circulated to all parties prior to the Hearing, were also considered:

Additional evidence submitted on behalf of Simmons & Simmons LLP on 28 August 2013, in addition to the original representation by CBRE Ltd.

Additional documentation from Bloomsbury Leisure Group on behalf of the Applicant submitted on 30 August 2013, which provided an amended crowd management plan, additional photographs of the premises, two customer letters and a customer petition.

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1. The Hearing commenced at 10:00am.
 2. The Chairman opened the Hearing by introducing himself, the other Members of the Sub Committee, the officers present and the nature of the application.
 3. The Chairman outlined the format of the Hearing, noting that he would ask the Applicant to introduce the application. He would then invite those making representations to address the Hearing. The Applicant would then have the opportunity to address any matters arising during the course of the Hearing.
 4. The Chairman noted that the Director of Markets and Consumer Protection would be advising on the distance of the premises to the bollards at some point during the Hearing.
 5. The application, sought to amend the sole condition on the licence, which limited drinking outside the premises to between 19:00hrs and 21:00hrs, as follows:

“The sale of alcohol for consumption off the premises in unsealed containers will only be permitted until 21:00hrs each day.”
 6. The Chairman invited Mr Warne to provide an outline of the application.
 7. Mr Warne introduced the Application noting that concerns that the pavement area would be blocked when the application for the premises licence had been granted. Subsequent research by the Applicant had shown that the pavement and roadway did not have high levels of pedestrian traffic and pedestrians walked on the roadway regardless of if there were customers standing on the pavement. Their analysis had concluded pedestrian and vehicle traffic was not

substantial with an average of 11 pedestrians per minute passing on the pavement and road of the premises. People left work at different times and the roadway was not used as an access road. Vehicle traffic was predominantly related to Livery Company events and vehicle traffic occurred later in the evening. Mr Warne noted that in relation to this application, no representations had been received from the Livery Companies or residents and no representations received had concerns with regards to noise nuisance. Mr Turner, the Manager of the premises, concurred with research findings.

8. Mr Warne stated the Applicant had met with CBRE and the tenancy managers of Cannon Bridge House. Mr Warne added that the photo of the premises submitted by two of the representations was the same photo which displayed one of the two entrances of Cannon Bridge House. Photos supplied by the Applicant showed that the entrance of Cannon Bridge House was clear, and that individuals who were not Pelt Trader customers also stood in front of the building. Two letters submitted by the Applicant were in favour of the variation to the premises license and were from employees of companies within Cannon Bridge House. A petition had also been signed by customers that showed that customers were from businesses in the area.
9. The Applicant had also been in discussion with the highway authority on the use of barriers in front of the premises and Mr Warne stated that if complaints occurred, the Applicant would remove these barriers.
10. In regards to the representation submitted by CBRE (Appendix 4iii), the Applicant noted that there was no claim that noise nuisance would occur if the variation to the premises licence was granted. In response to the representation made by Ms Sargent (Appendix 4v) which cited beer bottles outside the premises on the 19th of June 2013, Mr Warne advised that the premises did not sell any beverages in glass bottles.
11. A Member of the Sub Committee asked if the pedestrian flow varied over the winter and summer months and Mr Warne replied that he was satisfied the management plan would cope with variations in pedestrian traffic.
12. A Member of the Sub Committee stated that the Applicant had presented a number of claims that had not been independently tested. Mr Warne replied that it was up to the Applicant to conduct the assessment and present the findings to the Sub Committee whose role was to ensure the application would not violate the licensing objectives if granted. The Applicant had observed the flow of pedestrian traffic as had been requested at the last Hearing and had produced a good management plan.
13. The Chairman then invited those making representations to address the Hearing.
14. Mr Straker began by asking Mr Warne if the expectation was, if the permission to amend the sole condition was granted, that people would be using the pavement from 12:00hrs onwards and subject to barriers to inhibit the movement of customers. Mr Warne responded that the premises had been the

exploring the use of barriers, which would be managed through the crowd management plan.

- 15.** Mr Straker then asked if there had been calculations done on the number of people that would be outside the premises after 12:00hrs, and Mr Warne replied that not many would be outside, perhaps five to ten people at a time. He advised the number of people outside on the pavement could be managed through the crowd management plan, and the Applicant was happy to amend so as to ensure barriers were only used when it assisted access. Mr Warne clarified that the outside area extended up to but not including the archway depicted in the additional documentation submitted by the Applicant (pg10). Under no circumstances were customers permitted to go to the left of the Cannon Bridge House entrance and this had been explained to staff.
- 16.** Mr Straker inquired as to how staff monitored the outside area to which Mr Warne advised that employees could see the entrance from behind the bar and assessed the outside area continuously when there was a sufficient amount of usage to warrant it.
- 17.** The Chairman stated that the conditions within the crowd management plan had to be clearly enforceable and the management plan was too flexible to be enforced by licensing officers. Mr Warne replied by stating that the crowd management plan was flexible in order for it to be amended according to how busy the premises could be. A Member of the Sub Committee replied that police officers were the only ones capable of controlling customers as the premises had limited capacity through controlling drink consumption. Mr Turner advised that a similar crowd management plan worked well at another premises owned by the Applicant, as customers respected the need to comply with the management plan in order to preserve the outside drinking area.
- 18.** In a response to a query from Mr Straker, the Applicant stated an external consultant had not been employed to undertake the pedestrian count as the lack of traffic did not warrant it.
- 19.** Mr Straker stated there was a tension between the use of the pavement by pedestrians and customers of the Pelt Trader who wished to drink and smoke. If the variation was granted, the area outside the premises would result in customers being on the pavement from 12:00hrs to 19:00hrs as a site of all day drinking in a busy thoroughfare that could obstruct the highway. There was also the concern that the use of barriers could cause further obstruction to the pavement.
- 20.** In response to a query the Chairman, Mr Straker stated the use of the pavement was considered a problem for those who worked in Cannon Bridge House whether at midday or 19:00hrs as it impacted their safety by limiting the space available on the pavement and negatively impacted the image and operations of Cannon Bridge House as a place of important business in the City.

21. The Chairman asked if there were any further questions for the representations and if there was anything else those making representations would like to add.
22. Mr Warne stated that when the Applicant was granted the premises licence, the condition was placed on the licence to ensure the premises abided by the licensing objectives. Since that time, the licensing objectives had not been violated and this was confirmed by the lack of representations at the current hearing from Livery companies and residents in the area. The premises had also used Temporary Event Notices (TENs) in the past and felt that if there were concerns with the requested variation to the existing condition, the Licensing Authority had the right to review the condition and the license. Mr Warne referenced the High Court ruling on the *Thwaites v Wirral Borough Magistrates' Court* case which had highlighted the importance of evidence as opposed to speculation presented.
23. Mr Warne reiterated that the research undertaken by the Applicant had shown that between 17:00hrs and 19:00hrs there was not a significant amount of people leaving work who were using the roadway or the pavement in front of the premises. He added that there was also a significant amount of pubs in the area that allowed for customers to use the pavement outside their premises, and in comparison, the Pelt Trader had a larger pavement.
24. For clarification, the Sub Committee was advised that the distance of the premises to the bollards was 4.13 metres and the distance from the premises to the inside kerb edge was 4.84 metres.
25. *The Panel retired to consider its decision at 10.55am and returned at 11:21am.*
26. The Chairman committed to circulating the Sub Committee's full decision in due course. He informed those present that there was no justification in not granting the variation application, therefore the application was granted and agreed that the condition on the premises licence governing the consumption of alcohol would be varied to read:

"There shall be no sale of alcohol off the premises in unsealed containers after 21:00hrs."
27. It was of the view that the Applicant's amended crowd management plan (Appendix 1i, additional documentation) was too flexible to be imposed as an enforceable condition on the premises licence. It was also noted the area outside the premises was not one that could be regulated through the City of London Licensing Authority.
28. The Sub Committee encouraged the applicant to take the City of London's Code of Good Practice for Licensed Premises and Risk Assessment Guidance into consideration with regard to the premises.

The meeting closed at 11.22am

Chairman

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COMMON COUNCIL OF THE CITY OF LONDON
LICENSING (HEARINGS) SUB-COMMITTEE

1 October 2013

Application by
JONATHAN DALTON
In respect of:
PELT TRADER
ARCH 3, DOWGATE HILL, EC4N 6AP

DECISION

I am writing to confirm the decision of the Licensing Sub Committee at the hearing on 3 September 2013 in relation to the above-mentioned premises. The Sub Committee's decision is set out below.

1. This decision relates to an application for a variation to the existing Licence, made by Jonathan Dalton, for the premises known as Pelt Trader, Arch 3, Dowgate Hill, London, EC4N 6AP.
2. The variation to the existing Licence sought to amend the sole condition on the licence, which limited drinking outside the premises to between 19:00hrs and 21:00hrs, as follows:

“The sale of alcohol for consumption off the premises in unsealed containers will only be permitted until 21:00hrs each day.”
3. The Sub Committee considered the application and carefully considered the representations submitted in writing and orally at the hearing by representatives of the applicant, Ms Jennifer Leitner, Mr Piers Warne and Mr James Turner and Mr Timothy Straker QC representing CBRE Ltd and Cannon Bridge Properties Limited.
4. In reaching its decision, the Sub Committee was 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 2013 and Licensing Code of Practice.
5. Furthermore, the Sub Committee took on board the duty to apply the statutory test as to whether an application should or should not be granted, that test being that the application should be granted unless it was satisfied that it was necessary to refuse all, or part, of an application or necessary to impose conditions on the granting of the application in order to promote one (or more) of the licensing objectives.
6. In determining the application, the Sub Committee first and foremost put the promotion of the licensing objectives at the heart of their decision. In

this instance, the most relevant of those objectives being the prevention of public nuisance and public safety.

7. In reaching its decision the Sub Committee took into account the additional documentation received from the Applicant including an amended crowd management plan, two customer letters in support of the application, a petition signed by customers of the premises and photographs of customers outside the premises. An additional written submission was received from CBRE Limited and was also considered.
8. It was noted the Applicant had assessed the amount of traffic from pedestrians and vehicles passing outside the premises. Their analysis had concluded pedestrian and vehicle traffic was not substantial with an average of 11 pedestrians per minute passing on the pavement and road of the premises. The Applicant stated an external consultant had not been employed to undertake the pedestrian count as the lack of traffic did not warrant it. Vehicle traffic was predominantly related to Livery Company events occurring nearby and the resulting traffic took place later in the evening. It was noted that in relation to this application, no representations had been received from the Livery Companies or residents who resided near the premises and no representations received had claimed concerns over noise nuisance.
9. The Sub Committee heard submissions as to the effect of customers of the Pelt Trader drinking and smoking outside the premises obstructing the highway and causing pedestrians to walk in the road and pass glasses and cigarette ends left on the pavement. It was noted that this was considered a problem for those who work in Cannon Bridge House whether at midday or 19:00hrs as it impacted their safety by limiting the space available on the pavement and negatively impacted the image and operations of CBH as a place of important business in the City. There was also concern that if the variation was granted, the area outside the premises would result in customers being on the pavement from 12:00hrs to 19:00hrs as a site of all day drinking in a busy thoroughfare. There was concern that the use of barriers by the Applicant could cause further disruption by restricting the space available on the pavement. For clarification, the Sub Committee noted that the distance of the premises to the bollards was 4.13 metres and the distance from the premises to the inside kerb edge was 4.84 metres.
10. The Sub-Committee concluded that there was insufficient evidence to satisfy it that to grant the variation as sought would result in a failure to promote the licensing objectives. The Sub-Committee was satisfied that the manner in which the Applicant currently managed clientele drinking outside the premises was acceptable and did not cause public nuisance and that if the Applicant was able to maintain the current levels of management and supervision there was no justification in not granting the variation application. Accordingly, it decided to grant the variation and agreed that the condition on the premises licence governing the consumption of alcohol should be varied to read:

“There shall be no sale of alcohol off the premises in unsealed containers after 21:00hrs.”

11. The Sub Committee then went on to consider whether any additional conditions should be placed on the premises licence as a result of the variation of the licence. It was of the view that the Applicant's amended crowd management plan (Appendix 1i) was too flexible to be imposed as an enforceable condition on the premises licence. As the Applicant had advised that the amended crowd management plan was successful in managing the area outside the premises and customers understood the need to comply with the City's Licensing Objectives in order to maintain the conditions of the premises licence the Sub-Committee urged the Applicant to continue with its implementation.
12. If the Sub Committee was wrong and the conditions prove insufficient to prevent a public nuisance associated with these premises, all parties are reminded that any responsible authority, business, resident or a Member of the Court of Common Council is entitled to apply for a review of the licence which may result, amongst other things, in a variation of the conditions, the removal of a licensable activity or the complete revocation of the licence.
13. The Sub Committee encouraged the applicant to take the City of London's Code of Good Practice for Licensed Premises and Risk Assessment Guidance into consideration with regard to the premises.
14. If any party is dissatisfied with the decision, he or she is reminded of the right to appeal, within 21 days, to a Magistrates' Court. Any party proposing to appeal is also reminded that under s181(2) of the Licensing Act 2003, the Magistrates' Court hearing the appeal may make such order as to costs as it thinks fit.

Yours faithfully

Xanthe Couture
Clerk to the Licensing Sub Committee