

MINUTES OF THE LICENSING (HEARING) SUB-COMMITTEE

HELD ON TUESDAY 6 AUGUST AT 10.30 AM

APPLICANT: Herbivore Restaurants Ltd t/a Stem & Glory
PREMISES: Stem & Glory, 60 Bartholomew Close, EC1A 7BF

Sub Committee:

Marianne Fredericks CC (Chairman)
Michael Hudson CC
James Tumbridge CC

Officers:

Polly Dunn - Town Clerk's Department
Frank Marchione - Comptroller and City Solicitor
Robert Breese - Markets and Consumer Protection

Given Notice of Attendance:

Applicant:

Craig Baylis	Solicitor, Bryan Cave Leighton Paisner - Agent for the Applicant
Sandy Glassford	General Manager, Stem & Glory

Making representations at the Hearing:

Brendan Barns	Resident
Ann Holmes CC	Resident and Ward Member for Farringdon Within

Licensing Act 2003 (Hearings) Regulations 2005

A public Hearing was held at 10.30 AM in Committee Room 1, Guildhall, London, EC2, to consider the application submitted by Stem & Glory, 60 Bartholomew Close, EC1A 7BF, the applicant being Herbivore Restaurants Ltd t/a Stem & Glory, in respect of a license variation sought to replace condition 5 on the premises license following the granting of the Tables & Chairs Licence (No: LN/ 200507715) on 26 April 2019, to allow a maximum of 6 tables and 12 chairs to be placed on the highway outside the premises between the hours of 09.00 and 21.00, Monday to Sunday, with the following two conditions:

(1) There shall be no sale of alcohol in unsealed containers for consumption off the premises save that sales for consumption at tables which benefit from a licence granted to the applicant by the highway authority under S.115E Highway Act 1980 are permitted for a maximum of 12 patrons from 11.00 up to 21.00 hours on any day. Such alcohol is only permitted ancillary to a table meal and by waiter/waitress service only.

(2) Alcohol may be supplied for consumption off the premises in sealed containers only, at any time during the hours permitted for on sale.

The Sub Committee had before them the following documents:-

Hearing Procedure

Report of the Director of Markets & Consumer Protection

Appendix 1: Copy of Application

Appendix 2: Current Premises Licence

Appendix 3: Current Tables & Chairs Licence

Appendix 4: Conditions consistent with Operating Schedule

Appendix 5: Representations from Other Persons

i) Barns

ii) Curran

iii) Holmes

iv) Carrington

v) Bowen

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

Appendix 7: Plan of Premises

NB: The decision letter of 11 October 2018 relating to the original licence for the supply of alcohol and late-night refreshment obtained by the applicant was circulated separately to all parties in advance of the Hearing.

1. The Hearing commenced at 10.30 AM.
2. At the commencement of the Hearing, the Sub Committee, Applicant and Objectors introduced themselves. Mrs Ann Holmes CC, an objector, informed the Committee that she been granted a general dispensation to speak directly to the Hearing in her capacity as a resident
3. Mr Baylis advised the Hearing that the Applicant wished to amend the proposed terminal hour for the sale of alcohol to the outside table area from 21:00 to 20:30. This was due to the practicalities surrounding the time needed for employees to pack away the external tables and chairs by 21:00 as per the Applicant's Tables & Chairs Licence. Mr Baylis highlighted that the proposed new condition also required that the sale of alcohol for consumption at the outside tables would be ancillary to table meals only and would be served by waiting staff and subsequently be monitored at all times.
4. A query was raised by the Sub Committee with regards to the plan of the premises submitted at Appendix 7, which featured six tables and 24 chairs. The current Tables & Chairs Licence (No: LN/200507715) granted to the Applicant allowed for a maximum of six tables and 12 chairs (two per table). Mr Baylis confirmed that he would submit an updated plan to the City of London Licensing Department that afternoon.
5. Mr Baylis revised his earlier amendment confirming that the applicant would like to revise the proposed terminal hour for the sale of alcohol to the outside table area to 20:00 Therefore the last sale of alcohol to patrons sat at the outside tables

would be 20:00, they would be given until 20:30 to consume the alcohol, allowing 30 minutes for employees to pack away the tables and chairs by 21:00 to ensure compliance with their Tables & Chairs license

6. The Hearing heard the concerns identified by local residents Mr Barns and Mrs Holmes. The Objectors explained that, unlike other nearby premises, Stem & Glory was particularly close to Middlesex Passage and there was concern this would cause more noise nuisance to residents who lived directly above the outside area in question. The Objectors concurred that the offer by the Applicant to reduce the hours of sale of unsealed alcohol for consumption outside the premises was a move in the right direction.
7. Mrs Holmes voiced a specific concern over the prospect of groups of patrons exceeding two people pushing the outdoor tables together which would create greater noise nuisance. However, following reassurance from the Applicant, the Objectors felt that the restrictions of the Tables & Chairs Licence prevented this from occurring and safeguarded access to the nearby disabled space and ramp providing the outside area was managed appropriately. The Objectors acknowledged that the Applicant had been managing the outside area closely and there were currently only five tables not six outside the premises, which reduced their concerns of noise nuisance further. It was noted that the Tables & Chairs Licence had to be renewed on an annual basis.
8. There was some discussion on the right for members of the public to use the outdoor seating, during which time they would be able to consume their own food/drink. It was concluded that this was the case for all premises with tables and chairs on a public highway and that it was not grounds to decline an individual application.
9. The Sub Committee enquired as to what constituted as the "point of sale". Mr Baylis used the definition under Section 190 of the 2003 Act which provides that the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract. Therefore, in this instance, it would be the point at which the waiting staff placed the patron's order with the bartender.
10. The Sub Committee retired and considered the application and carefully deliberated upon the representations submitted in writing and orally at the Hearing by those making representations and the Applicant. It was evident that the most relevant licensing objective that required the Sub Committee's consideration was the prevention of public nuisance. In reaching its 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.
11. In determining what constituted a public nuisance, 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”.

12. The Sub Committee regarded potential noise from use of the outside space to be the principal concern to residents. The Sub Committee acknowledged the residents’ concerns but were reassured by the Applicant’s attempt to address these by lowering the terminal hour for the sale of drinks to the outside area to 20:00. In addition, alcohol consumption would be ancillary to a meal and with waiter/waitress service only. All of which the Sub Committee considered would sufficiently reduce the potential risk of public nuisance.
13. The Sub Committee’s decision was that the application for the variation should be granted. The Sub Committee sought to strike a balance for residents and the business and concluded that following the granting of the Tables & Chairs Licence it was necessary and appropriate that condition 5 be replaced with the following two conditions:
 - (i) There shall be no sale of alcohol in unsealed containers for consumption off the premises save that sales for consumption at tables which benefit from a licence granted to the applicant by the highway authority under S.115E Highway Act 1980 are permitted for a maximum of 12 patrons from 11.00 up to 20:00 hours on any day. Such alcohol is only permitted ancillary to a table meal and by waiter/waitress service only.
 - (ii) Alcohol may be supplied for consumption off the premises in sealed containers only, at any time during the hours permitted for on sale.
14. The Applicant was reminded by the Sub Committee to submit a corrected plan to attach to the licence showing the area and location as per the granted Tables & Chairs Licence (No: LN/200507715).
15. The Chairman thanked all parties for their attendance and for their pragmatic and conciliatory approach throughout the Hearing. The Chairman informed those present that the written confirmation of the decision would follow.

The meeting closed at 11.00 am

Chairman

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