

MINUTES OF THE LICENSING (HEARING) SUB-COMMITTEE

HELD ON TUESDAY 13 AUGUST AT 10.30AM

APPLICANT: Daisy Green Food Ltd
PREMISES: Daisy Green, 2 London Wall Place, EC2Y 5DH

Sub-Committee:

Graham Packham (Chairman)
Shravan Joshi
Michael Hudson

Officers:

Town Clerk – Leanne Murphy
Comptroller and City Solicitor – Paul Chadha
Markets & Consumer Protection - Peter Davenport

Given Notice of Attendance:

Applicant:

Ms Prudence Freeman (Director, Daisy Green)
Mr Alun Thomas of Thomas & Thomas Partners LLP (Applicant's solicitor)
Mr Glenn LaFountain of Brookfield Properties (Landlord)
Ms Holly McColgan (Associate Solicitor)

Making representation:

Mr Paul Holmes (COL Police)
Mr Paul Forster (Environmental Health)
Mr Ian Dixon (resident)
Ms Mary Bonar (resident)
Mr Yash Rupal (representing residents Dimitri Varsamis and Ravi Rupal)
Ms Hilary Sunman (Barbican Association and the Residents' Association of Willoughby House)
Mr Adam Hogg (Chairman, Andrewes House Group)

Licensing Act 2003 (Hearings) Regulations 2005

A public Hearing was held at 10.30am in Committee Room 1, Guildhall, London, EC2, to consider the representations submitted in respect of an application for a premises license in respect of Daisy Green, 2 London Wall Place, EC2Y 5DH, the applicant being Daisy Green Food Ltd.

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: Conditions consistent with the operating schedule

Appendix 3: Representations from responsible authorities

- i) City of London Police
- ii) Environmental Health

Appendix 4: Representations from Other Persons

- i) Resident 1
- ii) Resident 2
- iii) Resident 3
- iv) Resident 4
- v) Resident 5
- vi) Resident 6
- vii) Resident 7
- viii) Resident 8
- ix) Resident 9
- x) Resident 10
- xi) Resident 11
- xii) Resident 12
- xiii) Resident 13
- xiv) Resident 14
- xv) Resident 15
- xvi) Resident 16
- xvii) Resident 17
- xviii) Resident 18
- xix) Resident 19
- xx) Resident 20
- xxi) Resident 21
- xxii) Resident 22
- xxiii) Resident 23
- xxiv) Resident 24
- xxv) Resident 25
- xxvi) Resident 26
- xxvii) Resident 27
- xxviii) Resident 28
- xxix) Resident 29
- xxx) Resident 30
- xxxi) Resident 31
- xxxii) Resident 32
- xxxiii) Resident 33
- xxxiv) Resident 34
- xxxv) Resident 35
- xxxvi) Resident 36

Appendix 5: Representation in support of application

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

Appendix 8: Blue public notice

-
1. The Hearing commenced at 10.30am.

2. At the commencement of the Hearing, the Chairman stated that all written representations had been read by the Sub Committee and requested that there was not a repetition of the submitted representations. The Chairman invited those making representations to first set out their objections against the Applicant.
3. Mr Rupal noted that the additional evidence submitted by the Applicant in support of their application was received at late notice and had not allowed time for Objectors to provide rebuttal evidence. He argued that this information should have been submitted with the original application to address the four licensing objectives. The Chairman reminded those present that the Sub Committee was required to consider all information submitted prior to the commencement of the Hearing. The Objectors were disappointed that there had been no engagement with residents as they felt this would have resolved most of the concerns.
4. Mr Rupal identified a number of concerns with the additional information submitted by the Applicant. Mr Rupal questioned the validity of the acoustics report which he felt to be based on unsound assumptions as it was conducted when the premises was closed. He felt that the placement of the receptors did not give an accurate portrayal of the noise, particularly at Roman House, as the receptor was placed behind a wall in the gardens which would not capture the noise travelling upwards.
5. The modelling also assumed that access to the terrace ended at 22:00 ignoring access by smokers after this time and was based on the noise levels of 25 people on the terrace despite the maximum proposed number being 50 people. There was also no mention of music throughout the application. Mr Rupal felt that the validity was therefore not tested, and the conclusions were a matter of conjecture.
6. Mr Rupal felt that the brochure and information about the Daisy Green concept purposely emphasized the food and coffee culture with no reference to alcohol in an attempt to downplay its significance. He noted that the menu offer at other Daisy Green premises were different and was therefore not clear what the premises was trying to be as it held bar, café, pub and restaurant qualities.
7. Mr Rupal felt the Applicant's dispersal plan should have been included as part of the application. He questioned who would be managing the calls if residents used the contact telephone number provided and how smokers/non-smokers would be managed on the terrace area after licensable activity ceased. He stated that there was no condition regarding off-sales which risked continued drinking in the area. It was also noted that regardless of the windows and doors being closed after 22:00, the front and left façade were made of glass panels which were not insulated.
8. Mr Rupal concluded that the requirements for noise had not been satisfied and that the needs of the local residents should be the priority. He noted that the flats at Roman House were not air conditioned which required windows to be left open, particularly in the summer months, and would be particularly affected by the noise from the terrace.
9. Ms Sunman advised that her primary concerns related to noise and the opening hours. She noted that there were a range of hours across the different Daisy

Green establishments and that the hours needed to be brought back in order to be considerate to the local residents.

10. Ms Sunman was also representing the concerns of the Barbican Association and the Residents' Association of Willoughby House who were very concerned regarding the offer of a bottomless brunch. The Hearing was advised that Willoughby House was above the Bad Egg who also provided this offer which had caused a number of negative impacts for the local community including noise and public urination by highly intoxicated patrons. It was felt that bottomless brunches in the terrace area would have a negative impact on the public gardens, particularly on Sundays when it is a peaceful haven.
11. Ms Sunman requested that the terrace area be closed at 21:00 as recommended by Environmental Health, that the premises remain closed on weekends and to keep the eastern façade closed to prevent noise nuisance by music. She stated that the site would be a nice location for a café/restaurant only.
12. Ms Bonar advised that she was representing the concerns of the Barbican Association and the residents of Wallside. With regards to the new material provided by the Applicant, she stated that the consultation all referred only to planning and not licensing concerns. It was noted that a Liaison Committee meeting took place at the time of the application who would have provided advice yet no consultation with the Committee happened.
13. Ms Bonar questioned when a meeting of consultation with the nearest affected properties took place as she was not aware of such a meeting.
14. Ms Bonar felt the proposed conditions were well crafted. She requested that the opening hours be reduced especially on Sundays, that all doors and windows remain closed at all times, there be no admission of all patrons to the terraced area after 22:00 and for food and drink sales to cease at an earlier time to ensure patrons were not leaving the premises and making noise at an unsuitable hour.
15. Mr Dixon agreed with Ms Bonar that there had been no engagement with the local residents which was disappointing as key concerns could have been addressed.
16. Mr Dixon felt the proposed number of 50 people for the inside and outside areas of the premises was completely unsuitable as they were too small to manage these numbers. He stated that this would encourage vertical drinking and spillage into the public space risking the peaceful dynamic of the space. He argued that drinking with a meal only would ensure less noise nuisance.
17. Mr Dixon noted that other local businesses ensured all doors and windows were closed at 21:00 which significantly helped prevent noise nuisance.
18. Mr Dixon was concerned by the proposed end licensing hour of 23:00 seven days a week. He felt that allowing these hours on Sundays completely lacked merit and was problematic in general as patrons would have until 23:30 to finish their drinks and would therefore realistically be dispersing the area as late as midnight. He requested a clear dispersal policy along with suitable conditions concerning the

opening hours, dispersal of patrons, the numbers of people in the internal and external area, and the closure of doors and windows.

19. Mr Hogg advised the Hearing that he had significant experience in the drinks industry and had advised the government on licensing law for the 2003 Licensing Act.
20. Mr Hogg's primary concern was noise nuisance from the premises. He advised that Andrewes House had about 30 flats in direct view of the premises, and, like Roman House, they did not have air conditioning and would therefore have their windows open. He stated that the noise from the terrace would reverberate in the block below which would echo further down towards Gilbert House. Mr Hogg argued that it would be difficult to manage noise which would affect the neighbourhood and supported the advice of Environmental Health for drinking in the external terrace to be brought back to 21:00 and closure on Sunday. He also discouraged the sale of off-sales after 21:00.
21. Mr Holmes, representing the COL Police, stated that they had been in communications with the Applicant during the representation period who agreed to ensure all of the Police's concerns would be covered by the licence.
22. The Chairman invited the Applicant to ask the Objectors questions regarding their statements.
23. Mr Thomas queried how often Mr Rupal lived in his flat. Mr Rupal confirmed he lived in the flat once a fortnight but that his son permanently resided in the flat as did his daughter during term time.
24. The Sub Committee wanted to understand the area and the basis for some of the representations. The Sub Committee noted that it was difficult/unusual to travel through the Barbican Estate unless you lived there or knew the area well. Patrons would be expected to travel home using the simpler route along London Wall to the Barbican or Moorgate Stations.
25. The Sub Committee noted that Gilbert House was out of the sightline of the premises and questioned why these flats would be impacted by noise. Mr Dixon said people leaving local premises did travel through the Estate and therefore dispersal at night would affect the neighbourhood.
26. The Sub Committee noted that only two rows of flats at Andrewes House were in the sightline of the premises. Mr Hogg responded that approximately 30 flats out of 190 would be affected along with the gardens.
27. In response to a query, Ms Bonar confirmed her objection had not been noise but concerns regarding poor dispersal and the impact of off-sales making the area a target for drunk people. It was noted that other premises in the area did not have tables and chairs outside and were not open during weekends and she feared that granting this application would encourage others in the area to request longer opening hours. The Sub Committee confirmed that this application would be judged on its own merits.

28. The Sub Committee asked the COL Police if the concerns for the area were fully addressed in the proposed recommendations. Mr Holmes stated that they were content as the premises would not have a bar in its external area.
29. The Chairman invited the Applicant and Mr Thomas to set out their case in support of the application.
30. The Applicant confirmed that Daisy Green had ten other sites each with a flexible coffee/brunch/restaurant offering to suit all customers. Each site was unique and evolved to suit the location. The Applicant felt that the location was ideal for the business model and would thrive in the mixed resident and worker area.
31. The Applicant wanted to explore evening trade in this new premises, in comparison to other Daisy Greens, and felt that flexibility was vital to the success of the business. She argued that the location and business offering would encourage a higher end clientele and the proportion of "dry to wet" sales would be 75% food and 25% alcohol/soft drinks/coffee.
32. Mr Thomas advised that having considered the concerns of the Objectors, the Applicant would reluctantly agree to amend the terminal hour for the sale of alcohol to the external area to 21:00 with all patrons leaving the premises by 22:00 on Sunday. The Applicant was not prepared to offer to amend the proposed hours for Saturday to allow operational flexibility. Mr Thomas noted that this did not mean that the premises would be open until 23:00 every day as it was not a late-night venue and would close earlier if not busy.
33. In response to concerns identified by Objectors, Mr Thomas stated that there would be no music played on the external terrace but music and occasionally a DJ would play music inside ambient to the atmosphere, e.g. Motown or jazz.
34. The Hearing was advised that bottomless brunches had been introduced in the last two years to some of the larger Daisy Green venues, e.g. Soho and Victoria. The bottomless brunches would represent a very small component of the overall offer (3-5%) unlike Bad Egg of which this was a business focus and the clientele would be local residents and workers to which trade would be focused on based on the location of the premises.
35. Mr Thomas confirmed that terrace use would be restricted to smokers only after 22:00.
36. The Applicant agreed to cease the sale of off-sales to 22:00 to curtail concerns for continued drinking by patrons within the neighbourhood after the premises closed.
37. With regards to the acoustic report, Mr Thomas advised that RBA Acoustics specialised in mixed use premises and found nearby traffic to be the predominant noise factor at the location. He confirmed the assessors had relied upon assumptions used within the industry and the WHO standard, finding that the premises was below or within the limit guidance. The effect of smokers on the terrace was assessed for up to 10 people. The Applicant confirmed that patrons

that wished to smoke on the terrace after 22:00 would be monitored, drinks would not be allowed outside, and the number would be capped at ten people.

38. Mr Thomas stated that the majority of the objections had common themes based on misconceptions, e.g. bottomless brunches and the variances on timings each day, which were inconsistent with the requests within the application.
39. Mr Thomas addressed the Objectors stating that it was regretful that the additional information was provided at late notice, but the high number of objections meant that it had taken time to address all of the concerns. The premises was not regarded as a late night venue; however, the longer opening times would allow the Applicant some flexibility in their offer. The Applicant confirmed that daytime trader would be the focus.
40. Mr Thomas noted that the reason the Wood Street Bar & Restaurant had no external drinking was because it was direct beneath the Barbican.
41. The Chairman invited the Objectors to ask the Applicant and their solicitor questions regarding their statements.
42. Mr Forster (Environmental Health) stated that the acoustic report did not include any measurements for a Saturday or Sunday or for the time 22:00 to 23:00 which was of most concern to residents. The measurement to determine ambient background noise levels was conducted on a Thursday evening whilst the premises was closed. Mr Thomas advised that the LAeq sound metric was used to measure customer and ambient noise peaks. Mr Thomas added that the noise nuisance legislation included within the Applicant's lease in conjunction with basic environmental health law would further protect local residents and ensure that the Applicant managed noise from the premises responsibly.
43. Mr Rupal queried exactly where the terrace was with regards to the premises. Mr Thomas advised that this was directly in front of the premises. Planters would be used to frame the space and staff would manage this area to ensure no drinking took place in the public area.
44. Mr Rupal enquired how smokers would be policed to ensure there were no more than ten people outside after 22:00. Mr Thomas advised that staff would stop patrons from entering the terrace area if numbers reached ten people. He confirmed non-smokers would be allowed in the area within reason.
45. Mr Dixon queried whether the proposal for 50 people in the internal and external areas was realistic and suggested a maximum of 40 people. Mr Thomas confirmed that the maximum proposed numbers for both the internal and external area was 50 people, which was compliant with fire safety regulations which put a maximum of 60 people. He added that use of the external area was seasonal.
46. The Sub Committee requested clarification regarding what consultation took place with local residents six months ago and how many people were involved. Mr Thomas confirmed that approximately three residents were involved in the

consultation which took place for the site but prior to Daisy Green becoming a tenant. This included questions concerning the terrace area, seating and windows.

47. In response to a query concerning CCTV, Mr Thomas advised that there would be CCTV at the premises internally and externally. It was noted that the Landlord, Brookfield Properties, also had CCTV which covered the entire estate.
48. With regards to noise, the Sub Committee noted that music leakage could have an effect on the speaking level of patrons and questioned whether the Applicant would consider implementing limits on the sound system and/or a tracker. The Applicant confirmed that there would be regular tests of decibel reading and would consider implementing a tracker.
49. The Sub Committee queried how the Applicant would control bottomless brunches. The Applicant advised that brunches lasted for 90 minutes starting from when the entire party arrived. Each person would be allowed one glass of alcohol at a time and would be served food and drink to the table by waiter/waitress service and that the offer would be undertaken in such a manner so as not to infringe the mandatory condition relating to irresponsible drinks promotions. In response to a query regarding walk ins, the Hearing was advised that this was rare, but they would not be turned away.
50. The Sub Committee stated that controlling smokers was not a licensable activity making it difficult to manage at the premises. The Sub Committee could only impose conditions concerning licensable activities, e.g. to prevent containers outside.
51. The Sub Committee questioned whether allowing vertical drinking in the external terrace would produce higher noise levels. Mr Thomas confirmed that the terrace would allow for a mixture of patrons sitting at tables, vertical drinking or smoking but this would be carefully managed as the premises was not a pub.
52. The Chairman offered all parties the opportunity to make a concluding statement.
53. Mr Rupal stated that although a number of assurances had been given by the Applicant, he did not feel confident that the concerns of the residents had been resolved. The site was a peaceful area enjoyed by locals and workers alike and despite the good intentions of the Applicant, noise from the venue, particularly from the terrace area, would affect the neighbourhood and risk the dynamic of the area throughout the day and night.
54. Ms Sunman felt that the proposed maximum hours by the Applicant were too late and were not necessary for the business. She also felt that there was no strong commitment from the Applicant to manage the impact of bottomless brunches at the premises.
55. Mr Hogg highlighted noise as the biggest issue and felt that up to 50 people having a good time on the terrace area would be considerably louder than the acoustic report had suggested and requested that the terminal hour for the terrace be brought back to 21:00.

56. Mr Dixon did not feel the flexibility requested by the Applicant concerning opening times and the sale of alcohol was reasonable for the local community and requested that the terminal hour for the terrace be brought back to 21:00. He also felt that the maximum number of people internally and externally were too high for the modest size of the premises.
57. The Objectors requested the following conditions: 1) the hours for drinking in the external terrace be brought back to 21:00 as recommended in the representation submitted by Environmental Health, 2) that all doors and windows at the premises remain closed after 21:00, 3) a clear dispersal policy with signage be put in place to ensure patrons exit via the London Wall side and 4) that the premises reduces its opening hours at the weekend.
58. Mr Thomas concluded that the Applicant was a good, successful operator and use of the terrace area until 22:00 was critical to the business plan. He noted that there was no evidence of inevitable noise nuisance or that patrons would disperse across the Barbican Estate. Mr Thomas stated that the venue was a café/bar with a focus driven by providing upmarket food and would be a nice addition to the area.
59. The Chairman thanked all attendees for their comments and explained that a written decision letter would be sent to all relevant parties within five working days.
60. The Sub Committee retired at 12:40 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.
61. 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".
62. The Sub Committee regarded noise to be the principal concern to residents. The Sub Committee noted that this was a new business and, whilst conscious of the fact that the premises was located in a residential pocket of the City, also noted that other licensed premises operated in the area. The Sub Committee accepted the residents' concerns as to the potential for noise disturbance late at night but were partly reassured by the measures proposed by the Applicant in an attempt to address these concerns would sufficiently reduce the risk of public nuisance. The Sub Committee had regard to paragraph 27 of the Statement of Licensing Policy

which provided that residents had a reasonable expectation that their sleep would not be unduly disturbed between the hours of 23:00 and 07:00, and given the close proximity of the premises to residential accommodation considered the closing time should be no later than 23:00 with the sale of alcohol 30 minutes earlier, so the premises would be closed and all patrons dispersed prior to 23:00.

63. The Sub Committee concluded that, with the imposition of suitable conditions, it would be possible for the Applicant to operate the premises in accordance with the licensing objectives. The Sub Committee sought to strike a balance for residents and the business.
64. It was the Sub Committee's decision to grant the premises licence as follows:

Activity	Current Licence	Licencing Hours	
Sale of alcohol	N/A	Mon-Sun	11:00-22:30
Hours premises are open to the public	N/A	Mon-Sun	07:00-23:00

65. However, the Sub Committee had concerns relating to the potential for public nuisance resulting from patrons purchasing alcohol and subsequently consuming the alcohol in the vicinity of the premises. It therefore decided that the supply of alcohol would be restricted to on the premises.
66. The Sub Committee then considered the issue of conditions and concluded that it was necessary and appropriate to impose conditions upon the licence so as to address the concerns relating to public nuisance.
- a) The premises will install and maintain a comprehensive digital colour CCTV system. All public areas of the licensed premises will be covered enabling facial identification of every person entering in any light condition. The CCTV cameras shall continually record whilst the premises is open for licensable activities and during all times customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. A staff member who is conversant with the operation of the CCTV system shall be present on the premises at all times when they are open to the public. This staff member shall be able to show the police or the Licensing Authority recent data or footage with the absolute minimum of delay when requested (MC01).
 - b) There shall be no promoted events on the premises. A promoted event is an event involving music and dancing where the musical entertainment is provided at any time by a disc jockey or disc jockeys one or some of whom are not employees of the premises licence holder and the event is (independent of the licence holder) promoted to the general public (MC02).
 - c) All door and windows shall remain closed after 21:00 save for entry or exit, or in the event of an emergency (MC13).

- d) Prominent signage shall be displayed at all exits from the premises requesting that customers leave quietly (MC16).
- e) Licensing activities in the external area of the premises shall cease at 21:00 and the external area shall, subject to Condition 7, be clear of patrons by 21:30.
- f) Customers are permitted to access the external area of the premises after 21:00 to smoke only but shall not be permitted to take drinks or glass containers with them (MC17).
- g) The Licence holder shall make available a contact telephone number to nearby residents and the City of London Licensing Team to be used in the event of complaints arising (MC19).
- h) The number of persons permitted in the external area of the premises at any one time (excluding staff) shall not exceed 50 persons.

The meeting closed at 12.40 PM

Chairman

Contact Officer: Leanne Murphy
Tel. no. 020 7332 3008
E-mail: leanne.murphy@cityoflondon.gov.uk