

MINUTES OF THE LICENSING (HEARING) SUB-COMMITTEE

HELD ON WEDNESDAY 12 JANUARY, 2022 AT 2.30PM

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

Sub-Committee:

James Tumbridge (Chairman)
Deputy Peter Dunphy
Marianne Fredericks

Officers:

Town Clerk – Leanne Murphy/Julie Mayer
Comptroller and City Solicitor – Frank Marchione
Markets & Consumer Protection - Peter Davenport

Given Notice of Attendance:

Applicant:

Prue Freeman (Director, Daisy Green)

Making representation:

Ms Mary Bonar (Chair, Wallside House Group);
Ms Fionnuala Hogan (Chair, Willoughby House Group);
Liz Hirst (Willoughby House Group);
Mr Ian Dixon (Chair, Gilbert House Group);
James Durcan (Chair, Andrewes House Group)
Dr Dimitri Varsamis, speaking on behalf of Ravi Rupal (both residents of Roman House)

In attendance and had made written representations but not speaking:

Ms Sue Cox (Deputy Chair, Barbican Association),
Helen Kay (former Chair of Barbican Association, Licensing and Planning Committee)
Cheng Han-Li (Roman House resident)

Licensing Act 2003 (Hearings) Regulations 2005

A virtual public Hearing was held at 2.00pm to consider the representations submitted in respect of an application to vary the premises licence 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: Minutes of Hearing held on 13 August 2019

Appendix 3: Minutes of Hearing held on 12 August 2020

Appendix 4: Current Licence

Appendix 5: Those making representations in objection (x26)

Appendix 6: Premises Location Maps

Appendix 7: Plans

1. The Hearing commenced at 14:00.
2. At the commencement of the Hearing, the Chair stated that all written representations had been read by the Sub Committee. The Chair then sought clarity in terms of what the Variation was actually seeking, as there appeared to be contradictory information in the application. The Applicant confirmed that the only variation being sought was to bring forward the sale of alcohol to 9 am (from 11 am) seven days a week, as set out in the report of the Director of Markets and Consumer Protection:

<u>Activity</u>	<u>Current Licence</u>	<u>Proposed Licence</u>
Sale of Alcohol	Mon-Sun:11:00-22:30	Mon-Sun:09:00-22:30

3. The Applicant explained that the Variation would bring consistency to the brunch offer across all 11 Barbie Green premises in London, 10 of which were now serving alcohol from 9 am. The Sub Committee, and all those in attendance and making representations, were asked to note that an error had been made on the application form by Thomas & Thomas Partners LLP, and no changes were being sought in respect of off-sales.
4. The Chairman invited those making representations to set out their objections, noting the written representations had already been considered. There were no representations in support of the application or from responsible authorities.
5. Liz Hirst and Fionnuala Hogan, representing residents of Willoughby House, felt that the lack of consultation had undermined residents' trust, as had the number of applications made over the past couple of years, which might gradually erode amenity. The Sub Committee were asked to note that this part of the Barbican Estate experiences high levels of construction noise during the week, and residents particularly value peaceful enjoyment of their property between 9 and 11 am at weekends. Residents were concerned that increasing the brunch trade would encourage more noise from clients gathering outside the premises and on dispersal.
6. Jim Durcan, representing Andrewes House, endorsed this view, particularly in terms of protecting peaceful amenity on Sunday mornings, when there is no construction works and less traffic noise. Residents were also concerned about the substantial external area to the premises, and the lack of any statement on the application about proposals to manage noise disturbance. There was a

further concern expressed that the earlier licensing hours might be attractive to patrons leaving nightclubs.

7. Dr Dimitri Varsamis of Roman House (also speaking on behalf of Mr Ravi Rupal of Roman House) felt that promoting the sale of alcohol from 9 am at a 'bottomless brunch' was inappropriate, given the premises' close proximity to the Girls' School. Furthermore, Roman House's glass construction made its residents particularly vulnerable to external noise.
8. Mary Bonar, representing Wallside residents, felt that the external terrace should not be open at 9 am, and there should have been a noise assessment of the current seating arrangements of the premises. Whilst keeping alcohol sales inside would have some mitigation, subsequent gatherings outside the premises and on dispersal were likely to be disruptive.
9. Ian Dixon, the Chair of Gilbert House acknowledged the applicant's wish for consistent hours across their premises but felt that any licence granted should be relevant to each location and its amenity.
10. The Chair invited the applicant to respond. The applicant stressed that Barbie Green are very mindful of the amenity of their neighbours, as the Barbican residents and surrounding areas make up 90% of their trade. Barbie Green prides itself on strict observation of the Licensing Act, which prohibits sale of alcohol to any person(s) already intoxicated. The Applicant felt that prior consultation with the resident groups had not been necessary, as the Variation was not seeking an unreasonable start time, past concern was with trade toward the end of the day and was in keeping with the City of London Corporation's Licensing Policy.
11. The applicant explained that Barbie Green's business model is based on the Australian brunch culture; i.e. - breakfast business meetings and celebrations. The premises operate in Central London across Zone 1, for local residents and office workers, and also attract brunch customers to areas of interest across the City. The business is seasonal and winter trade is often 40% lower than summer. There is capacity for 30-40 covers in the on-sales areas, and most of the clients require sit down meals with alcohol served. There might be vertical drinking at office gatherings during the week, observing social distancing, but 90% of business is seated. Other Barbie Green premises, which are already serving alcohol before 10 am, see fairly low numbers at this time.
12. The Chair stressed that the impact on the business model; i.e. – the Premises Manager's projection that the Variation was only likely to attract a few additional clients, could not be a determining factor in this decision. Furthermore, repeat applications/variations are acceptable under the Licensing Act, as they allow businesses to adapt and grow. The Applicant was reminded of the Licensing Department's pre-application service, which would have facilitated consultation with local residents and highlighted the error in the application recorded at the start of the Hearing.

13. The Chairman offered all parties the opportunity to make a concluding statement. The applicant reiterated Barbie Green's commitment to providing a good service for all and its position on upholding the Licensing Act, which prohibits the sale of alcohol to any person(s) already intoxicated. Barbie Green is a successful business and, whilst the slight extension to the licensing hours is unlikely to have much impact on the business, they are seeking consistency across their customer base/experience.
14. There were no concluding comments from the Objectors.
15. The Chairman thanked all attendees for their comments and explained that a written decision letter would be sent to all parties within five working days by email only.
16. 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 from noise. Once the position had been clarified in that the Variation only sought to extend licensing hours in the morning, the Sub Committee agreed that the written representations were mainly concerned about an extension to off-sales later in the day and were not raising many concerns on the earlier morning start time. 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.
17. 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"*.
18. The Sub Committee considered that, given the size of the premises, the Variation was unlikely to attract a considerable number of additional brunch clients. Whilst noting residents' concerns about patrons from night clubs being able to visit the premises earlier in the day, Barbie Green fully understands the Licensing Act's position on serving alcohol to any person(s) already intoxicated. This business had operated without any significant issues to date and, the Applicant had made significant concessions to help address the key concerns of the Objectors, as set out in the extensive list of conditions, and there had been no representations from responsible authorities. Furthermore, there was no historic evidence that groups congregating alongside London Wall Road were Barbie Green clients, as they might have purchased alcohol from elsewhere. Whilst noting and empathising with the cumulative effect of noise from other developments on the Barbican Estate, this is not a determining factor in reaching a decision, neither is any material impact on the business.

19. The Sub Committee sought to strike a balance for residents and the business and, taking into account the fact that Sunday is a relatively quiet day for City residents, the Sub Committee agreed to grant a Variation of the Licence and extend the licensing hours to 9 am on Monday to Saturday and 10 am on Sundays, as follows:

<u>Activity</u>	<u>Current Licence</u>	<u>Proposed Licence</u>
Sale of Alcohol	Mon-Sun: 11:00-22:30	Mon-Sat: 09:00-22:30 Sun: 10:00-22:30

20. The Sub Committee concluded that it would be possible for the Applicant to continue to operate the premises in accordance with the licensing objectives and did not consider a need to impose further conditions.
21. The Sub Committee concluded that 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, and it was the Sub Committee's decision to grant the variation of the premises licence to permit alcohol sales between the hours of 09:00-22:30 Monday to Saturday and 10:00-22.30 Sunday. The Sub Committee did not consider there to be a need for any additional conditions.

The meeting closed at 16:00

Chairman

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