

MINUTES OF THE LICENSING (HEARING) SUB-COMMITTEE

HELD ON WEDNESDAY 15TH NOVEMBER 2023, 2:30PM

Sub Committee:

Anthony Fitzpatrick (Chair)
Deputy Marianne Fredericks
Mary Durcan

Officers:

Raquel Pinto – Town Clerks
Rachel Pye – Assistant Director, Public Protection
Robert Breese – Licensing Officer, Department of the Environment
Sadhari Perera - City Solicitor

Applicant:

Craig Baylis

Making representations:

Carla Regan

Licensing Act 2003 (Hearings) Regulations 2005

A Public Hearing was held at 2:30pm to consider representations submitted in respect of an Application for a Premises Licence by Barts Square Active One Ltd, for 60 Bartholomew Close, London, EC1A 7BF.

The Sub-Committee had before it the following documents:

- Hearing Procedure
- Report of the Executive Director Environment
- Appendix 1: Copy of Application
- Appendix 2: Representations from Other Persons
 - Resident 1
 - Resident 2
 - Resident 3
- Appendix 3: Conditions consistent with the operating schedule
- Appendix 4: Map of subject premises together with other licensed premises in the area and their latest terminal time for alcohol sales
- Appendix 5: Plan of Premises

The Hearing commenced at 2:30pm. The Chairman introduced himself before asking the Sub Committee, the City of London Corporation officers and other parties present to introduce themselves.

The Chair confirmed the nature of the application which was for the sale of alcohol for consumption on and off the premises and for the provision of late-night refreshment. The Chair also explained the order of proceedings, as set out in the agenda pack circulated to all parties.

During the presentation from those making representations, the following points were noted:

- The applicant was the developer of not only the commercial premises in the square, but also all of the residential properties as well.
- There was previously in force a licence at these premises which had been granted in October 2018, and was held effectively for five years by the previous tenants.
- The previous license had never been challenged or reviewed and no complaints were ever made about it to the city officers or to any of the responsible authorities.
- The application was being made because the previous licence holder became insolvent, and the license was lost through the legal process.
- If the freeholder had known in advance, they would have taken a transfer of license, but this was not possible.
- The Applicant wants to regain the licence that was there without any difficulties for five years on identical terms, identical hours, identical conditions, and then seek to market it to a potential new tenant chair.

During questions, the following points were noted:

- There was no tenant yet, as the applicant wanted to have a license to then market the property. The License would be a part of the offer to the potential new tenant.
- The Applicant was looking for another restaurant as a tenant with no vertical drinking and with a sit-down waiter/waitress table service with the same hours and same conditions as previously held in that property.
- On concerns raised regarding not having a tenant as of yet and whether the hours they had applied for were in line with this unit, it was noted that the Applicant's view was that the license had been granted by this Committee before for the hours they had on this application. Given there had been no complaints there was no reason on this basis why the previous license should not be regranted on the same terms. It was noted that this hearing should not be a review of the previous tenants and that the license should be restored on identical terms.
- The Applicant's Counsel explained that regarding the concerns raised about

the premises now being in a different environment as there were more tenants in place and the lack of a tenant, that these concerns were addressed by the review process rather than the potential for granting a new license. Furthermore, given the history of the premise, and that the previous tenants had traded with no difficulties it was the Applicant's view that the submission to restore the license on the terms that it had previously to be appropriate.

- The Applicant's counsel also drew the Committee's attention to the fact that out of 260 flats only three objections had been received which was not a high percentage.
- Having a license was a valuable asset to the property and added more value. On preliminary discussions with prospective tenants this was an attractive addition.
- The landlord was interested in having in place a high class restaurant operator and someone who would not be causing difficulties for their tenants and residents. There was a community of interests in making sure that whoever was granted the lease for these premises was also mindful of the fact that they've got to be a good neighbour and so provisions will be built into the lease so then effect. The Committee noted that the Applicant would be happy to offer a condition which said no vertical drinking, to stop it turning to a bar as well as waitress/table service condition if to provide some comfort about where the property might go in terms of a potential operator.
- The Committee noted that it was common for landlords to apply for the license rather than tenants as it added property value but also it cut down the time for the landlord to sell the property and ensured a smooth negotiation process and not cause further delays.
- The Applicant was not applying for a pavement license and this would be something the new tenant would have to apply for.

During the presentation from the Other representatives, the following points were noted:

- There had been complaints made directly to the previous tenants Stem and Glory, as when staff were leaving after 11:30pm the smallest noises were amplified given the narrow streets of the City, which could be heard in the apartments.
- Their apartment sat on top of the premises and when the previous license was acquired it was before there were any tenants living there.
- Several complaints had been made regarding other premises nearby like Butchers Hall and Chicago Booth regarding noise and music.
- Concerns regarding the cumulative effects of noise were raised as more premises were being occupied, although due to Covid not all commercial premises had been let which helped for now.
- Concerns remained on businesses being able to continue their activities beyond 11:00pm, given that this was the cut off time dictated by the City that deliveries should cease.
- The importance of preserving the crucial sleep time between 11pm and 7am

was stated.

- Complaints were being raised with the entities rather than involving the City of London, as when a complaint was lodged with the City of London, the team would have to call back to investigate where the noise was coming from, which residents found it would take away further from their sleep time. Residents were trying to build good relationships with the commercial properties so any issues could be resolved quickly.
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During questions, the following points were noted:

- On the issues with the previous tenants, the Committee noted these were to do with noise, dirt and smell. The previous tenants had a pavement license which meant that chatter could be heard well after the sale of alcohol stopped as the business was opened for longer. Staff clearing up after the business had closed also made a lot of noise which could be heard from resident's properties. These concerns had been raised with the tenants themselves but residents found the issues they had raised were not addressed, which caused further concerns as they did not know who the new tenants would be.
- On the issue of deliveries, the Committee noted that the Applicant would be happy to add a condition which restricted deliveries so they were no later than 11pm or earlier than 7am.
- On the availability of storage inside the unit as there were concerns on this from the previous license and the noise it generated, the Committee noted there was ample storage inside. However, currently, there was no pavement license.
- Concerns about dispersal were raised as the staff and the owners could not control the general public when they leave the premises.
- The previous tenancy ran for five years from 2018.
- Concerns regarding how visible and how well the application was advertised to residents were raised, as it was explained this was done via a leaflet to residents. The Committee noted that residents felt this did not capture all the residents properly, and although legally the applicant did what was required, it was felt more could be done. The Applicant's Counsel advised that the application as found to not be controversial as it was re-instating a license that as there previously, and there was no record of complaints. Nevertheless, feedback regarding wider consultation would be taken back to the Applicant.
- The Committee asked if the Applicant would be happy for a condition to be added to ensure these premises were for restaurant use. The Applicant's Counsel advised that if the Committee were minded to grant the license for the hours that were previously enforced, the Applicant would be amenable to a condition which said that alcohol would only be ancillary to a table meal which effectively was the normal restaurant condition, but only if the hours remained those they had applied for.

The Chair invited parties to sum up. The Applicant's Counsel stated their concern that this application should not become a substitute review for a licence that was previously enforced for five years with no complaints, no reviews and no difficulties.

The Objector stated that those who lived in the area found it difficult to sleep and trying to make the residential and commercial aspects work. Their main concern was around the preservation of the non-delivery restriction times between 11:00 PM and 7:00 AM.

The Chair explained that the Sub Committee would retire to make a decision and all parties would be advised of the outcome within 5 clear working days. The Chair thanked all those present and closed the Hearing at 15:00.

Deliberations:

The Sub-Committee retired to carefully consider the application, on 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 objectives requiring the Sub-Committee's consideration was the prevention of public nuisance and prevention of crime and disorder.

The Sub Committee noted that since the granting of the original application the residential units above the premises and in the wider development were now occupied. The Sub- Committee further noted the representations from the residents, and fully understood their concerns about dispersal, specifically noise nuisance and the cumulative impact of anti-social behaviour from patrons leaving late night drinking establishments (including this establishment), the noise coming from late deliveries as well as staff cleaning the premises and the resident's want of maintaining and protecting sleeping hours between 11pm to 7am. Although the Sub-Committee noted these points, it also agreed that this application needs to be considered on its' own merits.

The Sub-Committee noted that the applicant wanted to regain the licence that was there previously on identical terms and conditions. The Applicant was the developer for both the commercial premises in the square and the residential properties, who had previously a license granted for this premise in 2018 and was in effect for five years. During this period there had been no challenges nor complaints. This had come to Committee because the license was lost through the legal process as a result of the previous tenant (Stem and Glory) became insolvent and the applicant wanted to regain the license so they could seek to market this property to a potential new tenant.

The Sub Committee also noted concerns from the resident regarding particularly extending the late-night refreshments to past 11pm and the cumulative effects of potential noise nuisance as more and more premises become occupied. Complaints had been raised directly with the previous tenants regarding potential noise nuisance rather than involving City of London. Residents were trying to have and maintain a good relationship with businesses in the area. The Committee also noted that at the moment noise nuisance is not an issue as a lot of the commercial premises have not been rented as a result of Covid-19. However, issues such as deliveries operating outside of the 11pm-7am timeframe had become an issue and residents wanted to

safeguard and preserve this time. The Committee heard that noise nuisance would be an issue post 11pm as chatter and the cleaning of the premises added to the overall noise levels, therefore, if this license was granted post 11pm, residents would be impacted by this noise. If a pavement license was granted this again would further add to the overall noise as chatter could be heard by residents from the street. This could lead to potential noise nuisance.

The Sub-Committee noted that the applicant does not have a pavement license and so there was no request for outside seating/dining in this application. The Applicant’s Counsel also explained the Applicant would be happy to add a condition surrounding deliveries that these be no later than 11pm and no earlier than 7am to mitigate any potential noise nuisance. The applicant was also happy to add a condition to have alcohol sold by table service and there would be no vertical drinking. This would help mitigate any potential noise nuisance.

The Sub-Committee considered amendments to existing conditions to further mitigate noise nuisance. On page thirty-nine of the pack, under the conditions agreed with the City of London Police, the Sub-Committee agreed an amendment to condition number two, where it should read that ‘There shall be no sale of alcohol in unsealed containers for consumption off the premises’. As the applicant explained there was no pavement license and the application did not include outside dining, the condition was amended.

The Sub-Committee decided to add new conditions, to ensure the application would not undermine licensing objectives in respect of prevention of public nuisance and prevention of crime and disorder.

In reaching its decision, the Sub-Committee was mindful of the provisions of the Licensing Act 2003 (‘the Act’), 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 2022.

In determining what constituted a public nuisance, the Sub-Committee relied upon the common law definition of ‘public nuisance’ as: *‘one which inflicts damage, injury or inconvenience on all the King’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”’.*

DECISION

The Sub-Committee determined that the license should be granted as set out below:

Activity	Proposed licence
Supply of alcohol for consumption on and off the premises	Mon–Weds 11:00-23:00

	<p>Thurs – Sat 11:00-23:30</p> <p>Sun 11:00-22:30</p>
Late Night Refreshment	<p>Thurs –Sat 23:00-23:30</p>
Opening Hours	<p>Mon–Weds 07:00-23:30</p> <p>Thurs –Sat 07:00-00:00</p> <p>Sun 07:00-23:00</p>

The Sub-Committee had regard to the conditions that parties had agreed upon in advance of the hearing. It was of the view that it was necessary to amend the agreed conditions and impose further conditions for the promotion of the licensing objectives and for the prevention of public nuisance all of which is set out below. The Sub Committee decided to include a condition requiring a dispersal and management plan which can be amended if necessary and noted that these are live documents, giving residents reassurance that any future concerns in terms of anti-social behaviour on dispersal will be addressed.

The Sub-Committee therefore agreed that the following conditions should be attached to the premises licence:

1. All doors and windows shall remain closed at all times save for entry or exit, or in the event of an emergency. **(MC12)**
2. Prominent signage shall be displayed at all exits from the premises requesting that customers leave quietly. **(MC15)**
3. 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. **(MC18)**
4. A 'Challenge 25' Scheme shall operate to ensure that any person attempting to purchase alcohol who appears to be under the age of 25 shall provide documented proof that he/she is over 25 years of age. Proof of age shall only comprise a passport, a photo card driving licence, an EU/EEA national ID card or similar document, or an industry approved proof of age identity card. **(MC20)**

5. The premises shall install and maintain a comprehensive digital colour CCTV system. All public areas of the licensed premises, including all public entry and exit points will be covered enabling facial identification of every person entering in any light condition. The CCTV cameras shall continually record whilst the premises are open to the public and recordings shall be kept available for a minimum 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 recordings of the preceding two days immediately when requested. **(MC01)**
6. There shall be no sale of alcohol in unsealed containers for consumption off the premises. **(MC18)**
7. To prevent noise nuisance and to promote the licensing objectives, there shall be no deliveries to or from the premises between 11pm and 7am.
8. Alcohol shall only be sold to a person sitting down eating a meal and for consumption with that meal. This condition means that the restaurant will only have table dining and there will be no vertical drinking. **(MC26)**
9. Alcohol shall be sold to customers by waiter/waitress service only **(MC27)**
10. A written dispersal policy and management plan shall be in place and implemented at the premises to move customers from the premises and the immediate vicinity in such a way as to cause minimum disturbance or nuisance to neighbours. You must engage with the City of London's Environmental Health department to finalise the dispersal and noise management plan. **(MC15)**
11. Customers permitted to temporarily leave and then re-enter the premises e.g. to smoke, shall not be permitted to take drinks or glass containers with them. **(MC17).**

The meeting ended at 15:00

Chairman