

MINUTES OF THE LICENSING (HEARING) SUB-COMMITTEE

HELD ON FRIDAY 5 JULY AT 2.00 PM

APPLICANT: Gremio de London Ltd
PREMISES: Gremio de Fenchurch, 26A Savage Gardens, London, EC3N 2AR

Sub-Committee:

Sophie Fernandes (Chairman)
Shravan Joshi
Michael Hudson

Officers:

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

Given Notice of Attendance:

Applicant:

Max Alderman* (Director, Gremio)
Mr Anthony Thomas

Making representation:

Leo Charalambides (from FTB Chambers representing 28 residents)
Marianne Fredericks CC
Siobhan Marshall (Environmental Health)
Alan Martin

Licensing Act 2003 (Hearings) Regulations 2005

A public Hearing was held at 1.00PM in Committee Room 1, Guildhall, London, EC2, to consider the representations submitted in respect of an application for a variation of a premises license in respect of Gremio de Fenchurch, 26A Savage Gardens, London, EC3N 2AR, the applicant being Gremio de London 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: Current Licence
Appendix 3: Applicant Amendment
Appendix 4: Conditions consistent with the operating schedule

Appendix 5: Review Hearing Minutes

Appendix 6: Consent Order

Appendix 7: Representations from responsible authorities

i) Environmental Health

Appendix 8: 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) CC Fredericks

Appendix 9: Map of subject premises together with other licensed premises in the area and their latest terminal time for alcohol sales

Appendix 10: Plan of Premises

1. The Hearing commenced at 2.00pm.
2. At the commencement of the Hearing, the Chairman invited those making representations to set out their objections against the Applicant.
3. Mr Charalambides advised that he was representing 28 local residents and highlighted the importance of public opinion. He was of the opinion that weight should be given to the views of the local community as they would be affected by the business.
4. Mr Charalambides stated that the description of the nature of the proposed variation within the application did not clearly describe the changes to the application, the capacity of the premises and was missing a Risk Assessment. It was noted that whilst the Applicant acknowledged the capacity requirement of the Fire Authority, there were licensing concerns regarding public nuisance and dispersal issues that required proper consideration.
5. Residents were concerned by references throughout the application to use of the outside terraces/areas despite two conditions prohibiting licensable activities or access by customers to the terraces at any time except in cases of emergency. It was requested that conditions 12 and 13 be amended to state "terraces, courtyard or other outside areas" to make these conditions explicitly clear.
6. Residents welcomed the suggestion to move the exit to Crutched Friars with the Savage Gardens exit to be used only by staff, for deliveries or in cases of

emergency. Residents also accepted the proposal for a ground floor café bar provided that there was no consumption of alcohol outside or off-sales which would ensure that all licensable activity would remain within the licensed area of the premises.

7. Mr Charalambides noted that Environmental Health had inspected the outside area and found it to be unsuitable for drinking as it was a highly congested space. With regards to smokers using the space, residents questioned whether 15 people could fit into this area as the Environmental Health Officer had recommended two metres width must be left for a public highway to enable pedestrians to pass in a safe manner. It was suggested that five people was a more suitable maximum number of smokers.
8. Mr Charalambides summarised that whilst a number of local residents did not want the business to open, the majority were in favour of a reasonable compromise with the Applicant although felt the balance needed to be more in the favour of the local community rather than the Applicant or its customers.
9. Ms Fredericks CC informed the Hearing of a correction in the agenda pack on page 103 noting that the alcohol closing time and late night refreshment closing time for Gremio de Fenchurch should state 01:00 not 02:00. The Chairman stated that the application would be considered with this amendment.
10. Ms Fredericks was pleased the Ladbroke's premises had been purchased by the Applicant and requested that Savage Gardens to be used as an emergency exit only with patrons being encouraged to use only the Crutched Friars exit. She supported the recommendations put forward by Mr Charalambides and requested conditions be imposed to prohibit off sales and outside drinking. Ms Fredericks agreed that the number of patrons smoking should be capped to five people due to the very narrow pavement in comparison to "Bierschenke" adjacent to the premises and the further obstruction of bicycle racks outside the premises.
11. Mrs Crossby (Environmental Health) gave context to the supplementary information she had submitted since the adjourned Hearing advising that if the Applicant were to submit a request for a Tables & Chairs Licence, there was a requirement for a space of 2.2m to remain on the pavement for public use. She advised that the significant footfall, shape of the area and narrowness of the path meant that allowing a significant number of patrons to drink and smoke would be detrimental to the area and cause public nuisance and safety concerns.
12. The Chairman invited the Applicant to ask the Objectors questions regarding their statements.
13. Mr Thomas queried if nearby businesses Bierschenke and Cheshire Cheese had any restrictions on the number of customers that could smoke outside their premises. Mrs Crossby confirmed there were none. In response to a query regarding the suggestion of a maximum number of five customers smoking, Mr Charalambides advised that the Environmental Health Officer's recommendation came following an assessment of the area which was a strange shape and had a particularly high footfall.

14. Mr Thomas disagreed that the premises should be subject to restrictions as nearby businesses had no restrictions and their customers could easily be mistaken as Gremio customers. He believed it would be unfair if the businesses were not on "level pegging". The Sub Committee noted that each premises was unique and considered on its own merits and therefore a premises could not seek to negotiate conditions based upon the arrangements of another licensed premises.
15. The Sub Committee queried whether putting a cap on the number of smokers outside was enforceable. Mr Charalambides stated that imposing a number could inform a condition as there was a need to promote good management against customers preventing the public from using the pathway.
16. Mr Thomas stated that they could not accept a condition preventing the public use of the Savage Gardens entrance as two separate leases had been acquired and entry was therefore required to both demises. Ms Fredericks disagreed stating that only use of the Crutched Friars exit would prevent public nuisance. She noted that open use of the Savage Gardens exit would also present a security concern for the residents as patrons would be able to see through to their properties.
17. The Chairman invited Mr Alderman and Mr Thomas to set out their case in support of the application.
18. Mr Thomas advised that they were responsible businessmen operating 50 premises across London with no complaints. He refuted claims that they were irresponsible and only interested in making profit and getting customers drunk. Mr Thomas argued that the premises served the local community and they took their responsibilities carefully to serve the wider community, hoping that local residents would become their customers.
19. Mr Thomas stated that they already had a licence and could be operating but had held off opening for 18 months at personal expense to acquire the Ladbrokes premises purely to resolve the concerns of the local residents regarding Savage Gardens. He confirmed that they now had two separate leases with Network Rail and Archway. The proposed café bar at the former Ladbrokes premises would be key to this offering and required off-sales for safety reasons so patrons would not need leave their drinks unattended.
20. In response to queries regarding capacity, Mr Thomas confirmed that they were led by the Fire Authority who would provide guidance on the numbers and building controls. He stated that they would not overfill the premises as this was a fire risk and also caused poorer service and customer satisfaction.
21. Mr Thomas and Mr Alderman concluded that they were disappointed that the premises had not yet opened but were committed to finding a solution that worked for everyone. They stated that there was no evidence that they had been unsafe in 20 years of operation and aimed to create a safe environment for customers. Mr Alderman said that Crutched Friars would be the main entrance, but they could not accept the preclusion of Savage Gardens to provide public access in case they lost the Ladbrokes unit. This exit was also required to provide disabled

access into the ground level as the Crutched Friars entrance had a couple of steps preventing access as well as an emergency exit.

22. The Chairman invited the Objectors to ask the Applicant and their counsel questions regarding their statements.
23. Ms Fredericks stated that two leases had no bearing on the conditions of the licence noting that the Ladbroke's unit had been sought purely to resolve issues of public nuisance caused by the door which would constantly hit the building and disturb residents. She recommended that a condition be placed on the licence regarding the exits which would be overcome by a small variation that would not be challenged if Ladbroke's was lost.
24. The Sub Committee confirmed that a single licence would cover both spaces and that a variation to the licence would need to be sought by the Applicant if the Ladbroke's unit no longer formed part of the licensed premises regardless of whether there was a condition on the exits or not.
25. The Chairman offered those in attendance the opportunity to speak.
26. Mr Alan Martin (resident) queried what would prevent non-smokers from bringing their drinks outside on a nice day and drinking on the street. Mr Alderman stated that the original application had intended to include a small area outside the front of the premises but that the Licensing Authority advised the Applicant to remove this from the application and request off-sales instead. Ms Fredericks noted that there was a condition preventing outside drinking and that the Applicant had not applied to remove this condition. Mr Charalambides stated that the Applicant showed a clear misunderstanding of the law through fundamental errors throughout the application.
27. Ms Jayne Evans (resident) stated that the Savage Gardens access was small and crowded and queried how this space would be managed safely for disability/mobility/pram use and as a fire exit in conjunction with Bierschenke. Mr Thomas stated that there was no evidence that they would not manage this safely. Mr Charalambides recommended that condition 3 be amended from two to four SSAs to manage the two exits and protect the safety of the local residents.
28. The Chairman offered all parties the opportunity to make a concluding statement.
29. Mr Charalambides concluded that, despite 20 years' experience managing 50 licensed premises, the Applicants showed a worrying lack of licensing knowledge and what was required by law. He maintained that the Applicant did not understand and could not promote that the four licensing objectives and the local community were more important than the needs of its customers. The chief concern of the residents was patrons drinking outside which was not suitable for the area.
30. Mr Charalambides stated that the Applicants had not adequately worked out the safety or capacity of the premises or provided any plan, maps, measurements or proper Risk Assessment to assess fire, building and licensing needs. He urged

the Applicant to adopt the requests of the residents including no off-sales, a commitment to the primary use of the Crutched Friars exit, to operate the café bar as advised, and to deal with the windows (e.g. frosting) to protect the privacy of the residents cheek to jowl with the premises.

31. Ms Fredericks summarised that since 2017 and the misunderstanding of 100 flats surrounding the premises, there were still huge concerns on the use of outside spaces which would directly affect residents and required an amendment to conditions 12 and 13. She stated that a review of a licensed premises before it had even opened was unprecedented and that the Applicant had failed to provide a coherent application that articulated how the premises would be managed. Ms Fredericks saw unfettered access to two exits to be the main concern and felt that the safety of the residents would be protected if patrons were limited to one entrance. She supported conditions against off-sales and drinking outside.
32. Mrs Crossby (Environmental Health) maintained that drinking and smoking in Savage Gardens was unsuitable and mirrored the conditions of Mr Charalambides. She stated that a clear management plan was crucial to mitigate the obstruction of the public highway.
33. Mr Thomas concluded that they had demonstrated that they were responsible Licence Holders that took the four licensing objectives seriously through the decision not to open and acquire the Ladbroke's premises to remedy concerns incurring huge delays and cost. He took umbrage with assertions that they were unsafe or incompetent when they had not opened and there was no evidence to support these claims. Mr Thomas reiterated that they already had a licence and could be operating and hoped that the new licence would be approved as requested providing "level-pegging" with the neighbouring businesses.
34. 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. The Sub Committee retired at 3.40 PM.
35. The Sub Committee 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.
36. 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".

37. The Sub Committee regarded noise to be the principal concern to residents, particularly in outside spaces. The Sub Committee, whilst conscious of the fact 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 but were reassured by the Applicant acquiring the Ladbroke's premises in an attempt to address concerns which would sufficiently reduce the risk of public nuisance. However, it took seriously the concerns identified by Environmental Health regarding drinking and smoking at the front of the premises as a congested space with a high footfall.
38. 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.
39. It was the Sub Committee's decision to grant the variation to the premises licence to incorporate 9a&b Crutched Friars. However, the Sub Committee was extremely concerned as to the risk to public safety and the potential for public nuisance were it to agree to vary the premises licence to include the sale of alcohol for consumption off the premises. Consequently, the Sub Committee decided not to vary the premises licence so as to include off sales. The Sub Committee considered that patrons would generally finish one drink before going outside to smoke and not taking drinks outside would reduce the time patrons spent outside, thus limiting the risk of the Crutched Friars pavement being obstructed.
40. 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 Applicant is to produce a clear Management Plan that identifies how outside smoking will be managed and that patrons will be encouraged to use the Crutched Friars entrance in liaison with Environmental Health before the commencement of licensable activities.
 - b. The Crutched Friars exit is to be used as the main access to the premises by customers.
 - c. Licensable activities shall not be permitted on the terraces, courtyard and other outside areas at any time.
 - d. Customers shall not be permitted to access the terraces, courtyard and other outside spaces at any time except in cases of emergency or to provide disabled access.
41. The Sub Committee noted there was no need to impose any condition regarding outside drinking as there were to be no off-sales.

The meeting closed at 3.40 PM

Chairman

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