

MINUTES OF THE LICENSING (HEARING) SUB-COMMITTEE

HELD ON WEDNESDAY 18 MAY, 2022 AT 1.45PM

APPLICANT: Fancy Delivery UK Ltd
PREMISES: Gopuff, 171 – 176 Aldersgate Street, Barbican EC1A 4HT

Sub-Committee:

Sophie Fernandes (Chairman)
Shravan Joshi
Graham Packham

Officers:

Town Clerk – John Cater
Comptroller and City Solicitor – Frank Marchione
Markets & Consumer Protection - Peter Davenport

Given Notice of Attendance:

Applicant:

Marcus Lavell (Solicitor, Keystone Law, on behalf of the applicant)
Stephanie Webb (Applicant)
Jack Wilson (Applicant)

Making representation:

Mr Peter Flynn
Ms Ann Holmes CC
Mr Alpesh Lad
Mrs Mina Lad
Mrs Brenda Szlesinger
Ms Lucy Thomas
Ms Deborah Tompkinson
Mr Graham Webb

Responsible Authorities

Mr Garry Seal, Environmental Health
Mr Paul Holmes, City of London Police

In attendance and had made written representations but not speaking:

Mr Jan Bors
Mrs Philippa Bors
Mr Jonathan Dennis
Mr Chandrakant Patel
Mrs Viraj Patel

Licensing Act 2003 (Hearings) Regulations 2005

A virtual public Hearing was held at 1.45pm to consider the representations submitted in respect of a premises licence in respect of Gopuff, 171 – 176 Aldersgate Street, Barbican, London EC1A 4HT, the Applicant being Fancy Delivery UK 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: Application Amendment
- Appendix 3: Conditions consistent with the operating schedule
- Appendix 4: Representations from Other Persons (4i – 4cxxix)
- Appendix 5: Representations from responsible authorities (5i – 5v)
- Appendix 6: Map of Subject Premises
- Appendix 7: Plan of Premises
- Appendix 8: Barbican Hearing Bundle from Gopuff

The Hearing commenced at 1:45pm.

The Chairman invited those making representations to set out their objections against the application, but with the knowledge that the Sub Committee had already read the written submissions. Following brief comments from the attending Responsible Authorities (Environmental Health and City of London Police), a number of resident spoke against the application; with several raising concerns about public safety and the likelihood of anti-social behaviour related to the sale of alcohol on a 24 hour basis; the local area was in walking distance of a number of late night bars and nightclubs and the premises could act as a magnet to late night revellers which would cause a potential risk of public nuisance and other public safety concerns. It was also highlighted that Aldersgate Street was a particularly busy thoroughfare and the introduction of Gopuff cyclists and other delivery vehicles (including waste collections) would compound the already evident risk of traffic collisions, and otherwise add to the congestion in the immediate vicinity. It was also pointed out that, given Gopuff's target of delivery within 30 minutes, a delivery zone radius of 5 – 10 miles would be a realistic assumption, which was hard to square with Gopuff's assertion as a business focused on its local community. A resident expressed particular concern that the 24-hour operation would be in opposition to the government's Waste Duty of Care Code of Practice which promoted waste collection to take place in reasonable hours.

It was also apparent that as well as the additional noise pollution, which, given the 24-hour nature of the operation, would have a detrimental impact on people's sleep and right to quiet enjoyment of the hours between 11pm and 7am, a further public nuisance would be created by Gopuff delivery riders frequently mounting and dismounting the pavement, proving an obstruction to pedestrians, many of whom were classed as vulnerable.

In addition, a resident raised concerns that fire safety measures had not been taken into account.

A Member of the Sub-Committee sought clarification from the representative of the City of London Police about whether the Police's representation was still valid; the Police officer responded that whilst the applicant's solicitor had responded via email to the concerns raised by the Police, it was felt prudent to consider these concerns in full at the Hearing. To confirm, the Police were satisfied with the applicant solicitor's responses.

In response to two clarifications from a Member of the Sub-Committee, the location of the lobby in London House was highlighted and it was confirmed that there were no apartments on the Ground Floor of London House. The Member added that, if the License is granted, a further planning application would be likely to be required, the Sub-Committee were here today to judge the merits of the license only.

The applicant responded to the objectors:

It was pointed out that the premises was previously a restaurant, with a license up to midnight from Thursday – Saturday; this license is currently suspended. Highlighting the City Corporation's own policy concerning public nuisance and risk of disturbance to local residents and workers, they pointed out that Gopuff was a grocery store with alcoholic beverages amongst its suite of products, they contended that the ability to sell alcohol would, by inevitably enhancing the compliance regime, given the potential criminal sanctions involved for non-compliance, reassure all stakeholders that the applicant took its responsibilities with the seriousness required.

The applicant emphasised that the premises was a commercial site and the operation would be fulfilling its planning use, whilst the applicant took on board all the realistic concerns raised, they assured objectors that Gopuff operated a different model to those of its more well-known market competitors; it operated premises in multiple locations across the world and did not seek to operate beyond a 0.25 miles delivery zone, it was not its policy to rush riders and given the business did not deliver hot food, pace was not as a significant a factor as some of its market competitors – the 30 minute target was there to allow staff to batch several deliveries together in order to make it more efficient and cut down on the frequency of individual deliveries.

The applicant informed the Sub-Committee that the expectation was for an average of one delivery actuation (i.e. cyclist crossing the pavement with a delivery) every three minutes. It took a rider three – five seconds to cross the pavement from Aldersgate Street to the premises and vice-versa) and the number of actuations reduces as it gets later into the evening, with peak hours between 6pm – 8pm.

In terms of fire risks, there was no requirement for a kitchen as the applicant did not provide hot food, so fire risks are not as prominent as the previous operator.

The applicant added that the extractor units could not be switched off between 11pm and 7am (58 mins in)

The Applicant accepted that Aldersgate Street was a busy thoroughfare but contended that the sound of a bike passing would not add to the already significant background noise, the applicant did not operate trailers, deliveries were in a box attached to the bike or in a rucksack. It was also pointed out that the heavier vehicles used for delivery to the premises and for waste collection would be using the same delivery area that currently provides for deliveries to the apartments in London House and had been previously used for the restaurant. The applicant highlighted that whilst there had been rider-based incidents on the roundabout by London Wall there had been none recorded around the premises directly. If it were considered a higher risk, the applicant would accept the Sub-Committee proposing a condition that moved the main delivery to the alternative entrance slightly further down Aldersgate Street.

The applicant added that they operated on the basis of an off-sale provision of alcohol, i.e. alcohol could not be consumed within the premises but was offered for delivery alongside all other products on a 24 hour basis. People were able to walk-in and buy directly in-store but this was only available until 11pm. Given this closing time the applicant did not anticipate people migrating from outside the area to use the store or late-night revellers using the premises. In response to direct concerns about security in London House, the applicant added that it would be happy to specify additional protocols to its riders when delivering to apartments in the building to reduce the risk of tailgating.

In response to a query of a Member of the Sub-Committee, it was confirmed that the previous premises operator's license was suspended.

In response to a query, the applicant confirmed that approximately 10% of orders to the business was made up of alcohol.

The applicant informed the Sub-Committee that large areas for riders inside the premises were provided, in order that they did not congregate outside. All riders were on the applicant's payroll (and paid via PAYE) and were subject to the applicant's HR processes. In response to a further query, it was confirmed that riders were not permitted to smoke outside the premises.

In response to a query concerning the potential for the imposition of a terminal hour on the sale of alcohol it was confirmed that the terminal hour is determined as the point of sale. The operation does not allow for orders ahead of time (preventing pre-ordering for deliveries after a set time if that is deemed appropriate).

In terms of redress, if the license were granted and it was considered that behaviours which did not meet the licensing objectives were exhibited, an application for a review could be made and if deemed appropriate, would result in a Review Panel Hearing. With regard to an application linked to road traffic accidents, objectors would have to ensure this was linked to the business directly.

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 promotion of the prevention of public nuisance and public safety.

The Sub-Committee determined that the license should be granted, subject to the following conditions:

- That the applicant had ensured that planning permissions required were met before operations began.
- Off-sale provision only with no delivery of alcohol (i.e. customers were required to enter and buy directly from the applicant within the premises)
- Off-sale provision of alcohol was limited to the hours of 8.00am – 11pm (seven days a week)

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.

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".

The meeting closed at 16:00

Chairman

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