

Licensing Sub-Committee

Supplementary Agenda

Tuesday 11 May 2021
6.30 pm
Online - Virtual Meeting

MEMBERSHIP

Administration:	Opposition:
Councillor Fiona Smith (Chair) Councillor Matt Uberoi	Councillor Frances Stainton

CONTACT OFFICER: Charles Francis
Committee Co-ordinator
Governance and Scrutiny
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Public Notice

Members of the press and public are welcome to attend at the YouTube link below:

Speaking at Licensing meetings is restricted to those who have submitted a representation and registered to speak.

THIS MEETING WILL BE HELD REMOTELY It will be streamed via YouTube on:
<https://youtu.be/vCv-37-lvf4>

Date Issued: 11 May 2021

Licensing Sub-Committee Supplementary Agenda

11 May 2021

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The Hawks Nest

SUBMISSIONS OF APPLICANT

1. This application is for the grant of a premises licence in respect of 176 Railway Arches, Shepherds Bush, known as Delina's.
2. There have been 2 representations from interested persons and a representation from the Environmental Health Officer. Accordingly given the location of the site the Committee's discretion has been engaged to determine the application taking account of the Shepherd's Bush Cumulative Impact Policy.
3. The policy is clear (Annex 4 para 6) that an application will "*normally be refused*" if it is likely to add to the cumulative impact however, "*this policy is not absolute and the circumstances of each application will be considered on its own merits.*"
4. I respectfully submit to the Sub-Committee that the grant of this licence will not add to the cumulative impact; identified in the policy as "serious problems of crime, disorder and public nuisance". I do so on the following basis:
 - i) There are no representations from the Police.
 - ii) The premises are a small capacity café of less than 60 customers.
 - iii) Alcohol is ancillary to a meal and only for persons who are seated.
 - iv) There are no "off sales."
 - v) The hours applied for are limited and not late in the evening.
 - vi) The operating schedule together with the conditions agreed with the Police and promote the licensing objectives and eliminate any risk of crime, disorder or public nuisance.
5. I will expand on those points above.

There are no representations from the Police and no substantive representation from Environmental Health.

6. The Secretary of State's Guidance issued under section 183 Licensing Act states that licensing authorities should look to the Police as the main source of advice on crime and disorder (para 2.1). Further para 9.12 of that guidance states: "*each responsible authority will be an expert in their respective field and in some cases it is likely that a particular responsible authority will be the main source of advice in relation to a particular licensing objective.*" The two elements identified in the policy as having a negative cumulative impact are crime/disorder and nuisance.

7. I would therefore respectfully invite the Sub-Committee to attach considerable weight to the fact that the Police and Environmental Health were satisfied, that with the conditions agreed with them, there was no negative cumulative impact. There is no other tangible evidence put forward by the Interested Parties which outweighs or contradicts the views of the police.
8. The only concern expressed by Environmental Health is the means of escape and that the hours of opening should be restricted to those when the market is open or an alternative means of escape provided. They are not objecting to the grant of a licence. My client had hoped the issue of the Fire Escape could have been resolved before the hearing but this has not happened. My client will only open the premises when the market is open currently until 9pm unless and until a new means of escape is available post 9pm.
9. We have offered a condition on the licence which addresses that very point as follows:

The premise shall only remain open at times when the market gates are open unless an alternative means of escape from the market is provided and approved by the Environmental Health Officer, whereby this condition can be removed on the written agreement of that officer, without the need to vary the premises licence.

The operating schedule together with the conditions agreed with the Police and promote the licensing objectives and eliminate any risk of crime, disorder or public nuisance

10. These conditions are set out in your report however, please note that further discussion is required regarding the conditions set out on Page 16 and 17 of the report as these do not reflect the application made, nor conditions agreed with the Police.
11. This is a small café where all customers are seated and will only be able to purchase alcohol as ancillary to a meal. The café was set to open in March 2020 but in fact had to launch in August 2020. In addition to the café the Licence Holder will be providing cooking classes at the rear of the premises, at least once a week during the afternoons.
12. The Sub-Committee are invited to consider these conditions alongside the nature and character of the premises and the clientele that the premises will attract to the local area. The sale of alcohol at this premises is secondary to the attraction of the food. The change of the chefs/menu will keep that clientele returning to the venue, unlike any other venue which may revert to special offers to get people to return.
13. In the unlikely event the Sub-Committee has any outstanding concerns, rather than going on to refuse the application I respectfully invite you to consider whether those concerns can be resolved by adding to or revising that list of conditions.

Interested Parties

14. As an experienced Sub-Committee you will be aware that some of the matters raised in the representations are not relevant to your decision and have no bearing on the licensable activities, licensing objectives or cumulative impact policy, for example, the economy of the market, the commercial impact on traders and litter (given that no alcohol will be taken from the premises and that is the only licensable activity that might have the potential for litter, the sale of food not being a licensable activity).
15. My client has spoken to numerous of the market traders neighbouring her café and all have expressed their support rather than objection. It will be interesting to hear from the Association how many traders it actually spoke to specifically about this application and why there has been not one representation forthcoming from any trader.
16. The representations in essence assert that granting the licence will lead to an increase in crime, disorder and nuisance. However, that view is not shared by the Police or Environmental health.
17. There is no assertion that the applicant is not “fit and proper” and that the establishment would be well managed. Taking this and the expert views of the Police and the Environmental Health Officer into account it is submitted the conditions offered above are adequate to protect the local community from any negative impact of the licensed premises.

Conclusion

18. It is nigh on impossible to prove a negative yet that is the burden an applicant has in the face of a cumulative impact policy, to prove that if a licence is granted there is no negative impact on the cumulative effect.
19. Whilst the onus is on the applicant to rebut the presumption of the policy there is nonetheless no credible evidence adduced in the representations which would support an argument that this applicant, at this premises, would have a negative impact on the cumulative impact, nor even credible evidence it would have a negative effect on the licensing objectives. I ask you to consider very carefully the reasons why the policy is in place and the evidence on which it is based, in the context of this application to allow a maximum of 60 customers to purchase alcohol whilst sat down enjoying a meal.
20. The experts, to whom the Sub-Committee should direct themselves to for advice on crime and disorder and public nuisance, do not object and offer no evidence that the grant of a licence would have a negative impact. In their discussions with the Applicant they were very positive.
21. The Licensing Act 2003 was intended to be a permissive Act. To allow responsible operators to flourish and to be prohibitive or restrictive to those who were not. The protection the Government introduced in the Act to promote that underlying principle was the ability for anyone to review a premises licence at any time. It is a quick and

easy remedy for interested parties and responsible authorities to get a Sub-Committee to review a decision to grant a licence. It is on such an application that evidence can be tested properly of the impact of the premises, rather than the position we have here, which is an expression of fear of what might happen

22. It is submitted therefore that the applicant has discharged the burden with regard to the cumulative impact policy on the individual merits of his application and, there being no other evidence on which a decision to refuse the application can be reached, the Sub-Committee is respectfully asked to grant the application.

Jon Wallsgrove

John Gaunt & Partners

Solicitors for the Applicant

Delina Plates

Teff Injera

(Ethiopian sourdough flat bread - homemade with gluten free superfood teff grain)

OR Rice

Meal Plates

Option 1 - Vegetarian Plate -

£8.50

Choose any 3 dishes from (A) or
Tofu Tibs - (4) and (5) from (B)

Option 3 - Tibs Plate -

£8.50

Choose 1 dish from (B) and 2
from (A)

Option 2 - Beyayntu

Large Vegetarian Plate - £9.50

for one or £8.50 per head

All six vegetarian dishes from (A)

Option 4 - Wot Plate -

£8.50

Choose just 1 wot dish from (C)

A- Vegetarian Dishes £5.50 each

(meat free, gluten free, dairy free and nut free)

1. Misir Alichu - Mild lentils
2. Misir Wot - Spicy lentils
3. Gomen - Tasty greens (spinach, kale, seasoning)
4. Kay Sur - braised beetroot
5. Atakilt - Potato, carrot with turmeric and ginger sauce
6. Habesha Salad - tomatoes, red onion

B- Tibs Dishes £7.50 each

(East African style stirfry)

1. Tibs - Beef - with onion, chilli, garlic and ginger. Spicy or mild.
2. Doro Tibs - marinated sauteed chicken cubes with berbere spice.
3. Doro Begomen - marinated sauteed chicken cubes with spinach and kale greens dish.
4. Tofu Gomen (v) - Marinated tofu with spinach and kale greens dish.
5. Tofu Tibs (v) - Marinated tofu with onion, tomatoes and chilli.

C- Wot Dishes £8.50 each

(Slow cooked curry stew)

1. Doro Wot - a famous deep red chicken piece stew, slow cooked with red onions, berbere spice and boiled egg.
2. Beg Wot/Zegni - a deep red stew as with Doro Wot only with lamb (no egg)
3. Beg Alichu - a mild yellow curry with lamb infused with turmeric, cardamom and secret herbs

Delina Kitchen

Shepherds Bush Market

Eat in or takeaway

- Ethiopian coffee / tea
- Freshly pressed juice
- breakfast smoothie
- soft drinks

Breakfast - Small Plates

Served all day

Avocado on sourdough bread

With chilli flakes and chia sprinkle

£5.00

Enkulal- Scrambled Egg

Delina scrambled eggs and sourdough bread with green chilli and tomato

Chechebsa

Torn flatbread and spiced butter with honey.

£5.50

Firfir

Torn teff injera flatbread and spiced tomato sauce.

£6.50

Ful Madamas

Mashed broad beans, tomatoes and chillies.

£5.50

Kategna

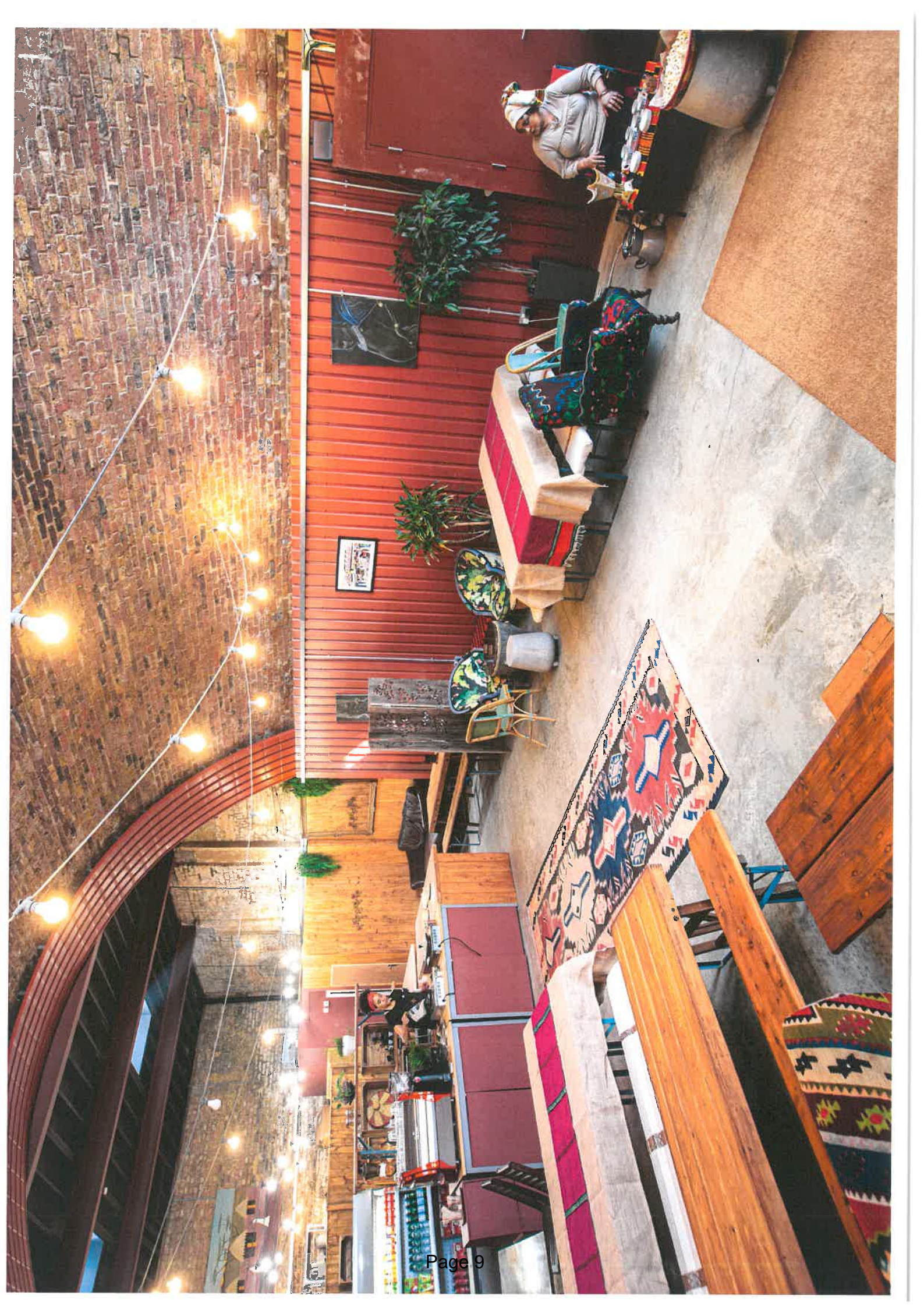
Toasted injera in a spiced butter with homemade cottage cheese.

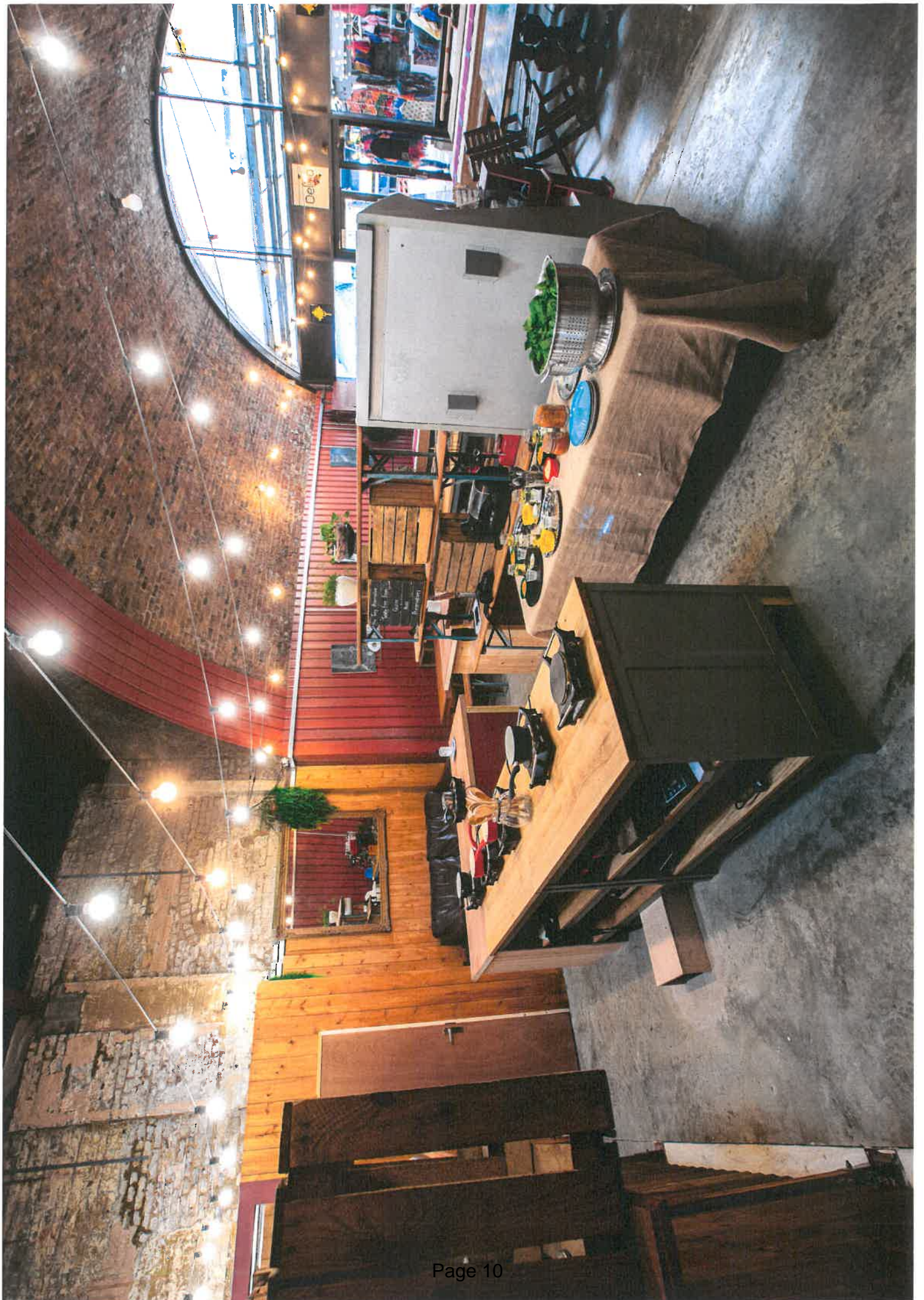
£6.00

Add-ons:

Fried eggs, boiled eggs, grilled halloumi, avocado.

£1.50ea







Agenda Item 6



SHEPHERD'S BUSH MARKET TENANTS' ASSOCIATION

10th May 2021

Reference IL Ref 0514

The Shepherd's Bush Market Tenants' Association

Arch 155 Railway Approach

London W12 8DF

For the attention of

Hammersmith & Fulham Licensing Department:

Hammersmith & Fulham Council

Licensing Team

Town Hall, King Street, London W6 9JU

licensing@lbhf.gov.uk

Adrian.Overton@lbhf.gov.uk

maria.dimitriou@lbhf.gov.uk

Licensing Reference: 2021/00120/LAPR

Case officer: Maria Dimitriou

Applicant: Miss Nazareth Kelif

Applicants Address: 176 Railway Arches Shepherd's Bush Market London W12 8DF

Objection to Licencing Application 2021/00120/LAPR

176 Railway Arches Shepherd's Bush Market London W12 8DF

Dear Maria,

- 1) It was pleasant to speak with you on the telephone today and the SBMTA committee appreciates your assistance and promises to forward this correspondence to the licensing Committee and licensing department.



SHEPHERD'S BUSH MARKET TENANTS' ASSOCIATION

- 2) The Shepherd's Bush Market Tenants' Association (SBMTA) object to the alcohol licensing application 2021/00120/LAPR and look forward to attending and speaking at the hearing on Tuesday 11th May 2021.
- 3) In further examination of the documents later accompanying Application 2021/00120/LAPR, it is felt that it is important to clarify certain matters and bring greater emphasis to the truth and the correct facts.

Beer Gardens/External Areas

- 4) Within the documentation 'Appendix 2 - Police conditions', the Metropolitan Police press their condition that *"Alcohol supplied for consumption on the premises shall only be supplied with and be ancillary to food to be consumed on the premises at the same time"*
- 5) The premises Arch 176 is defined within its lease. The demise of the premises does not stretch beyond that of Arch 176's entrance/exit which is indicated in the document 'Appendix 1a - Plan of the Unit'. The premises Arch 176 have no external area.
- 6) It is therefore perplexing as to why the documentation 'Appendix 1b - Additional steps' reads *"Use of beer gardens/external areas - The front outside area shall not be used after 22.00"*.
- 7) It should be made clear that there is no external area associated with the premises of Arch 176, and land outside of Arch 176 is either classified as communal Shepherd's Bush Market land or tenanted land that may belong to tenants, other than the applicant. Either way, this application for alcohol does not apply to any other land area other than the premises of Arch 176 and therefore it is mystifying as to why there is a discussion of the consumption of alcohol on external land when there is no external land.



SHEPHERD'S BUSH MARKET TENANTS' ASSOCIATION

Appendix 5 - Response from the applicant

- 8) The response of the applicate shown in the document '[Appendix 5 - Response from applicant](#)' raises several concerns and indicates a misinterpretation of the facts by the applicant.
- 9) The applicant's response to Geraldine O'Grady's objection is inadequate and incorrect.
- 10) The Shepherd's Bush Market gates and boundaries must be securely shut and locked Monday to Saturday by 7 PM and will remain closed until the following morning at 6.30 AM (with exception to Sunday whereby the Shepherd's Bush Market gates and boundaries remain closed for the entire day).
- 11) This is evident within all the Shepherd's Bush Market leases under the first schedule, within the definition: "The Market Opening Hours"
- 12) *As stated in the leases: - "The Market Opening Hours" means 0630 hours to 1900 hours on Monday to Saturday.*
- 13) The Market Opening Hours may not be changed if it causes compromise the principles of good estate management. Furthermore, any change in The Market Opening Hours may only be performed once the Railway Company (TfL) has notified each tenant in writing.
- 14) The applicant's statement that the market closes at 9 PM is false.
- 15) Additionally, the current landlord of Shepherd's Bush Market: YC Orion Shepherd's Bush Market Ltd. has reaffirmed that The Market Opening Hours are currently 6.30 AM to 7 PM - Monday to Saturday.
- 16) This affirmation from the landlord of The Market Opening Hours was recorded and agreed at the Zoom Meeting on 5th May 2021 between the SBMTA and Yoo Capital.
- 17) Although the applicant claims that their lease permits the operation of their business until 9 PM, the stipulation of 'The Market Opening Hours' from 6.30 AM to 7 PM, Monday to Saturday, is also present within their lease.



SHEPHERD'S BUSH MARKET TENANTS' ASSOCIATION

- 18) Of course, the tenant may operate their business at any time of their choosing provided it is between the Market Opening Hours of 6.30 AM to 7 PM, Monday to Saturday.
- 19) Operating outside of these hours would be viewed as:
- (i) a breach of lease, and
 - (ii) a compromise to the community of the Shepherd's Bush Market leaseholders, and
 - (iii) a compromise of the principles of good estate management, and
 - (iv) a compromise on the Service Charge Account expenditure if the landlord proposed to place any cost incurred onto the Service Charge Expenditure due to the proposals in this application.
- 20) It is understood that U+I Group Plc. acted as the managing agent in Shepherd's Bush Market for a period of approximately two years during the time when the applicant's lease was issued.
- 21) If there is the stipulation that the applicant may operate their business to the extended time of 9 PM, whilst the Market is shut, then it may be appropriate to consider that this unique stipulation, for this lease, may have been an accidental administration error, or may have been performed with a disregard to the principles of good estate management.

Additional Financial Compromise to the Shepherd's Bush Market tenants

- 22) The applicant makes several assumptions within their responses seen in the document '[Appendix 5 - Response from applicant](#)' and unfortunately, they do not address the concerns satisfactorily.
- 23) The applicant suggests that there may be a fire exit door but does not explain how it will be monitored, managed, or financed, especially as no party has shown a



SHEPHERD'S BUSH MARKET TENANTS' ASSOCIATION

willingness and promise to bear the cost of the additional charges that may be incurred.

- 24) The applicant suggests that the hours of closing the market gates and boundaries will be addressed, however, there is no explanation as to who will manage and finance the additional task of executing this task.
- 25) The applicant suggests that security guards will bear the duties of implementing entrance and exit, and control of the applicant's patrons whilst all the other market businesses are absent from the market, however, the landlord - *YC Orion Shepherd's Bush Ltd.* has stated that the cost of the security guards will not be borne by them in the future. Furthermore, it has been made clear that the cost of security guards will not be borne by the Service Charge Accounts.
- 26) The licensing committing must appreciate that there is no one who is willing to pay for security guards, and therefore there will be none.
- 27) The SBMTA will consider the cost of the daily locking and unlocking of the market gates from Monday to Saturday, to be borne by the Service Charge Accounts subject to the hours and subject to the security of the market gates and boundaries not otherwise being compromised.
- 28) The applicant seems to have overlooked the additional costs which their proposals may incur. It would be seen as unfair and selfish to expect the other market businesses to take on the applicant's burden.
- 29) It seems that the applicant is not willing to bear the liability of the repercussions that may be suffered to the other market businesses.
- 30) The applicant incorrectly states in the document '[Appendix 5 - Response from applicant](#)' to the SBMTA's objection "*Delina will only serve alcohol during the trading hours of the markets*", however, the proposed alcohol hours exceed that of the Market Opening Hours of 6.30 to 7 PM, Monday to Saturday. The applicant's statement is false.
- 31) The applicant's attempts to disregard the worldly findings of the negative repercussions of alcohol is viewed as unrealistic.



SHEPHERD'S BUSH MARKET TENANTS' ASSOCIATION

- 32) The applicant's further summation that alcohol served with food removes the concerns and negative repercussions of alcohol is simply ludicrous and unprofessional.
- 33) The applicant is welcome to provide appetising food to customers within the Market Opening Hours and need not compromise other market businesses and the local community, simply for the wish of serving alcohol.
- 34) Non-alcoholic beverages are vogue and the applicant's reasoning that a meal cannot be enjoyed without alcohol is strongly refuted.
- 35) The consumption of alcohol in Shepherd's Bush Market is not welcomed.

Kind regards,

The Shepherd's Bush Market Tenant's Association

The Shepherd's Bush Market Tenants' Association Committee							
James Horada	Peter Wheeler	Surjeet Duggal	Bill Mehra	Laura Sakstein	Devinder Singh	Robbie Marwaha	Fateh Singh
	Arch 155	Stall 34/35	Shop 16	Shop 1	Stall 65	Shop 41	Arch 179
Chairman	Vice-Chair	Treasurer	Secretary				