

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.

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Solicitors for the Applicant