

**LONDON BOROUGH OF HAMMERSMITH AND FULHAM
LICENSING SUBCOMMITTEE
HEARING – 13TH JANUARY 2022**

**APPLICATION FOR A PREMISES LICENCE BY MR AARAT PATEL
ACCESS AND STORAGE FACILITY UNIT 4225 AT 21 EFFIE ROAD, FULHAM, LONDON,
SW6 1EN**

LICENSING ACT 2003

CASE SUMMARY

Introduction

1. This Case Summary is lodged on behalf of the following persons who made written representations on an application by Mr Aarat Patel (“the Applicant”) for a premises licence in respect of a lockup unit number 4224 access and storage at 21 Effie Road, London, SW6 1EN. All residents live in Barclay Road immediately adjacent to the premises site:

Claire Harris ● Barclay Road

Sally Bagot ● Barclay Road

Alexander Hare ● Barclay Road

Adrian Murray ● Barclay Road

Mary Ferguson ● Barclay Road

Anne Tarrasse ● Barclay Road

Roland Wells ● Barclay Road

Paul Whitehouse ● Barclay Road

Tanya Kandel ● Barclay Road

Jasmine Broadfield – [REDACTED] Barclay Road

F Stratton – [REDACTED] Barclay Road

Kira Taylor – [REDACTED] Barclay Road

Laura Kennedy [REDACTED] Barclay Road

Thomas Railhac [REDACTED] Barclay Road

Phillipa Hawkins [REDACTED] Barclay Road

Fleur Collyer [REDACTED] Barclay Road

Florian Haerb [REDACTED] Barclay Road

Adrian Dear – [REDACTED] Barclay Road

Charlotte Dexter [REDACTED] Barclay Road

The above are also supported by Martin Band [REDACTED] Barclay Road (representation late by one day).

Overview

2. All of the abovenamed live in very close proximity to the application site – in fact, the majority live only a few metres away from the entrance to the access and storage facility where bicycles, motorbikes, vans and other vehicles will be stopping to pick up alcohol from the unit. They will be referred to collectively in this Case Summary as “the Residents”.
3. A Google Earth view of the site is attached herewith which shows all the houses in Barclay Road adjacent to the application site and will demonstrate that many of the houses from which complaints have arisen, have bedroom windows at the rear which face on directly to the application site and are therefore most vulnerable to noise and disturbance particularly during later hours.
4. The Residents’ principal concerns go to the sheer scale of the Applicant’s proposals from such a tiny unit which, if permitted, will inevitably have a substantial adverse impact on their residential amenity. All of the representations submitted from the Residents as well as those from Charlotte Dexter and Gareth Hughes in a written statement previously served on the council, set out the problems that are anticipated.

5. The Courts have long recognised the rights of householders to the quiet enjoyment of their homes, now found in Article 8 of the European Convention on Human Rights. In Hampstead & Garden Properties v Diomedous [1968], Mr Justice Megarry was dealing with music from a restaurant but he said –

“It is the home rather than the meal table which must prevail. A home in which sleep is possible is a necessity whereas loud music as an accompaniment is for those who enjoy it, a luxury.”

6. The Judge’s comment is no less pertinent to the loud noise and disturbance proposed throughout the day caused by vehicles, motorbikes, electric vehicles and drivers talking and shouting whilst they wait for goods to be delivered to them from the lockup unit. The Residents here have an entitlement to live in their homes without sleep disruption caused by a very substantial increase in activities taking place at the rear of their premises and proposed to run through the most sensitive hours of the evening particularly from midnight until 7.00am when most people and particularly children are sleeping. The very business model of the Applicant, is based upon very late hours trading given that those who are in need of a bottle of wine or whiskey or beer at 2.00 or 3.00 or 4.00 in the morning, are unlikely to be able to buy such alcohol from any local stores.
7. Letters or emails from some of the most affected Residents are contained within the committee report. Having regard to the sheer proximity of the lockup unit and the proposed hours and to the obvious vulnerability of their houses and gardens to noise nuisance from this site, they suggest that it is utterly unrealistic to expect activity of this kind and on the scale proposed in the Applicant’s operating schedule to take place without undermining the “prevention of public nuisance” licensing objective. There are also concerns set out with regard to the crime and disorder objective and public safety relating to all the comings and goings from this site 24 hours a day.

Location Plan

8. A location plan is set out within the committee papers at page 35 and again, in support of the Google Earth photograph, it is quite clear that many of the houses on Barclay Road are just a few metres away from the proposed site.

The Cumulative Impact Policy

9. The Committee will be invited to consider cumulative impact on the area as a result of this new proposal. Whilst it is noted that the cumulative impact policy which has pertained in the Fulham Broadway area and has covered Effie Road and Barclay Road for many years is for the time being under review, it is submitted that all the conditions which led to the implementation of a cumulative impact policy still exist in this area. The renewal of the cumulative impact policy has not taken place at this time because of the inability of the Council to gather vital supporting evidence during the pandemic in 2020 and 2021 and the resultant lockdown of almost the entire hospitality sector. In line with many licensing authorities, it is held in abeyance until such time as the hospitality sector reverts to normal operations. However, whilst we invite the Committee still to consider its policy in this respect and the fact that the underlying causes have not gone away, the licensing policy does allow the issue of cumulative impact to be raised in any event, regardless of the existence of a special policy, and we rely upon that policy as part of this case. Notwithstanding the arguments we set out below, it is the submission of the residents that this inadequate application should not be granted on the basis that it will add quite substantially to public nuisance within this area.

The Applicant for a Premises Licence under Section 16 of the Licensing Act 2003

10. Section 16(1) of the Act states as follows:

"The following persons may apply for a premises licence -

*(a) A person who carries on, **or proposes to carry on**, [author's bold] a business which involves the use of the premises for the licensable activities to which the application relates".*

11. Doubt must be cast on the ability of the Applicant to **propose to carry on** a business from these premises given the terms of use set out in the Contract with the Access Storage Company (attached to the committee papers) which indicates clearly at paragraph 10.6 of his conditions that:

"At no time during the term shall you offer any alcohol for sale from the site".

12. It is abundantly obvious from this application that this is exactly what Mr Patel intends to do and it is not clear, therefore, how he proposes to carry on such a licensable activity

in the light of the attached condition and the agreement with Access Storage and, if this be the case, how he is able to agree any conditions if he cannot operate such a licence.

The Intended Use and Planning

13. The proposed use of this one small unit within the overall complex is as a premises from which alcohol will be sold 24 hours a day. No description is provided of the unit as one might expect in a normal application for a premises licence presumably because it is a dark unlit lockup space measuring 10 metres by 10 metres. The only reference to it is set out in page 19 of the application form which indicates that the premises will *“operate to a high standard and would do so should this licence be granted in terms of the sale of alcohol. All staff would be fully trained in their responsibilities with regard to the sale of alcohol and would be retrained every six months with recorded training records kept for inspection”*. There is no indication, of course, of how the staff will even fit into this unit or where they will be located if not and the opening statement of the operating schedule such as it is, is therefore a nonsense. The only reference to public nuisance is not one of assurance but merely indicates that it cannot possibly cause a public nuisance as it is located in a large warehouse used for distribution. This, of course, entirely misses the point about the substantial number of comings and goings throughout the night with vehicles and drivers and individuals waiting around as well as staff immediately within a few metres of bedroom windows of the Residents in the Barclay Road.
14. The planning permission which was granted on 7 February 2017 (in the committee bundle) allows for, amongst other things, alterations to what was then the existing self-storage facility by the erection of extensions at ground, first and second floors to the southern elevation for Class B1 (office) use at ground floor and additional Class B8 (self-storage) space at first and second floors, upon which floor this unit is located.
15. Condition 22 of that planning permission provides for the operating hours of the self-storage facility to be limited between 7.00am and 10.00pm on Monday to Friday, 8.00am to 10.00pm on Saturdays and between 8.00am and 8.00pm on Sundays and bank holidays. It goes on to state that no customers should be on the premises or delivery shall occur in connection with the uses outside of these times. Such a condition was added to the planning permission in order that "Noise disturbance which may be caused by customers leaving the premises is confined to those hours when ambient noise levels and general activity are sufficiently similar to that in the surrounding area thereby ensuring that the use does not cause demonstrable harm of

surrounding residents in accordance with policy DMH9 of the Development Management Plan of 2013".

16. The planning decision and the attached condition, therefore, recognise the detriment to local amenity through noise disturbance and nuisance and address the issue through restricted hours of use. It is to be noted, however, that at this time the self-storage facility was envisaged as only being used by those storing goods or personal belongings. However, it was not envisaged at this time that there would be a 24-hour delivery service running from one of the units which would include constant comings and goings from noisy motorbikes and other vehicles as well as those driving them and loading vans and bikes. The planning permission was clearly concerned with the normal daily use of such a facility by those coming in occasionally to put their belongings into storage or remove them. It was not concerned at that time with 24-hour businesses operating out of the facility.
17. It is therefore suggested that the paucity of planning control over this proposed use as set out in the licensing application leads to the conclusion that it should be refused. That, in itself and standing alone would not be a lawful ground of refusal under the licensing regime. What it does, however, is underscore the importance of the Subcommittee's licensing role, which is likely to be the only significant regulatory oversight and control of what is proposed in this application. In exactly the same way as the planners are required to examine the detriment to amenity caused by any proposed development, licensing officers and the Licensing Committee are required to direct themselves to the similar concept of public nuisance, which is one of the four key licensing objectives that should be satisfied on any application under the 2003 Act.
18. It is clear, therefore, that planners, with the advice of the environmental health officer, were concerned about the hours of operation of this facility even without the knowledge that 24-hour businesses would seek to operate from within the building. It is the resident's submission, therefore, that the Licensing Committee is similarly tasked with analysing the proposed operation in the light of the public nuisance objective and, as we have indicated above, there is absolutely no proposal from Mr Patel to address this issue of paramount concern to the residents. He has also singularly failed to speak with the residents despite their overtures, which gives serious cause for concern in terms of relationships going forward. Furthermore, through his representative, Mr Rawlinson of the Council's Environmental Health Team and the Noise and Nuisance Officer has made several proposals with regard to conditions to be placed on any licence that may be granted and has faced rejection of these proposals by the

Applicant. His proposals are set out in the supplemental bundle. It is telling that the Applicant, Mr Patel, cannot even bring himself to agree with the modest proposals of the Environmental Health Team, let alone discussing these issues with those most directly affected - namely the residents.

19. He does not even seek to support his application with the professional evidence of an acoustic expert.
20. In addition to the issues set out above, it is quite revealing that, in a further comment to the Environmental Health Team, Mr Patel indicated that he really has no control over the companies who will be delivering the late-night alcohol, including Deliveroo and Uber. This is, again, a telling admission on an entirely inadequate application, expressing his own view that he will have no control over the noise and disturbance that the drivers from all these various companies will cause to the local residents. There is no attempt by the Applicant even to conciliate with Mr Rawlinson or with any of the residents which brings into sharp focus his integrity in this matter and the inappropriateness of his holding a premises licence under the authority of Hammersmith & Fulham.

Statement of Licensing Policy

21. The Subcommittee will be very familiar with its own licensing policy. The residents respectfully draw attention to the following paragraphs, in particular (but not exclusively)

Paragraph 3.9 - "Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate when setting out the steps they propose to take to promote the licensing objectives that they understand:

- The layout of the local area and physical environment including crime and disorder hotspots, **proximity to residential premises** and proximity to areas where children may congregate;
- **Any risk posed to the local area by the applicant's proposed licensable activities".**

Paragraph 10 - The Prevention of Public Nuisance

"10.1 The Licensing Authority will require the applicant to demonstrate within the operating plan how they intend to prevent nuisance arising, prevent

disturbance and protect amenity so far as is appropriate to ensure that the licensing objectives are met. Where there is a relevant representation regarding extended hours the Licensing Authority will not permit an extension unless it is satisfied that the licensing objectives would be met.

- 10.2 In considering an application, the Licensing Authority will consider the adequacy of proposed measures to remove or effectively manage the potential for public nuisance and antisocial behaviour".

Planning Permission

"14.8 The Licensing Authority may refuse to grant a licence if a representation from the Planning Department has been received **and**:

- **One or more of the licensing objectives would not be promoted"**
(our bold)

14.10 All applicants are encouraged to obtain the correct planning permission" (this is not something this Applicant can achieve because he lacks a legal interest in the land).

Paragraph 15.6 - Operating Schedule Considerations

"The Licensing Authority considers it would be beneficial if operating schedules include all of the various matters set out in this part of the policy. It is submitted that the operating schedule in this respect fails to address any of the main issues affecting residents and the public nuisance licensing objective and does not explain the full nature of the application or show any understanding of the impact it will have on local residents living a few metres away.

22. In the operating schedule before us, the Applicant has offered just this as "steps to promote the prevention of public nuisance":

"The premises will not cause any public nuisance as it is located in a large warehouse used for distribution".

23. Not only do the residents feel that this is an inadequate response having regard to the scale of the proposals and the Council's policies in respect of residential amenity but they are genuinely concerned that the Applicant could have **thought** it was adequate.

The Subcommittee is invited to share this concern. It gives a very unpromising vision of the future should this application be granted.

24. The unit at 21 Effie Road, whilst not set in a tranquil rural area, is adjacent to a quiet street off Fulham Broadway, namely Barclay Road, very close to family homes with young children, as well as homes which have specifically been chosen for the quiet enjoyment of their residents in this particular enclave. It is simply the wrong place for an all-year-round, 24-hour delivery service with all the public nuisance associated with such a service and accompanying antisocial behaviour from drivers/staff. All of this, meanwhile, to be carried out without any formal offices and with constant comings and goings in the area immediately outside the residents' premises.
25. It is respectfully suggested that in all the circumstances this entirely inadequate application should be refused outright.

Gareth Hughes - Barrister
Keystone Law



APPENDIX – GOOGLE EARTH VIEW

