

Licensing
Hammersmith & Fulham Council
London W6 9JU

Dr. Susan Thompson
Eyot Gardens
London W6 9TN

By email only to licensing@lbhf.gov.uk

29 September 2022

Dear Sirs,

Mari Deli, 1A Eyot Gardens, London W6 9TN – Application to vary a premises licence - Representation

My name is Dr Susan Thompson. I live at Eyot Gardens, London W6 9TN (“my Flat”).

I am making this representation in relation to the application by Mr Ciro Guerra (“the Premises Licence Holder”) to vary the premises licence at Mari Deli, 1A Eyot Gardens, London W6 9TN (“the Premises”).

Background

My Flat is situated directly above the Premises with windows facing on to Eyot Gardens, Chiswick Mall, and above the rear kitchen area of the Premises. It is situated in the Chiswick Mall Conservation Area, and the whole building is one of Townscape Merit.

It is a two-floor maisonette and has all three bedrooms on the first floor, immediately above the Premises. My kitchen diner/living room is on the smaller top/second floor.

I enclose some photographs showing where my windows are located relative to the Premises, **(Photos 1 and 2)**.

I first rented my Flat in the early 1980s before purchasing it in 1998. It is my home. I have always loved the property. More recently, I have had cause to fall out of love with it and that is primarily due to the Premises and the impact that the Premises has had on my life.

When I first took on my Flat the Premises was an A1 corner shop, deli, and off-licence. It has been through several changes of ownership. I had a good relationship with the two managers of the previous businesses below me over many years, and never has any cause to complaint about nuisance. Once new owners purchased the A1 shop and off-licence in 2003 and renovated it, the Premises has been transformed into a licensed restaurant. There has been lots of building work to achieve this. I have significant concerns about the safety of a commercial kitchen running within a converted space (the Premises was never designed or adapted properly to house such) underneath my Flat. I will cover those concerns in more detail in the section of this representation marked “Public Safety.”

I am making this representation under the following of the Licensing Objectives:

- The Prevention of Crime and Disorder;
- Public Safety; and
- The Prevention of Public Nuisance.

In respect of each, I say the following

The Prevention of Crime and Disorder

There are, in my view, several the conditions of the Premises Licence that are not presently being complied with or breached by the Premises Licence Holder and his staff. For ease, I have copied the various conditions below with my commentary in *italics* underneath.

15. A telephone number for the premises, or a responsible member of staff on duty, shall be displayed so that it is visible from the public highway for members of the public to lodge complaints.

So far as I am aware, no such number is displayed on the exterior of the premises. I accept that this is something that is easily correctible, but in my view, it goes to the central issue of the general compliance of the Premises Licence Holder and his staff – if he cannot arrange something so simple as displaying a telephone number then it is unlikely that he will be able to adhere to more complicated conditions.

16. External doors shall not be propped open at any time so as to give rise to a nuisance.

There are two external doors at the Premises. One on the Chiswick Mall side and one on the Eyot Gardens side. I will call them the Chiswick Mall doorway and the Eyot Gardens doorway. respectively.

The Chiswick Mall doorway leads into the kitchens. I have on occasion noticed it to be propped open.

The Eyot Gardens doorway is more problematic. It is right underneath one of my bedrooms (at first floor level) and my living room (at second floor level). It is regularly propped open/held open all the time allowing noise from inside the premises to escape out. I will speak about my experiences of noise under the Public Nuisance heading of this representation.

*Although they a not covered by this condition, and it is my belief that they should be, windows at the Premises are regularly left open or propped open allowing noise to escape in a similar way. This is particularly true of the skylight windows directly beneath one of my bedrooms (see **Photo 3**).*

*The kitchen window below is also often propped open. It is located beneath one of my bedroom windows. This is often to accommodate the wires for the heat lamps, more on which under public safety (see **Photos 4 -6**).*

Finally, the open gazebo housing both dining tables and a stall, with the shop door invariably propped open lie directly beneath my third bedroom, also blocking the street view, as do the pavement awnings (see photos 7 - 9)

23. Any alcohol sold for consumption off the premises shall be sold in a sealed container.

Notwithstanding the Business & Planning Act 2020 and the relaxation to off-sales, it is my view that this condition has never been complied with in any meaningful sense. Any sale of alcohol for consumption in any external seating area (either authorised or unauthorised) is an "off-sale." Orders are made by customers outside and the drinks are prepared and served to them outside. The drinks are in open containers when they leave the Premises, which is not what the condition suggests.

If it was always envisaged that customers would consume food and drinks in an external seating area then this condition, as drafted, prohibits that.

I note that no request for relief from this condition has been made by way of this application.

29. All ventilation and extraction systems and ducting shall be correctly installed, operated, maintained and regularly serviced, all in accordance with the manufacturer's instructions, to ensure that they are operating correctly and efficiently so as not to cause a nuisance to neighbours arising from noise or odour.

I will deal with this in more detail under the heading "Public Nuisance", but I do not believe this condition is being complied with. The entirety of the first floor of my property is constantly subject to the cooking smells from below, which accumulate. Visitors, when I have them, have remarked upon it and it embarrasses me. The Premises was never designed to contain a commercial kitchen and I do not believe the works that have been done to create one have been done to an acceptable standard. The proprietor proposed in licensing meetings to serve reheated food only, but pizza and baked goods are cooked freshly most of the day from 6 or 7 am onwards.

I am also aware, having visited the kitchen of the Premises, that several extractor units have been installed directly beneath the stairs that lead up from my front door and my first floor landing. The most troubling extractor unit gives off a great deal of noise that is both persistent and irritating, and it runs day and night. I am in the process of arranging for an acoustic consultant to review the noise made by the extraction unit and have not been able to arrange that in time for this letter, but I believe the sound emitted exceeds acceptable sound levels at night, as commented upon by a representative of Environmental Health. At least one other extractor was installed below my bottom stair, and a further one behind the gas pipe going to my flat. This work has compromised the fire compartmentalisation between the two properties, as there are holes between my staircase and partition wall, my only fire exit. My staircase is also damaged by these installations. (Photos 10 and 11 of extractors).

Fire Safety advisors from the London Fire Brigade have recently demanded a risk assessment to assess the fire separation between the commercial and single private dwelling flat above in accordance with article 9 of the Regulatory Reform Fire Safety Order, and a 5 year electrical

wiring test for the restaurant. Along with Environmental Health, they also remarked on the noise of the ventilation cooling fan, unpleasant odour of food from the premises, and the excessive heat downstairs in my flat.

The extractors and kitchen also certainly generate enormous amounts of heat which a surveyor confirms has damaged my property and indicates the unacceptably poor insulation between the premises and residential property above. My flat is often 10-20 degrees above ambient temperature.

32. A maximum of 12 customers shall be permitted in the front outside area at anyone time.

There is an issue with the plans appended to the Premises Licence in that:

- a) They do not show the front outside area or the layout of any furniture; and*
- b) They do not accurately reflect the layout of the Premises at all.*

I understand that, during Covid, it was desirable for customers to be seated outside in a well-ventilated area. I feel that the outside area referred to in the condition above has been allowed to morph into something above and beyond the number of customers and impact of what was specifically intended when the Premises Licence was granted. This is recorded in the notes of the relevant licensing subcommittee meetings. I have included some photos (12 - 14) to demonstrate what the front/forecourt area looks like currently and you will see that the Premises Licence Holder has put up various structures to create quite a significant outside area, which includes dining tables and a food stall/takeaway counter.

This continues to increase in size, with a new large corner parasol added this year. This new parasol advertising alcohol, has been installed on the pavement in front of the food stall using a heavy concrete base, placed on the highway, well outside the forecourt of the premises. This causes more congestion on the footpath/road when there are people queueing to buy a coffee, especially at weekends. There is certainly not the 1.5 metres required width for pedestrians to pass safely.

*There is also the issue that the "front/forecourt outside area" has, by the related pavement licence, been allowed to extend down the Chiswick Mall fascia of the building, where my front door and my gas meter are located. Customers and staff have, at times, placed bicycles, bags, bins and even chairs outside my front door creating a trip hazard and significant safety issue. My front door is my only means of escape from my Flat which means that it **must** be always kept clear. I have enclosed some photos (15 -34) of what I mean in terms of the location of the tables and chairs. A van used as a stall also attracts customers to crowd the pavement outside my exit, taking photos of the van, and a blackboard is also in the residents parking space outside, which is a hazard for pedestrians and motorists. Admittedly some of the photos were taken in lockdown, when it was more common for customers to stand or sit on my doorstep, (and tables were initially placed nearer my door then relocated), but the other photos illustrate how the tables take up a significant mass on the narrow street, especially with staff serving, who **can** take up the remainder of the pavement. People still leave bikes by my exit, and crowding around the vintage van also blocks my exit on busy days. It is stressful leaving my*

home, and visitors feel nervous and self-conscious too. I have copied some photos from the Deli's facebook page to further illustrate this point.

If the plan for the proposed position of the tables and chairs in respect of the Pavement Licence renewal for the premises is examined, the plan also shows the outline of the forecourt to the east of the premises (the orientation of the plan is incorrect – north is to the left) fronting Eyot Gardens. It is the opinion of a planning consultant I have consulted that **it is this forecourt /gazebo area only** which is the subject of this application to vary the Premises Licence, not the pavement licence.

The Council's web page Pavement Licence entry ref 2020/00748/PAVE states that the tables and chairs are to be placed "outside the shop front". As there is **no** shopfront to the west of the entry door to my flat, any tables or chairs beyond this doorway should not be covered by any licence.

33. External lighting for the Premises shall be turned off after the Premises are closed to the Public.

Generally speaking the use of the outside area is not really in accordance with the rules and the conditions of the Premises Licence. The lights are often left on after the Premises has closed to the public (**Photo 34**).

34. All tables and chairs shall be removed from the front outside area by 21:30 hours each day.

As per the above, this again sees little to no compliance. The Premises seem to treat 9:30 as the point by which (sometimes) customers are required to leave their tables. It is not, I am sorry to say, treated as the time by which all tables must be removed from the highway. Indeed, some tables are never removed and are left there all night, and the gazebo is never removed (although my understanding is that it should be, by definition). (**Photos 35 – 41**)

35. The outside area shall be separated from the public highway by a screen, rope barrier or other means of demarcation from the public highway which shall be removed by 21:30 hours each day.

It is arguable that what the Premises have created constitutes a "demarcation", but I would ask whether what is in situ is within the spirit of the condition and also wish to point out that little, if anything, is removed overnight.

36. Signs shall be prominently displayed in the outside area reminding patrons there are residents living nearby and instructing them to respect the neighbours and to conduct their behaviour accordingly.

I cannot say that I have ever seen signs to this effect outside the Premises. What I would say, however, is that I have regularly been disturbed in my Flat by customer noise from both inside and outside the Premises. I have also been disturbed by staff noise until 2 am, starting again by 6.30 am.

37. Alcohol shall not be consumed in the outside area of the Premises after 21:30 each day

This, I would say is honoured in the breach and I have seen customers continuing to drink/finishing their drinks after 21:30, which is not what the condition says/envisages e.g. everything closed/removed by 21:30.

Perhaps this condition could be adjusted relative to the closure time of the area e.g. consumption to cease 30 minutes before the area closes, which would allow time for staff to close down and remove the area?

I mentioned above that the layout on the plans attached to the licence and the layout of the Premises (in reality) do not marry up. Attached is the original version of the plan and version that has been marked up to show the differences.

Public Safety

I would say that there are several public safety issues in relation to this Premises.

Two are specific to the external areas that have been developed by the Premises and one is a more general public safety concern relating to the operation of the Premises as a whole.

The two public safety concerns relating to the use of the external areas are:

1. The use of patio heaters/heat lamps under awnings/a gazebo that are not designed for such; and
2. The lack of space between the external areas and the roadway.

Patio Heaters

I completely understand that the Premises would want customers using its external areas to be as comfortable as possible. I do not believe, however, that comfort should be prioritised over customer safety, and that of nearby residents.

All the awnings and the gazebo outside the Premises have, in some form or another, got heating elements installed underneath them. These are not the type of awnings or gazebo where these systems are “built in” and the structures rigorously fire tested – these are awnings and a gazebo where the Premises have jury-rigged or retrofitted these systems in after the fact, which I consider to be extremely dangerous. I am particularly concerned because there is only one means of escape from my Flat. If that is blocked (which it has been) or becomes unusable, then I am in significant danger.

I have contacted the manufacturer of the pavement patio heaters, and they told me that these should be wall mounted, not clamped to flammable awnings. The proprietor has been told to remove these, but promptly replaces them.

The patio heaters also possibly encourage the congregation of diners outside year-round in a manner which is not in keeping with the spirit of the pavement licence, or the number of clients proposed by the business in licensing meetings.

The internal dining space already has several tables and created a further “chef’s party table” since the premises licence was granted. I believe the number of covers is at least 21 at present.

Space to Roadway

This comment pertains to the pavement tables and chairs placed on the Chiswick Mall side of the Premises, (**see Photos 42-45**)

When in use the tables and other furniture will (and already do) severely obstruct the only available pedestrian route. This appear to be in contravention of the Ministry of Housing, Communities & Local Government Guidance: pavement licences (outdoor seating proposal). Updated 22 July 2020, which states at 1.1:

“Where a pavement licence is granted, clear access routes on the highway will need to be maintained, taking into account the needs of all users, including disabled people.”

As can be seen in the photographs below, the applicant is already using the pavement to the side of the premises for tables, chairs and other furniture and equipment. When the tables are in use, the narrow pavement is severely obstructed rendering it virtually unusable by pedestrians. At times chairs are placed right across the pavement and into the roadway. Boxes of produce displayed on the pavement cause a further obstruction.

The pavement to the front of the shop is also effectively blocked by the serving arrangements. The applicant has relocated the serving counter and entire shop front onto the forecourt restricting wheelchair access to the footpath.

The ‘pavement’ in front of the houses opposite is no more than a wide kerb, thus pedestrians are forced to use the roadway on this very narrow and quite busy corner, placing them (and in particular those with mobility problems) at risk.

Chiswick Mall is regularly used as a cut-through or rat run for drivers attempting to avoid traffic elsewhere. Those drivers, and I accept that this is not the Premises Licence Holder’s fault, often drive carelessly and at speed. I am concerned that it is only a matter of time before someone is seriously injured whereby they have entered the roadway to avoid the tables and chairs and a collision takes place. I do not think the current placement of the tables and chairs is safe.

The Prevention of Public Nuisance

I am regularly disturbed by the Premises in several ways. I would categorise the disturbances as:

- Customer noise

- Staff noise
- Plant noise
- Heat from the commercial kitchen

Customer Noise

The main outside area of the Premises is directly underneath two of my bedroom windows (first floor), and directly beneath the window of my living space (second floor). My third and final bedroom is also uninhabitable because of the noise from the open conservatory windows. The outside area under the gazebo in Eyot Gardens is invariably in use meaning that I have the noise of customers eating, drinking talking and sometimes singing directly beneath my Flat all the time. It can be relentless despite having secondary glazing throughout my maisonette. I feel unable to open windows on hot days as this exacerbates the problem.

The noise comes and goes throughout the day, but when the Premises is busy later in the evening it is particularly noticeable, especially when other ambient noise sources e.g. traffic noise, drop off. The noise was so bad at first floor level that I moved a mattress upstairs to the second-floor kitchen diner to see if that gave me some relief. It hasn't, as extractor noise is still audible in addition to customer/staff noise which only ceases 2am-6 am. More recently I have been doing all that I can to avoid staying at my Flat, as I now always ~~would~~ have to try and sleep on the sofa in my living room, as all 3 downstairs bedrooms are uninhabitable.

The noise has also disrupted my work. Like most of the country I was forced to work remotely during the various lockdowns and even now a good proportion of my work is done via remote video calls e.g. Zoom or Teams. Clients have remarked to me on the background noise level and I often have to mute out of calls when I am not speaking. The noise generated by the outside area is not conducive to a working environment which my Flat needs to be. I also find myself too tired for consultations after the limited sleep I manage to have during the early hours. Then the flat is relatively quiet, although I can still hear the overnight use of the extractor in the kitchen/diner, through a heavy fire door.

The second area of customers using the pavement tables in Chiswick Mall pavement outside area is also directly beneath one of my first-floor bedrooms, which is uninhabitable due to the smells generated from the commercial kitchen below, and the customer noise.

Staff Noise

In many respects the staff noise that I experience from the Premises is just as, if not more, intrusive than the customer noise.

I tend to be disturbed by loud staff noise later in the evening e.g. after the Premises has closed, well after midnight. It may be something as simple as a staff member conversing loudly or singing, but the noise really travels, particularly when the streets are quiet and reverberant, and the conservatory windows where the staff are situated after hours are open. Staff have also taken meals outside after closing time.

At other times it has been staff behaviour that has been the problem. I have experienced this in two ways.

Firstly, staff will move and remove rubbish from the premises late at night. This includes clinking bottles within bags which cause a real problem when they are carried and also when they are placed into the eventual receptacle. This invariably happens after midnight, (see **photo 46, taken at 0145 hours**), in contravention to the premises licence, which states that:

“Deliveries and collections (including refuse and/or recycling collections) associated with the premises shall be arranged between the hours of 07:00 to 20:00 only. Empty bottles and non-degradable refuse shall remain in the premises at the end of trading hours and will not be taken out to the refuse point between the hours of 23:00 and 07:00”.

Another issue is when staff set up for the day. Whilst the premises licence deals with when tables are to be removed from the highway (although they are not) the licence does not deal with when they can be placed out. This often means that the tables are placed out very early in the morning (from 6am).

Plant Noise

I mentioned above in relation to one of the conditions of the premises licence (condition 29) that I have had real issues with plant noise from the premises. I am sorry to say that those issues persist.

There is an extractor unit situated just underneath my entrance staircase or landing and the noise from that unit is very audible throughout my property. It ranges from a lower pitched humming sound when the unit is not operating to capacity to a much higher volume when strain is being placed on the unit. It often runs all night and is certainly noisier than acceptable noise levels.

The rear kitchen also has a couple of skylights over the Premises' kitchen (see previous photo of conservatory windows above) from which noise escapes. These skylights are located directly below one of my first-floor bedrooms and the rear window to my second floor living space (see photos). Noise escapes from these windows and can disturb me.

I have tried to resolve the issue of noise on several occasions. For example, in 2021 noise expert Richard Vivian wrote to Mariano Aiello as DPS in this regard, but no reply was received, (See letter).

Requested Outcome

I would like, please, for the application to vary the premises licence to be refused. There are several significant issues currently which, in my view, undermine the Licensing Objectives. To grant the variation would, respectfully, be a message to the Premises Licence Holder that everything is satisfactory, that he is operating in accordance with the premises licence, and that he should benefit from longer.

Additionally, no measures have been proposed to explicitly promote the four actual licensing objectives with this application, namely are the prevention of crime and disorder. public safety. the prevention of public nuisance. and the protection of children from harm.

The applicant is also requesting later hours but has not submitted a Noise Impact Assessment as a supporting document for his application.

It is also of particular concern that these issues are occurring in a conservation area, (which is primarily residential), with tables sprawling over a very narrow pavement. The premises licence may also not actually apply to these "forecourt" tables at all.

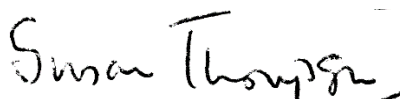
There appears to be no justification to request to serve alcohol from until 22:00 hours in a restaurant immediately adjoining residential accommodation.

There are alternative places to drink later locally, including the inside tables of the Deli which are licensed until 2300 hours, such that it appears unnecessary to extend the period that alcohol is served outside.

If the application cannot be refused, and I am not sure why it could not be, then I would ask the council to think very carefully about what changes could be made to the licence as it stands currently in view of what is being requested to alleviate the problems I have highlighted above. My quality of life has been significantly diminished as this Premises has developed and I do feel that without some sort of intervention the public safety and nuisance issues will only worsen.

Thank you for taking the time to consider my representation.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Susan Thompson', with a stylized flourish at the end.

Dr. Susan Thompson
Eyot Gardens
London W6 9TN

Enc.