

From: Gareth Hughes <Gareth.Hughes@keystonelaw.co.uk>
Sent: Monday, July 29, 2024 1:20 PM
To: Mckenna Lorna: H&F <Lorna.Mckenna@lbhf.gov.uk>
Subject: Re Booze Delivery
Importance: High

Dear Lorna

As you are aware I act for [REDACTED] and Barclays Road residents and others in this matter.

Please find attached my case summary/ skeleton argument for the committee members and Mr Chauhan.

This is of course not evidence but merely my client's submissions to the members based on the evidence already submitted

It is meant to act as a guide to the arguments which we will be taking before the committee.

I would respectfully request that this document be included as part of the record in order to save much time before the committee.

Kind regards

Gareth

LONDON BOROUGH OF HAMMERSMITH AND FULHAM

LICENSING SUBCOMMITTEE

HEARING – 30th JULY 2024

APPLICATION FOR A PREMISES LICENCE BY MR SIDDHARTH CHAUHAN (BOOZE DELIVERY LIMITED)

ACCESS AND SELF STORAGE FACILITY UNIT 4606 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 who made written representations on an application by Mr Siddharth Chauhan (“the Applicant”) for a premises licence in respect of a lockup unit number 4606 access and storage at 21 Effie Road, London, SW6 1EN. All residents live in Barclay Road immediately adjacent to the premises site:

[REDACTED]

Barclay Road Residents – who have made representations

The above are also part of the Barclay Road Conservation Area Neighbourhood Watch.

[REDACTED]

Overview

2. All the above named 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 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 the representations submitted from the Residents as well as those from [REDACTED] are in a written statements previously served on the council during the consultation phase.

5. 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 throughout most of the day. The business model of the applicant appears to envisage constant visits to this site to fulfil orders which have been requested via his tablet while e awaits those orders in his van. On any analysis this is not a conventional use under the Licensing Act 2003 which is why it bears scrutiny, and we apply that scrutiny below.

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 regarding the crime and disorder objective and public safety relating to all the comings and goings from this site during the revised proposed hours.

Location Plan

8. A location plan is set out within the committee papers at page 37 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.

Cumulative Impact

9. The Committee will be invited to consider cumulative impact in the area because of this new proposal. The Hammersmith and Fulham Licensing Policy Statement 2022-27 states as follows at Policy 4:

"The Licensing Authority will have regard to cumulative impact generally during the duration of this policy"

Whilst the licensing authority appears to have determined not to restore the cumulative impact policy which pertained in the Fulham Broadway area until the lockdowns associated with the pandemic it is submitted that all the conditions which led to the implementation of a cumulative impact policy still exist in this area. 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.

Submissions of the Residential Representors

10. The submissions are in two parts and are set out as follows:

- (i) There is no basis in law for granting a premises licence in this case as there are no licensable activities proposed to be conducted within or from the proposed premises. Previous licensing sub-committees have rejected applications for units within this storage facility on the basis also that the proposed licensed premises cannot be appropriate for what is proposed and cannot be used in any event as the terms of agreement between the owner and the “tenants” specifically prohibit such use. In this application no licensable activities are proposed in the unit.
- (ii) Even if a premises licence could be granted the representations made by many residents demonstrate that very serious issues of public nuisance will arise

The Law

11. **Section 1** of the Licensing Act 2003 (hereinafter referred to as “the Act”) states that “licensable activities include the sale by retail of alcohol”

12. Crucially for these purposes, section 1(6) of the Act states –

“Premises are used for sale of alcohol if the sale is carried on or from the premises”

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

“The following persons may apply for a premises licence -

A person who carries on, or proposes to carry on, [author’s underline] a business which involves the use of the premises for the licensable activities to which the application relates”.

11. Finally, **section 190** states that:

“Location of sales

This section applies where the place where a contract for the sale of alcohol is made is different from the place where the alcohol is appropriated to the contract.

For the purposes of this Act the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract.”

Applying the law to the facts – the proposal

12. The modus operandi of the Chauhan (Booze Delivery) business as he states clearly at pages 21 and 115 of the bundle is that he is situated in his van throughout the day awaiting orders from the public to ping through on his tablet. He has previously collected the alcohol from the storage unit at Safestore (not the unit subject to this proposal) and has enough stored in his van in order to be able to satisfy the orders and then deliver them to customers.

13. The problem with this is that there is no licensable activity – sale of alcohol - taking place at or from the proposed unit in accordance with section 1(6) or section 190 of the Act and there is no premises which can therefore be licensed. The sale is taking place from his van and it is that van which requires a premises licence from wherever it may be parked in a stationary position. There can no sales from a moving vehicle.

14. If Mr Chauhan picks up a quantity of alcohol from either this unit or Safe Store at the start of the day then this alcohol is not appropriated to the contract in accordance with section 190 at the time of pickup because there is no contract with any customer at that point.

15. The appropriation to the contract would only take place from his van at the point at which the contract is made for a sale on his tablet.

16. Further, Mr Chauhan cannot satisfy section 16 (1) as set out above in that he cannot **carry on or propose to carry on** a business which involves the use of the premises for the sale of alcohol because he is prevented from so doing by the express terms of his contract with Access Self Storage (attached to the committee papers) which indicates clearly at paragraph 10.3 of the conditions that he must not:

“offer anything including alcohol for sale from the facility.”

In addition to this condition paragraph 10.1 specifically prohibits running any business from the unit.

17. It is abundantly obvious from this application that this is exactly what Mr Chauhan seeks 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 Self Storage and, if this be the case, how he is able to agree any conditions if he cannot operate such a licence.

18. This is also supported by further evidence from the manager of the self storage facility supplied to [REDACTED] (see supplemental bundle) where it once again clearly specifically states that no alcohol may be stored in the self-storage unit.

The Intended Use and Planning

19. The proposed use of this one small unit within the overall complex is as a premises from which alcohol will be sold initially 24 hours a day but now from 0700 -22:00 Monday to Fridays; Saturdays between 08:00 and 22:00 and Sundays between 08:00 and 20:00. . 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 a mere 2.5 metres by 2.5 metres. The only reference to it is set out on page 17 of the report which indicates that the premises is *“gated and all time locked with a 24 cctv monitoring and only authorised persons can enter ad the premises is never open to the public so there is no harm to any of the four licensing objectives”!* This last is a mere throwaway line and demonstrates that the applicant has given no thought whatsoever to the impact of what he is proposing upon the residents many of whom live adjacent to this facility and overlook it from their rear windows many of which are bedrooms.

20. The planning permission which was granted on 20th February 2017 (2015/04542(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.

21. 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".

22. 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 delivery services running from the units which would include constant comings and goings from noisy vehicles. 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 self-storage or remove them. It was not concerned at that time with businesses operating out of the facility. It's clear that it was not granting planning permission for delivery services or businesses to be run from the facility and that is given support from the

owner of the premises by way of its own prohibition on running businesses from the site and specifically alcohol sales.

23. 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 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.

24. 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 residents' 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 Chauhan to address this issue of paramount concern to the residents. He simply does not see it as any problem which is a long way removed from any responsible applicant.

Hammersmith and Fulham - Statement of Licensing Policy – 2022-2027

25. 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)

Policy 1(page 18) – Local area risk assessments

"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".**

ANNEX 1: Guidance on promoting the licensing objectives in an operating schedule

The Prevention of Public Nuisance (page 38)

"The Licensing Authority will require the applicant to demonstrate within the operating plan how 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.

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....".

Operating Schedule Considerations (page 14)

"The Licensing Authority considers it would be beneficial if operating schedules include the following:

General (we have only included the relevant sections here which are singularly not addressed)

- *a description of the style and character of the business to be conducted on the premises (for example, a supermarket, or a cinema with 6 screens and a bar, or a restaurant, or a public house with two bars, a dining area and a garden open to customers);*
- *A description of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;*
- *the licensable activities to be conducted on the premises;*
- *the times during which it is proposed that the relevant licensable activities are to take place. This should include the time the premises will be open, the time the last customer will be able to enter the premises, the time the last drink will be served and the time all customers will have left the premises. Detail should also be provided on how this will be managed/controlled; "*

For sales of alcohol for consumption off the premises – applicants in respect of off licences and other premises selling alcohol for consumption off the premises may need to consider whether:

- *there are shutters to prevent alcohol from being selected in non-licensed periods.*
- *there are appropriate numbers of staff on duty to deal with possible 'intimidation' to sell alcohol.*
- *there are restrictions required on the sale of low price, high strength alcohol and drink promotions.*
- *an incident log book is available to record incidents.*
- *there are measures in place necessary to prevent underage sales. (See Annex 1)*
- *there are measures in place necessary to prevent alcohol from being sold outside permitted hours where the operating hours of the premises exceed those for the sale of alcohol.*

- *there are procedures in place to prevent sales of alcohol to intoxicated persons (with particular attention to street drinkers) or individuals leaving premises in the vicinity such as a late night bar; where there is evidence to suggest this is a problem the Licensing Authority may require a temporary cessation of alcohol sales during high risk times*

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 residents living a few metres away.

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

"There is no harm to any of the four licensing objectives".

We would very much doubt if the members of the licensing sub-committee have ever had before them an application which simply fails to address any of the licensing objectives.

27. Not only do the residents feel that this is a hopelessly 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.

28.. 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 enclave. It is simply the wrong place for an all-year-round delivery service with all the public nuisance associated with such a service and accompanying antisocial behaviour from drivers and vehicles. 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 both on the basis that no licence may be granted in law for the proposed premises as no licensable activities will be carried on from the unit and on the basis of the total inadequacy of the proposal which fails to address the law and the council's licensing policy.

Gareth Hughes - Barrister - 26th July 2024

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APPENDIX – GOOGLE EARTH VIEW

