

IN THE LONDON BOROUGH OF TOWERS HAMLET

Reference: Wombats City Hostel M/128620

BETWEEN:

WOMBATS LONDON LIMITED

Applicant

-and-

TOWERS HAMLETS COUNCIL

Respondent

APPLICANT'S SUBMISSIONS

Introduction

1. The relevant factual background has been detailed in the witness statement of Ms Carolin Paarmann, director of Wombats London Ltd, and need not be rehearsed here.
2. The nub of this application for two variations to the applicant's premises licence is captured at paragraph [9] of Ms Paarmann's statement:
 - i) *To extend the services to non-staying guests so that the Company can serve alcohol to members of the wider public from Monday to Sunday from 12:00 hours (midday) to 01:30 hours (the following day);and*
 - ii) *To occasionally play non-amplified music outdoors (until no later than 11pm)*

3. In a nutshell, the economic fallout from the coronavirus lockdown has been crippling to the applicant's business. The applicant is seeking to diversify the services offered to the public in order to remain financially viable. Contrary to the suggestion that the applicant is trying to surreptitiously morph into a night club, Ms Paarmann's statement demonstrates that the applicant is only keen to be innovative as a way of responding to the challenges to her business' sustainability that have been brought about by the coronavirus pandemic.
4. Ms Nicola Cadzow , Environmental Health Technical Officer, has described her concerns regarding the variations sought by the applicant as follows:

In my view the application, as it stands fails, to comply with the objective of the Licensing Act 2003 relating to "public nuisance" for the following reasons:-

- *Noise breakout from the venue affecting neighbouring residents.*
- *Access & egress to and from the venue, of patrons, especially due to patrons likely to be in high spirits; and*
- *The hours of operation (inclusive of proposals) with particular attention to use of the external area for non-amplified music until 11pm.*

5. It bears emphasising that the applicant proposes to play unamplified music only at interval stages and will not do so for more than an hour at any given interval.

Relevant legal principles and framework

6. The concerns that have been raised by Ms Cadzow involve the public nuisance aspect of the licensing objective, to be found at s4 (2) (c) of the Licensing Act 2003. In the case of *R. (on the application of Blackwood) v Birmingham Magistrates* [2006] EWHC 1800 (Admin) at paragraphs [11] and [12], the court referenced a previous version of the licensing guidance to the 2003 Act, which explained the thinking around the prevention of public nuisance as a licensing objective as follows:

“In relation to the prevention of public nuisance, in each individual case that arises following representations, the licensing authority should consider the potential for nuisance associated with the style, characteristics and activities of the business to be carried on at the premises in order to examine the potential steps which could be taken to reduce the risk of nuisance occurring. This will particularly apply in areas of residential accommodation. The licensing authority should consider restricting the hours of trading only where this is necessary because of the potential impact on the promotion of the licensing objectives from fixed and artificially early closing times.”

7. In the current Revised Licensing Guidance dated April 2018 , the following is noted on public nuisance:

2.15 - The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

And :

2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a

certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

Submissions

8. None of the applicant's proposed premises licence variations involve a risk of public nuisance that cannot be appropriately addressed. In considering whether to deny the proposed variations, the licensing authority must ask itself whether it is *necessary* and *proportionate* to do so, in order to prevent a public nuisance. In other words, the licensing authority must be satisfied that no lesser step other than the denial of the proposed variations, would suffice in order to promote the licensing objective.
9. The potential public nuisance concerning the extension of service to non-staying hotel guests arises from foot traffic into the hotel – that is, access and egress to the applicant's premises. Patrons, Ms Cadzow worries, will likely be in "*high spirits*" in leaving and cause a nuisance. It is submitted however, that the applicant has already put measures in place that would mitigate such potential risk. They are detailed in paragraph [22] of Ms Paarmann's statement and include monitoring and management of access and egress by security staff. There is likely to be sufficient security personnel in place to deal with the number of patrons that are envisaged. And given the style and character of the neighbourhood, it is not uncommon for patrons of entertainment venues to be traversing the streets at that

time. The blanket denial of this proposed variation to the premises licence is not necessary and would be wholly disproportionate.

10. The concerns about noise pollution and the nuisance impact on neighbours, appear to come from three aspects of the applicant's proposed variations: i) playing unamplified music outdoors; ii) playing unamplified music outdoors up to 11pm; and iii) general noise emission from patrons during outdoor music offerings. It is submitted that these concerns do not make it *necessary* that there should not be any music outdoors up to 11pm. There are measures that can be adopted to mitigate the potential risk of noise nuisance, which have been detailed in paragraphs [21] and [23] of Ms Paarmann's statement. This includes live music being played only at intervals of an hour; and restricting the live music played to a single unamplified instrument such as a guitar. In addition, the applicant is prepared to adjust the time down to 10pm, as a compromise. The proposed conditions that the applicant has put forward to accompany its application for this variation, are *reasonable, proportionate* and *enforceable*. It is therefore not necessary to deny the application for music to be played outside. And given the conditions proposed by the claimant, such denial would be patently disproportionate.

Relief sought

11. The licensing authority should grant the variations sought by the applicant regarding its premises licence.

Philip Dayle

No5 Chambers

September 7, 2020