

Nest Supplementary Document for 392/393 Hearing 24th August 2021

Response to Supplementary Documents submitted for Hearing.

We accept that residents are in close proximity to the proposed restaurant. We genuinely believe that we will be a far better proposition than rogue businesses or those that will attract problems to the area, such as sub-standard chicken shops, kebab shops, noisy repair shops and so on. However, the restaurant is located next to London Fields Station, which first dates from 1872, in the old waiting room. Clearly other people nothing to do with this restaurant will be using this road as a Public Highway whether to go to the Station, or elsewhere.

Many Arches in the Road have a commercial business use.

In Licensing the principle is each Application is on its' merits (1.17 of sec 182 Guidance to the Licensing Act 2003).

Please note that our amended hours as below are within the current lawfully permitted Planning Hours and well within the Hackney Licensing Policy Framework.

Tuesday – Saturday noon – 22.30, close 23.00
Sunday noon- 20.00, close 20.30

Helpful Legal and other Considerations for the Committee and all Parties

The Toulson judgement below specifically includes economic benefit to the proprietor, and Public Nuisance. Thwaites states the need for evidence, considering Police views etc. It does appear that the view of the Responsible Authorities each recognised as an expert in their own field allied to detailed statistics should be an integral part of decision making for any Cumulative Impact concerns for a specific Application and area.

Para 42 Toulson LJ Hope & Glory Court of Appeal.

42. Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order,

the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to public nuisance. Although such questions are in a sense questions of fact, they are not questions of the “heads or tails” variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgement rather than a matter of pure fact.

Nest Hearing Specific Legal & Policy Points arch 392/3 Mentmore Terrace

Decision of the High Court in Daniel Thwaites plc v Wirral Borough Magistrates’ Court [2008] EWHC 838 (Admin)

The licensee successfully judicially reviewed that decision. Mrs. Justice Black criticised the Justices for disregarding what had happened in the past as an aid to predicting what would happen in the future. She was also critical of the way the Justices used their local knowledge, saying “There can be little doubt that local magistrates are also entitled to take into account their own knowledge, but ... they must measure their own views against the evidence presented to them.” She particularly made that point because the evidence was that the responsible authorities were untroubled and that the history of the premises when operating to the longer hours did not substantiate the Justices’ fears.

In her conclusions, Black J stated that the Justices should have looked for “real evidence” that greater regulation was required in the circumstances of the case. Their conclusion that it was required was, in her judgment, not a conclusion to which a properly directed bench could have come. Here, it was said, they proceeded without proper evidence, gave their own views excessive weight and the police views none at all.

Hackney Licensing Policy

1.31 specifically mentions examples where the Licensing Authority should intervene: Cumulative Impact Area and history of issues with that

Premises. These issues do not exist here. The previous track record of the applicants with their established restaurants is excellent.

Section 2

2.3 Measures to be taken should be proportionate to the risk, for example a busy town centre nightclub will be expected to take far more precautions than a small local restaurant.

2.12 The Council will, where possible, seek to encourage a range of diverse activities within the evening and night time economy. Applications for activities where alcohol consumption is not the primary feature will generally be welcomed so as to broaden the appeal to a wider range of consumers.

Section 182 Guidance to the Licensing Act 2013

Purpose

7. 1.7 This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

Licensing objectives and aims

2. 1.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:
 - (3rd paragraph) recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;

Letter by Kit Malthouse MP Minister of State for Crime & Policing calling for Licensing Authorities to take a more pragmatic & flexible approach:

BY EMAIL ONLY

Chairs of Licensing Committees

Dear Councillor
Kit Malthouse MP
Minister of State for Crime and Policing
2 Marsham Street London SW1P 4DF
www.gov.uk/home-office

08 April 2020

The coronavirus outbreak is causing enormous disruption to all businesses, public services and to individuals across our nation. Local authorities are playing a key role in our response and are under significant pressure. I therefore think it timely to write to you to set out some key areas where licensing authorities may wish to consider a pragmatic and more flexible approach during this outbreak, while ensuring the licensing objectives are safe-guarded.

The Mayor of London's Vision for London as a 24-hour City

11. 2.11. Since the publication of the last Statement of Licensing Policy the Mayor of London has outlined his vision for London as a 24-hour City and has also appointed a Night Czar and a Night Time Commission to encourage the development of London as a vibrant, diverse, cultural city with a night time economy that is of global significance.

1. 4.3. We believe that as long as licensed premises operate as compliant, well-regulated businesses and that their management act responsibly in promoting the licensing objectives; run safe, well managed venues and facilities; and engage and work with the local authority, its partners and the local community; they make a positive contribution toward building community cohesion and cultural development. It is also important to appreciate that alcohol plays an important and inherent role within the leisure and entertainment industry.

