

**Royal Borough of Greenwich
Licensing Sub-Committee**

**Decision Notice
1st November 2021**

Application to Vary Premises Licence

Trafalgar Tavern, Park Row, London, SE10 9NW

In reaching its decision the Licensing Sub-Committee (“LSC”) considered the Council’s Statement of Licensing Policy, the Licensing Act 2003, the Regulations made thereunder, and the Guidance issued by the Secretary of State under S.182 of that Act. In discharging its functions, the LSC did so with a view to promoting the licensing objectives of the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

Having considered all written representations, evidence and oral submissions, the LSC resolved to refuse the variation of the premises licence.

Basis of Decision

The LSC noted the submissions of counsel for the Applicant and from Mr Frank Dowling, who operates the Trafalgar Tavern premises, notwithstanding the premises licence is held by Trafalgar Tavern Lease Ltd, and that Mr Dowling resides immediately next to the premises with his family.

In reaching its decision, the LSC took into consideration the proposed use of the 2nd and 3rd floors of the premises, principally for fine dining and private dining events, the listed nature of the building, the layout of the building, and noted the current permitted capacity of 1200. The capacity of the premises is not a consideration for the LSC, it is set independently, however, the impact of the use of the premises upon the vicinity and locality is a consideration that could be taken into consideration and, as indeed it was in reaching its decision not to allow the variation sought.

The LSC noted the submissions of counsel relating to other licensed premises in the vicinity, notably the Yacht pub and both its physical setup and the impact of its patrons upon the vicinity and locality. Counsel also addressed the LSC on the Cumulative Impact Zone, related statutory guidance including the alternative mechanisms to control cumulative impact, all of which the LSC fully considered in reaching its decision.

In reaching its decision the LSC had regard to the absence of any additional conditions being offered by the applicant, other than the reference to the police conditions during the hearing. The potential restaurant type conditions, e.g. alcohol ancillary to food, for the upper floors were not considered suitable for wedding type events, on behalf of the applicant. The LSC took into consideration the evidence from residents that an existing

condition on the premises licence, to keep windows and doors closed during amplified music performances is breached regularly is related to the loud music and noise experienced and complained of by residents, as originating for the Trafalgar Tavern.

Whilst the locality may be a mixed-use area, the LSC gave proper weight to the very close proximity of residential dwellings to the premises, the narrow nature of adjoining streets, the accepted general premise that noise travels with ease during night time and particularly impacts on those asleep, after 11pm.

There was clear evidence that there is existing noise, disturbance and public nuisance from the premises, it is particularly distinguished in at least 2 of the representations from residents, as opposed to anything originating for the Yacht pub. The LSC also gave weight to representations of residents who are patrons of the premises but oppose the variation application on the basis of existing and increased public nuisance, noise and anti-social behaviour, if the variation were to be permitted. The representations are clear that there is adverse impact from the Trafalgar Tavern in respect of the licensing objectives, both noise and public nuisance, as well as by loud music, notwithstanding there may be issues arising from other licensed premises within the locality.

It was clear to the LSC that there is not a happy neighbourly relationship between Trafalgar Tavern and residents, some of which is clearly as a result of how the premises operates its external area and the use of the Thames Path. It was noted with surprise that Mr Dowling stated he was unaware of such discontent until receipt of the resident' opposition to the variation application. The LSC, having considered all written and oral representations, formed the impression that the conduct and management of the premises, and certainly its "bouncers", is not conducive to receiving and considering complaints, and amplified by the fact that the Thames Path and a public highway have been closed off without permission during Euro 2020. The LSC does not accept that the local authority provided any consent for such actions, indeed no evidence was placed before the LSC to this affect. Moreover, by Mr Dowling's own submission, the local authority was notified, not that permission was granted. The discord between the premises and residents, and absence of communication, is surprising given the 30 years' experience of Mr Dowling in running hospitality type premises.

The operation of the premises during the pandemic was of concern to the LSC, leading to enforcement action and service of a fixed penalty notice by the police albeit the FPN was dismissed upon appeal in the criminal court where evidence is necessary beyond all reasonable doubt. The LSC reminded itself that the hearing before it was a quasi-judicial civil determination and, upon a balance of probabilities, the LSC consider that the FPN was correctly served when the totality of the evidence regarding the operation of the premises during the pandemic lockdown is considered and the conduct of the premises in blocking off a public highway and the Thames Path during Euro 2020.

The submission that Mr Dowling considers the 2nd and 3rd floors already have permission for licensable activities is rejected, there simply was no evidence before the LSC to substantiate it.

The LSC considered the reasons for the Cumulative Impact Zone ("CIZ") being introduced and the evidence for the CIZ within the Statement of Policy of the Licensing Authority. The

evidence for the CIZ is predicated on alcohol related incidents, crime and disorder, public nuisance, and moreover, the CIZ evidence also includes noise nuisance data from Environmental Health. The CIZ assessment takes into consideration not just what takes places within licensed premises but also the impact upon the licensing objectives once premises close. There is evidence of public urination, loud voices, shouting, music from cars and disturbance from taxis, absence of public transport after midnight, drug use, empty nitrous oxide cannisters, and littering, all presently an issue within the area. The expansion of the premises licence if it were to be granted would, in the opinion of the LSC, add to the cumulative impact, even if the impact from the operation of the premises remained constant. The LSC do not consider, or accept, that the addition of 2 floors of the premises for licensable activities would not increase the cumulative adverse impact late at night and would directly contribute to increased noise, anti-social behaviour and public nuisance. The proposal would adversely add to and impact globally within the CIZ.

The LSC noted and had regard and gave due weight to the representations from local councillors, in particular their detailed evidence on behalf of the residents, of the impact upon the vicinity of the operation of the premises, including the storage of refuse bins outside and noise from the premises long after closing time, which was also raised by residents specifically and the cellar trap doors being open all day for deliveries and causing a nuisance and hindering passage.

The LSC noted the representations of the police which were based in the main on grounds of public nuisance.

The LSC considered that the refusal of the variation application is appropriate to promote the licensing objectives and in particular for the prevention of public nuisance.

Any party aggrieved by this decision may appeal to the magistrates' court within 21 days.