



CITY OF WESTMINSTER

# MINUTES

## Licensing Sub-Committee (6)

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (6)** held on **Thursday 28th January, 2021**, This will be a virtual meeting.

**Members Present:** Councillors Tim Mitchell (Chairman), Richard Elcho and Maggie Carman

**Officer Support:**

Legal Officer:	Horatio Chance
Policy Officer:	Kerry Simpkin
Committee Officers:	Toby Howes Cameron MacLean
Presenting Officers:	Shannon Pring Francisco Franco-Mendes

#### 1. MEMBERSHIP

There were no changes to the Membership of the Sub Committee.

#### INTRODUCTION

The Chairman welcomed everyone to the meeting and introduced the Members of the Sub Committee and the Council Officers who would be supporting the Sub Committee. The Chairman explained the procedure that would be followed at the meeting.

#### 2. DECLARATIONS OF INTEREST

There were no Declarations of Interest.

#### 3. PITCH 3028 BROADWICK STREET

**Present:** Ms Rebecca St. Rose, Team Manager, and Ms Michelle Steward, Senior Licensing Officer (backup for Ms Pring): Public Protection and Licensing; Mr Anil Drayan, Environmental Health Officer, and Mr Ian Watson, Senior Practitioner (backup for Mr Drayan): Environmental Health Service; and Mr Jonathan Green, City Inspector, Markets, and Mr James Hayes, Team Manager (backup for Mr Green): Public Protection & Licensing.

**Representations:** Representations had been received from the Environmental Health Service (EHS).

**Applicant:** Ms Leanne Gellel, represented by Eugene O' Regan

**Ward:** West End

## **REPORT OF THE DIRECTOR OF PUBLIC PROTECTION AND LICENSING**

The Sub Committee considered a report of the Director of Public Protection and Licensing which asked the Sub Committee to decide whether the trading hours for Street Trading Licence Pitch 3028 Broadwick Street should be extended to 00:00 hundred hours to 23:59 hours, Monday to Sunday, inclusive.

The Sub Committee was also asked to decide whether, if minded to grant the application to vary the licence application, if the Sub Committee would consent to the licence holder leaving the kiosk in situ between consecutive trading periods in accordance with Standard Condition 57 of the Standard Conditions set out in Westminster City Council's Statement of Street Trading Policy pursuant to its powers under section 10(1) of the City of Westminster Act 1999, and which had been applicable to Street Trading Licences as of 4 January 2017.

It was noted that the applicant, Leanne Gellel, had held a Permanent Street Trading Licence (05/0478/LI\_STE) on Pitch 3028 Broadwick Street since, at least, 2005.

The report set out the history of the licence and the reason for the current application viz. because of the current coronavirus pandemic, the applicant's clients had requested that she deliver any orders to their premises, and set up any displays, before cleaning or other staff arrived at the premises and before the premises opened for business. To do this, the applicant required access to her kiosk to complete and carry out the orders. It was not her intention to trade from the kiosk beyond the hours prescribed in her current licence.

### **Presentation: Shannon Pring, Senior Practitioner, Street Trading, Public Protection and Licensing**

Ms Shannon Pring, Senior Practitioner, Street Trading, presented the report that was before the Sub Committee.

In making her presentation, Ms Pring noted that the applicant was presently trading from a temporary location across the road from her designated pitch because of construction works that were taking place at that location. The construction works were scheduled for completion in summer 2021 but, because of the coronavirus pandemic, it may be autumn 2021 before the works were completed and when the applicant could return to her designated location.

Ms Pring noted that the applicant had previously been granted permission to change her "receptacle", that is, the item of street furniture she used for trading, but had not been given consent, in accordance with Standard Condition 57, to the receptacle remaining in situ between trading periods. It was the understanding of the Licensing Service that the applicant had submitted the application for the variation on the basis that Planning permission was not required for the receptacle to remain in situ between trading periods. That was not the view of the Licensing Service, which believed, in accordance with the Council's Street Trading Policy, that Planning permission would be required if the receptacle was to remain in situ between trading periods.

Ms Pring stated that the Licensing Service had been advised that the reason for the application was that, in response to requests by her clients, the applicant wished to provide flowers and services to her clients before they opened for business, thereby complying with the wishes of her clients and adhering to the current Coronavirus Regulations.

The application had been made by Ms Leanne Gellel who would be represented at today's proceedings by Mr Eugene O' Regan. Representations had been received from the City Inspectorate and the Environmental Services Consultation Team (EHS).

In conclusion, Ms Pring stated that the Licensing Service requested that the Sub Committee consider the written representations set out in the report, and any oral representations, and determine whether the application for the requested variation to Licence 05/0478/LI\_STE should be granted or refused.

### **Presentation: Mr Eugene O' Regan On Behalf of the Applicant**

By way of background, Mr O' Regan stated that the applicant had operated her Florist business since 1996 and her principal sources of income were footfall traffic and services to commercial & residential client accounts. Her business operated from a receptacle which the applicant installed each day before trading and which she removed at the end of each day's trading.

Mr O' Regan described the construction works taking place opposite the applicant's pitch and the interim arrangements made for her to trade from that location while the construction works were carried out. Mr O' Regan then described the terms of the application for a variation to the licence, noting that Ms Gellel did not trade on Sundays; and the terms of Standard Condition 57 which required street traders to remove their stalls and goods from the public highway at prescribed times.

It was Mr O' Regan's contention that the City of Westminster Act 1999 ("the Act") and Westminster City Council's Statement of Street Trading Policy Standard Conditions, introduced under the provisions of the Act, granted the Licensing Authority the necessary power to allow Ms Gellel's receptacle to remain in situ when she was not trading.

Mr O' Regan then detailed the statutory provisions and description of what constituted a receptacle that he relied upon in support of his proposal that a replacement flower kiosk could remain in situ without the requirement for planning permission. In so doing, Mr O' Regan referred to drawings of the kiosk that would replace Ms Gellel's existing receptacle, as set out in Appendix 7 of the report before the Sub Committee, which, he maintained, would be in keeping with the amenity of the area.

In conclusion, Mr O' Regan stated that it was the applicant's view that Council Officers were conflating the Statement of Street Trading Policy Standard Conditions, as provided for in the provisions of the City of Westminster Act 1999, and the requirement for planning permission.

In response to questions by Members of the Sub Committee, Mr O' Regan and Ms Gellel provided the following information.

- (a) Regarding trading hours, Ms Gellel stated that she wished to vary her licence to allow her to use her kiosk for storage and to be allowed to access the kiosk outside her normal trading hours.

Ms Gellel explained that the space used to store her existing barrow after trading hours was expensive and the lease on the space was about to expire. Therefore, she wished to give up the lease on her current storage space and use her planned new kiosk for storage. This would also allow her to store the tools she used to make up orders before and after her usual trading hours.

Ms Gellel confirmed that she would continue to trade only during hours prescribed in her current licence and that the variation to the licence was simply to allow her access to her kiosk outside her usual trading hours to prepare orders.

- (b) Regarding concerns about Nuisance and Crime & Disorder, Mr O' Regan stated that both he and the applicant had reviewed the reports of the Markets and EHS officers and were surprised that such serious concerns had been raised by the officers in their reports.

In response, the applicant had looked at the number of licences operating in the area, including bars, café's and nightclubs, which were listed on Page 59 of the report before the Sub Committee. Mr O' Regan was of the view that the applicant would not be contributing to existing concerns about nuisance and crime & disorder should the Sub Committee be minded to grant her application for a variation to her current licence.

Further, after discussions with Council officers, it had become apparent to Mr O' Regan that Officers, when considering issues of nuisance and crime & disorder, had been looking at the temporary site from which Ms Gellel was currently operating, and that no significant investigation of the area had been carried out by Council officers when preparing their response to the application to vary the licence. In addition, officers had made an objection on behalf of the Metropolitan Police Service (MPS) on the basis that, if granted, the application would add to concerns about crime and disorder in the area. However, when requested, officers were not able to provide any information to support the Police objection other than general references in the Council's Statement of Street Trading policy.

- (c) In Mr O' Regan's opinion, the Sub Committee had the necessary power to grant the variation to the licence and, in doing so, allow the kiosk to remain in situ between trading hours.

**Mr Anil Drayan, Environmental Health Officer, Environmental Health Service (EHS)**

Mr Drayan stated that the main recommendation of the EHS was in relation to public nuisance. He stated that there was a general policy that street trading and the use of external tables and chairs licences should, for the benefit of residents, end at 11 PM, and this applied to the licensed premises in the area referred to by Mr O' Regan. Accordingly, if the application was amended to restrict the trading hours to 11 PM, the EHS would have no objection to the application. However, the application to vary the licence had been drafted in such a way that, if granted, the applicant would be entitled to trade 24 hours a day.

The EHS had also made a submission in relation to concerns about public safety and possible obstruction of the highway. Mr Drayan stated that the EHS did not normally consider such issues as these are more relevant to Planning matters. However, as no planning application had been submitted in relation to the proposed licence variation, the matter of concern to EHS officers was the possibility of any structure left on Highway being toppled over by passers-by who may be inebriated, and that it was for this reason that Mr Koduah of the EHS had submitted representations in relation to public safety and possible obstruction of the highway.

Mr Drayan stated that he believed that planning permission would be required as the kiosk would be a permanent structure on the highway. He noted that the EHS did not often have any public safety or "obstruction of the highway" objections to an application for temporary receptacles.

In response to a few questions by Members of the Sub Committee, Mr Drayan provided the following information.

- (a) The EHS would have no objection if the applicant was seeking a variation to the trading hours up to 11 PM. However, there would still then be a requirement for the structure to be removed from the highway after trading hours to address concerns about public safety and obstruction of the highway. Given the reasons expressed by the applicant for requiring access to the kiosk, it was unlikely that there would be any public nuisance concerns if the applicant was to have access to the kiosk from 05:30 hours. However, if the kiosk was located near to residential properties, there was still the potential for noise nuisance when opening and closing shutters and this would be a material consideration in deciding whether to recommend granting such a variation to the licence to this effect.
- (b) The risk posed by late-night revellers toppling over the structure was very much dependent upon the nature of the structure and how it was anchored or weighted to the highway. Such considerations would normally be dealt with as Planning matters.
- (c) Regarding the possible obstruction of the highway for the purpose of street cleaning and related activities, if such concerns were not to be considered as Planning matters, it was within the Sub Committee's remit to consider these matters in accordance with the Council's Licensing policies.

**Mr Jonathan Green, City Inspector, Markets, Public Protection & Licensing.**

Mr Green stated that he concurred with the points made by Mr Drayan in his presentation. He stated that, if the applicant could trade from 5:30 AM, he would have no objection as he knew the applicant and was satisfied that this would not present any problems. However, it was his view that to extend the permitted trading hours beyond 11 PM would require Planning permission.

**Comments by the Sub Committee's Legal Adviser and Policy Officer**

The Chairman invited the Sub Committee's Legal Officer and Policy Officer to make any comments they might wish to make at this stage of the proceedings.

Mr Horatio Chance, Senior Solicitor (Licensing & Highways), stated that he would be grateful if the applicant's agent, in his Summing Up, were to address the issue of why the Sub Committee might consider the request in her

application to vary the hours of her trading licence as an exception to the “Hours of Trading Policy – POLICY ST7”,<sup>1</sup> as set out in the Council’s “Statement of Street Trading Policy”.<sup>2</sup>

## **SUMMING UP**

At this stage of the proceedings, the Chairman invited each of the parties to sum up their presentations.

### **Mr Drayan, on behalf of the EHS**

Mr Drayan stated that trading hours up 23:00 hours were acceptable to the EHS and that the EHS had no objection to the applicant having access to her kiosk from 05:30 hours, as long as the kiosk did not have noisy shutters or anything else that might cause a noise nuisance that could affect residential neighbours.

The only matter of concern for the EHS was whether the applicant was going to seek Planning permission for the kiosk to remain on the highway overnight. If not, he suggested that the Sub Committee would have to take into consideration concerns about public safety and the obstruction of the public highway as part of its deliberations when determining the application in accordance with the Council’s Licensing policies.

### **Mr Green, City Inspector, Public Protection & Licensing.**

Mr Green concurred with the summing up of Mr Drayan, stating that, unless there were exceptional circumstances, the Statement of Street Trading Policy did not permit trading after 23:00 hours. He proposed that the application had to be more specific regarding the hours that the applicant required access to the kiosk. He was concerned that, if the application was granted, this would allow 24-hour trading which, in his opinion, would be contrary to the Council’s Street Trading policy.

Mr Green stated he would have no objection should the Sub Committee be minded to allow the applicant to trade from before 08:00 hours.

### **Mr O’ Regan On Behalf of the Applicant**

Mr O’ Regan stated that he wished to deal with two points that had been raised, as follows.

1. The reason for submitting the application to vary the licence was to allow a kiosk to remain in situ overnight. To this end, the design and structure of the

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<sup>1</sup> Regarding the Licensing policy in respect of trading hours, the Chairman had proposed that any on street trading between 23:00 hours and 08:00 hours should promote the licensing objectives as set out in Paragraph 7(5) of the Council’s “Statement of Street Trading Policy 2013”.

<sup>2</sup> Statement of Street Trading Policy 2013: 7 (5) trading hours for other types of street trading covered by this policy will be set on the basis of promoting the following purposes:

- (a) Preventing crime, disorder and antisocial behaviour
- (b) Avoiding public nuisance
- (c) Protecting public safety
- (d) Preventing obstruction of the highway
- (e) Location and neighbouring hours of business activity

proposed kiosk was such as to address any concerns there may be about safety aspects of leaving a kiosk in situ overnight.

2. Regarding the trading hours, the purpose of requesting an extension to the existing hours was to allow Ms Gellel to access the interior of the kiosk so that she could prepare orders and not to start "retail" trading outside her usual hours.<sup>3</sup>

Mr O' Regan then addressed the requirements of the Council's Statement of Street Trading Policy and the proposal by Council officers that Planning consent would be required if the kiosk was to remain in situ overnight. In so doing, Mr O' Regan proposed that, as the structure was removable, it did not require planning permission, and he referred to case law on a similar point involving Westminster City Council and a street trader. Mr O' Regan noted that the case in point was referred to in the papers before the Sub Committee at Page 60 *et seq.*

## **ADJOURNMENT**

At this stage in the proceedings, the Chairman adjourned the meeting to allow Members of the Sub Committee to retire to consider their decision. He stated that the Sub Committee would reconvene at 12 midday to announce its decision.

## **Resumption of Proceedings**

Having reconvened the meeting at 12 midday, the Chairman stated that he would restart the proceedings by outlining a series of questions to all the participants, noting that –

1. The Sub Committee had heard from the EHS that a trading licence after 23:00 hours would only be granted in exceptional circumstances;
2. The applicant had stated that she required access to the kiosk from 05:30 hours to allow her to continue to operate in much the same manner as she had always operated; and
3. The EHS and City Inspectorate had confirmed that they had no objections to the applicant having access to her kiosk from 05:30 hours.

In response to a series of questions by the Chairman, the various parties represented at the meeting provided the following responses.

### Licensing Authority

1. Ms Pring, Senior Practitioner, Street Trading, stated that the Licensing Authority would have no objection should the Sub Committee decide to approve a variation to the applicant's licence to allow the applicant to trade from 05:30 hours to 23:00 hours.

### Environmental Health Service (EHS)

2. Mr Drayan, Environmental Health Officer, stated that the EHS would not support a variation to the licence to allow the applicant to trade directly from

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<sup>3</sup> Mr O' Regan noted that by preparing orders before the applicant opened for trade, this could be considered as "trading". However, he emphasised that the purpose of granting the applicant access to her kiosk was to allow her to comply with the request of her clients to undertake deliveries and displays before their premises were open to others.

her kiosk from 05:30 hours, but would have no objection to the applicant trading directly from a kiosk from 07:00 hours

If the applicant required access to her kiosk to prepare orders between 05:30 hours and 07:00 hours, the EHS would have no objection to a variation to the licence to allow the applicant access to a kiosk from 05:30 hours to the time when she was permitted to trade directly from her kiosk.

#### City Inspectorate

3. Mr Green, City Inspector, Markets, stated that he concurred with Mr Drayan and that the City Inspectorate, Markets, would not object to the applicant having access to a kiosk from 05:30 hours to allow her to make up orders prior to starting to trade directly from the kiosk at 07:00 hours.

Mr Green stated that his only concern would be to ensure that the applicant disposed of any waste in a suitable manner before starting to trade directly from the kiosk. He noted that this had not been an issue in the past and, therefore, he was not unduly concerned about the applicant's willingness to comply with such a requirement.

#### Ms Leanne Gellel, Applicant on

4. On behalf of Ms Gellel, Mr O' Regan stated that Ms Gellel would not object to the application being amended to vary the licence to include trading hours between 07:00 hours and 23:00 hours with access to her kiosk from 05:30 hours.

### **ADJOURNMENT**

Having heard the responses from the various participants, the Chairman stated that the Sub Committee would adjourn to allow the Members of the Sub Committee to consider their decision. He stated that the meeting would reconvene at 12:30 PM when the Sub Committee would announce its decision.

### **Recommencement of Proceedings**

Having reconvened the meeting, the Chairman stated that the Sub Committee would announce its decision, as follows.

### **DECISION**

It was the Sub Committee's decision to **APPROVE** the application, as amended, to vary Permanent Street Trading Licence (05/0478/LI\_STE) on Pitch 3028 Broadwick Street, as follows –

#### Trading Hours

Monday to Saturday: 07:00 hours to 23:00 hours

#### Further Conditions

1. The Licence Holder be granted access to the kiosk from 05:30 hours, Monday to Saturday; and
2. The kiosk be allowed to remain in situ between trading hours subject to the relevant approvals being granted by –

- (a) The Planning Authority; and
- (b) The Highways Authority.

#### **4. PITCH 1640 HORSEFERRY ROAD**

**Present:** Mr Francisco Franco-Mendes, Team Manager, Public Protection and Licensing; Ms Shannon Pring, Senior Practitioner, Street Trading, Public Protection and Licensing (backup for Mr Franco-Mendes); and Mr Sean Dwyer, Highways Planning Manager, City Highways.

**Applicant:** Licensing Authority

**Ward:** Vincent Square

#### **REPORT OF THE DIRECTOR OF PUBLIC PROTECTION AND LICENSING**

The Sub Committee considered a report of the Director of Public Protection and Licensing in which the Sub Committee was asked to vary the Designating Resolution passed by the Council on 25 July 1990 and rescind the designation of Pitch 1640 Horseferry Road as the pitch was vacant; had not been used for a period of more than 6 months; and because the pitch was no longer suitable for trading.

#### **Presentation by Mr Francisco Franco-Mendes, Team Manager, Public Protection and Licensing**

Mr Francisco Franco-Mendes, Team Manager, Public Protection and Licensing, presented the report, noting the recent history of the pitch, including the grant of a licence on 18 March 2019 to operate the pitch, and the subsequent transfer of that licence on 24 January 2020 to a vacant pitch at Strutton Ground Market.

In recommending rescinding the designation of Street Trading Pitch 1640 Horseferry Road, Mr Franco-Mendes confirmed that the necessary statutory consultations with the Highways Authority, Police and the West End Street Traders' Association had taken place and that the responses, where applicable, had been included in the report before the Sub Committee.<sup>4</sup>

#### **Presentation by Mr Sean Dwyer, Highways Planning Manager, City Highways**

Referring to the photograph in the report before the Sub Committee showing the location of the pitch, Mr Dwyer noted that the footway where the pitch was located on Horseferry Road, south of the junction with Dean Ryall Street, was not particularly wide. As the pitch was located against the railings of the previous Westminster Hospital, and given its dimensions, this left limited space on the footpath for pedestrians. Also, as pedestrians turned from Dean Ryall Street into Horseferry Road, they had to detour around the pitch, which was in front of them as they turned the corner.

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<sup>4</sup> The response of Mr Sean Dwyer, Highways Planning Manager, to the consultation on behalf of the Highways Authority was attached to the report at Appendix 3.

Mr Dwyer confirmed that, from a City Highways point of view, the pitch was not in a suitable location. Therefore, City Highways agreed with the proposal of the Licensing Authority to rescind the designation of Pitch 1640.

## **SUMMING UP**

In summing up his presentation, Mr Franco-Mendes stated that, because the pitch had not been used for a period of more than six months, and because the pitch was not in a suitable location, it was the recommendation of the Licensing Authority that:

*The Designating Resolution passed by the Council on 25 July 1990 be varied to rescind the designation of Street trading pitch 1640 Horseferry Road.*

## **DECISION**

To **APPROVE** the proposal that the Designating Resolution passed by the Council on 25 July 1990 be varied to rescind the designation of Street trading pitch 1640 Horseferry Road.

## **5. PITCH 1792 CHARING CROSS ROAD**

**Present:** Mr Francisco Franco-Mendes, Team Manager, and Ms Shannon Pring, Senior Practitioner, Street Trading Public Protection and Licensing; (back up for Mr Franco-Mendes): Public Protection and Licensing; and Mr Sean Dwyer, Highways Planning Manager, City Highways.

**Applicant:** Licensing Authority

**Ward:** West End

## **REPORT OF THE DIRECTOR OF PUBLIC PROTECTION AND LICENSING**

The Sub Committee considered a report of the Director of Public Protection and Licensing in which the Sub Committee was asked to vary the Designating Resolution passed by the Council on 25 July 1990 and rescind the designation of Pitch 1792 Charing Cross Road. The recommendation was made on the basis that the pitch was not currently in use owing to several years of construction work related to the Crossrail Programme works at Tottenham Court Road Station; the impact of Camden's West End Project; and additional development of the site above the existing Tottenham Court Road Station. This had meant that the highway had either been hoarded off or was under another temporary arrangement.

### **Presentation by Mr Francisco Franco-Mendes, Team Manager, Public Protection and Licensing**

Mr Francisco Franco-Mendes, Team Manager, Public Protection and Licensing, presented the report. He stated that, at present, there was no street trading licence associated with the pitch which had been in situ since the start of the Crossrail project in 2005. The previous license holder had been relocated and granted a permanent Street Trading Licence Pitch 1717 on New Bond Street.

Mr Franco-Mendes stated that a Suitability Assessment had concluded that both the highway and pedestrian levels surrounding Pitch 1792 had changed

considerably since the time the pitch had been designated and the pitch was no longer suitable for trading. Therefore, it was recommended that Pitch 1792 be de-designated.

Mr Franco-Mendes confirmed that the statutory consultation regarding the proposal had taken place and responses had been received from Highways Planning, the Metropolitan Police Service (MPS), Councillor Jonathan Glanz (Ward Councillor at the relevant time), and the West End Street Traders' Association, and that no objections had been received to the proposal to rescind the designation of this pitch.

**Presentation by Mr Sean Dwyer, Highways Planning Manager, City Highways**

Mr Dwyer stated that there had been major changes at this location since the granting of the street trading licence. He stated that large entrances to the Elizabeth [Underground] Line, which would serve Tottenham Court Road Station, had been constructed, and pedestrian numbers had already increased dramatically at this location. He stated that pedestrian numbers would increase further when the Elizabeth Line opened to the public.

Mr Dwyer went on to say that, if the pitch was reinstated at its original location, it would be in the middle of a reconstructed junction. The Chairman noted that this was illustrated at Paragraph 2.3 the NRP report<sup>5</sup> on Page 103 of the Agenda Pack.

In conclusion, Mr Dwyer stated that, it was the view of the Highways Authority that this location was no longer suitable for use as a street trading pitch.

**DECISION**

To **APPROVE** the proposal that the Designating Resolution passed by the Council on 25 July 1990 be varied to rescind the designation of Street Trading Pitch 1792 Charing Cross Road.

The Meeting ended at 1.00 am

**CHAIRMAN:** \_\_\_\_\_

**DATE** \_\_\_\_\_

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<sup>5</sup> A suitability assessment "Oxford Street District: Charing Cross Rd – street trading pitch assessment" had been carried out by NRP (Norman Rourke Pryme) and was attached to the report at Appendix A.