

**IN THE Highbury Corner Magistrates Court**

**CASE NO: 2001522020**

**IN THE MATTER OF AN APPEAL UNDER S.181 & SCHEDULE 5 OF THE LICENSING ACT 2003 AGAINST A DECISION OF THE LICENSING SUB-COMMITTEE OF THE LONDON BOROUGH OF CAMDEN ON 13 AUGUST 2020 IN RESPECT OF PREMISES KNOWN AS KIERA (DELIVERY SERVICE), 134 CHARING CROSS ROAD, LONDON WC2H 0LA**

**BETWEEN:**

**MUHAMMAD SHOAIB**

**(t/a Kiera (Delivery Service), 134 Charing Cross Road, London WC2H 0LA)**

**Appellant**

**-and-**

**THE LONDON BOROUGH OF CAMDEN**

**Respondent**

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**JUDGMENT OF JULIA NEWTON DISTRICT JUDGE  
(MAGISTRATES COURTS) FOLLOWING HEARING ON 16 SEPTEMBER 2021**

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**Background**

1. Mr Shoib has appealed against the decision of the Licensing Sub-committee "LSC" of the London Borough of Camden "LBC" to refuse to grant in full an application for a new premises licence in respect of the premises known as Kiera (Delivery Service), 134 Charing Cross Rd, London WC2H 0LA ("the premises"). The LSC hearing took place on 13 August 2020. Notice of the LSC's decision was sent out by letter dated 13 October 2020.
2. The application for the premises licence was made on behalf of Muhammad Shoib ("the Appellant") and was for a premises licence for delivery only service 24 hours, 7 days a week. The decision of the LSC was to authorise the supply of alcohol by delivery service, with conditions attached and for a limited number of hours.

3. The premises currently operates as a small convenience store on the ground level which is used as a shop floor and a basement used for storage. There are two premises licences in place, authorising the sale of alcohol for consumption off the premises. The most recent licence extends the original hours during which the premises may sell alcohol as follows: from Sunday until Thursday from 11:00 until 01:00 hours and on a Friday and Saturday from 11:00 until 02:00 hours. The shop itself remains open between 08:00 and 04:00 hours from Sunday to Thursday and 08:00 and 06:00 hours from Friday until Saturday.
4. The application for the new premises licence to authorise the sale of alcohol throughout the day and night, would operate in addition to the existing licences.
5. The Appellant is listed as the Designated Premises Supervisor.
6. The Premises are located within the Seven Dials Cumulative Impact Policy Area.
7. The application for the licence was received by the Licensing Authority on 7 May 2020 in accordance with section 17 of the Licensing Act 2003 "LA 2003".
8. Representations were made by the police (PC Joel Francis) and the Licensing Authority (Peter Agbley) as responsible authorities. The police suggested that the application should be rejected in its entirety, however acknowledged that the LSC could make an exception to the licensing policy relating to cumulative impact and in such a case recommended that all conditions proposed by the Appellant and the police be adopted.
9. The Licensing Authority's view was that the application should be rejected.
10. The contested hearing took place on 13 August 2020 the decision of the LSC was to grant the application but limited the hours to the LBC's Framework hours namely: Monday to Saturday 08:00 until 23:00 and on Sunday 10:00 until 22:30. In addition, eleven conditions were attached to the licence.
11. By letter dated 2 September 2020, the Appellant appealed against the decision on the grounds that:
  - a) the decision was made against the weight of evidence produced at the hearing and

b) it is in the public interest that the premises licence is granted in full and

c) such further grounds as may be raised upon hearing the appeal.

12. By letter dated 13 October 2020, LBC sent out notification of the LSC's decision.

13. The hearing of the appeal has been delayed as a result of the Covid pandemic and was ultimately heard on 16 September 2021. LBC were represented by Mr Waller and the Appellant by Mr Dadds.

14. I was provided with one lever arch file of documents totalling approximately 210 pages. I was assisted by skeleton arguments prepared on behalf of both parties.

## **Issues**

15. The Appellant seeks the grant of a premises licence for a delivery only service for 24 hours, seven days a week. LBC contests the appeal and invites the court to dismiss it.

16. In opening, on behalf of the Appellant, it was pointed out that the committee was made up of two rather than three members contrary to section 9 of LA 2003. No point was however taken on that. However, objection was raised to the fact that a cat had been visible during the remote hearing such that one of the panel members had therefore been distracted.

## **Evidence**

### Muhammad Shoaib

17. I heard evidence from the Appellant. He had provided three statements, and in addition explained more about the present operation. He confirmed that deliveries were already undertaken from the premises, using Deliveroo and Uber. The average number of deliveries were two deliveries per hour mostly after 4pm. He wishes to deliver groceries and alcohol 24 hours a day. He does not anticipate more than two orders per hour.

18. Deliveries have been undertaken for more than two years. Between midnight and 2am on Fridays and Saturdays this has been no more than 2 to 3 per hour. No complaints had been received from neighbours, police or the local authority. The order for delivery would be prepared in the basement and sealed so it is not possible to see what is inside and the order would be given to the delivery person.
19. Orders are placed through an "app". Orders are limited to small orders and so they do not deliver to parties.
20. The Appellant explained that he has been involved with the premises since 2014. There are two pre-existing licences in the name of his partner, Muhammad Shahzad.
21. The shop sells food, snacks and confectionery. Alcohol deliveries have already been taking place as permitted under the current licence. It would not be acceptable to have a limit on a new licence of two deliveries per hour. At present two deliveries at a time can be accepted. It is possible to limit the time on the app to a delivery time of 15 to 30 minutes. The Appellant is willing to accept that only two deliveries at a time should be made. It is not possible to say how many couriers would arrive within an hour.
22. It was explained that an arrangement was presently in existence with Deliveroo and Uber, so that couriers would not serve a noisy house or children or those under 25. A written agreement to that effect exists.
23. It was stated that two delivery drivers would be employed in addition to the existing arrangement with Deliveroo and Uber. Those drivers had not yet been identified, nor details of their terms of employment decided.
24. It was not possible to provide data on the percentage of deliveries made within the cumulative impact area.
25. It was indicated that the Appellant would agree to a condition to have bicycles or electric vehicles effecting deliveries. It would necessitate a conversation with Deliveroo and Uber, but he understood from a friend that such an arrangement is possible.

26. It is proposed that a hatch would be built onto the street at the premises, so drivers would not need to enter the store. That is not the way the business is operated at present.
27. The local convenience store presently has approximately 1000 product lines.
28. On further explaining how the app works, multiple orders might come in, however orders can be limited. If the tablet is closed, then it would not be possible to sell anything. There are no concerns about the drivers who attend at the moment, as they want to finish the job as soon as possible. He was able to assess this from the way they come and go.
29. The Appellant explained that he did not know the addresses to which the deliveries were currently being made because of data protection issues. That information is not passed on by Uber or Deliveroo.
30. In the future it is proposed that his own employed drivers would receive orders by phone. There is a proposal to make an app and website in the future, which would cover all legal points.

#### David Kaner

31. I heard from David Kaner, Chair of the Licensing Sub-Committee of the Covent Garden Community Association ("CGCA").
32. The CGCA supported LBC's decision to grant a licence for the delivery service of alcohol only during Framework hours and to impose additional conditions to the licence.
33. The CGCA is concerned that the licensing objectives of the prevention of public nuisance, the protection of children from harm and the prevention of crime and disorder would be harmed with the supply of alcohol by delivery services after 23:00 hours.
34. Public nuisance can arise from delivery activities inasmuch as there is noise and disturbance during the collection process and the delivery process. A late-night delivery service is likely to involve ordering alcohol for immediate consumption. Experience suggests that these types of delivery service are used by people who are in the area for a short time and are staying in short let accommodation or having unlicensed music events.

35. Alcohol for immediate consumption and being delivered in the early hours of morning is likely to be consumed by someone who has already been drinking. Crime and disorder are also linked to consumption of excessive amounts of alcohol.
36. Concerns about the protection of children from harm lie in the courier having responsibility for age verification. There is a risk to couriers in refusing to handover alcohol to someone who is already drunk or who cannot produce documentation to prove their age.
37. Mr Kaner confirmed that he had had a telephone call earlier in the morning with Adrian O'Brien, who had stated that he was unaware that deliveries were already taking place from the premises.
38. It was confirmed that no complaint had been made about the specific premises. The observations were made as a result of concerns following discussion within the Association.
39. The Seven Dials area has an estimated 15 to 20% Airbnb presence. During the Covid pandemic, he had witnessed around four or five unlicensed music events. Such events still continue to take place.

P.C. Joel Francis

40. PC Francis provided two statements; a second containing more detailed information about the reported crime figures which he had earlier provided.
41. The first confirmed that he had made representations to the LSC as he believed that there was potential for one or more of the licensing objectives to be undermined, namely the prevention of crime and disorder.
42. The Appellant was unable to provide police with an estimate of how many deliveries would be made to customers within the Seven Dials Cumulative Impact Zone. The Appellant was unable to explain why the proposed activities would not add to cumulative impact outside the absence of footfall.
43. Delivery services usually have a focus on keeping delivery times as low as possible to make operations efficient and popular with customers. Reduced delivery times are achieved by prioritising venues in closest proximity to the customer's address.

44. A reduction in hours was felt to be beneficial. Unsupervised drinking in the home in the early hours of the morning can impact on others living in the home as well as neighbours. Figures were provided as to the number of domestic incidents for the period between 1 June 2019 and 1 June 2020.
45. It was felt that the LSC's decision had been reasonable and proportionate.
46. No incidents relating to the management of the venue or the Appellant had been found for the period 13 August 2020 to 10 August 2021.
47. PC Francis explained that he had heard evidence in the hearing before the court, of which he had previously been unaware. For instance, the operator will not know which addresses are being delivered to.
48. Whilst he accepted that Deliveroo drivers would not have been drinking, nevertheless the delivery of alcohol increases the presence of alcohol in an already stressed area. Alcohol increases problems and may require already stretched police resources to deal with problems arising in the home. The availability of alcohol increases domestic issues. It was pointed out to PC Farmer that the statistics provided showed that there was less than one domestic incident per week in the area. He responded that each incident was a tragedy for the persons involved. Whilst this may not be a high or exceptional nuisance it impacts on crime and disorder and the protection of children. Domestic incidents are the worst that the police have to deal with.
49. No complaints have been made as far as he is aware about delivery drivers not checking age identification.
50. He reiterated that there were potential problems from an increase in unsupervised drinking. The fact that alcohol can be delivered from elsewhere in London, does not mean that a blind eye should be turned to something which potentially makes matters worse.

Peter Agbley

51. Mr Agbley, a Licensing Enforcement Officer with LBC, made a statement confirming that he had objected to the grant of the original application. His position is that the appeal should be rejected and that allowing a 24-hour

licence would go against LBC's policy which could add to the cumulative impact within the Seven Dials Cumulative Impact Area.

52. The prevention of public nuisance is a licensing objective in order to protect residents. LBC has a balancing act to perform to protect residents and to help businesses. For that reason, he is prepared to accept delivery of alcohol during Framework hours.
53. So far as he is aware there are no 24-hour licences in Camden.
54. The conditions suggested by him in the letter of representation on 19 May 2020, were thought to be sufficient for the Licensing Authority, but not for a 24-hour licence.
55. When asked if he recalled the presence of a cat during the remote LSC hearing on 13 August 2020, he recalled a hearing where a cat was present. He appreciated that the hearing was online and everyone was at home at the time.
56. It was accepted that no objections to the proposed application had been made by residents, the planning department, environmental health or the antisocial behaviour team.
57. It was accepted that complaints which he had received regarding online deliveries, related to the source of the delivery not the point of delivery. The complaints were about the noise from drivers whilst waiting and congregating, smoking chatting and banging doors. Public nuisance could be caused by deliveries outside daytime hours, especially early morning or late evening or night, as set out in LBC's statement of licensing policy.

#### Further evidence

58. Adrian O'Brien and Andrew Hunt, both of Flat 10, Shaldon Mansions, 134 Charing Cross Rd and Keith Hopkins of Flat 8 Shaldon Mansions, 134 Charing Cross Rd provided written statements. None of the witnesses attended. Mr Hunt had not provided a signed statement. On the Appellant's behalf, it was argued that no weight should be given to those statements. The makers of the statements were not there to be cross-examined. All statements



contained the same error regarding the name of the Appellant. These statements were dated the same date and contain similar wording.

59. The Local Authority officer has made a report (Sheridan O'Grady) and not attended, however no point was taken on that by the Appellant .

## **SUBMISSIONS**

### On behalf of LBC

60. On behalf of LBC, the closing submissions were structured as follows:

- i) current operation
- ii) proposed operation
- iii) cumulative impact
- iv) public nuisance
- v) harm to children
- vi) crime and disorder

the overarching submission being that the appeal should be dismissed.

61. The current operation is that of a local convenience store. Deliveries have been taking place through Uber and Deliveroo and were taking place at the time of the LSC hearing last year. It was only on the day of the hearing (16 September 2021) that LBC was aware that deliveries had been taking place. The Appellant had explained to the court that he switched off the app so does not undertake any deliveries after 2am, the time when the permitted hours under the current licence expires. He has not used the option to deliver groceries only after 2am. PC Francis is of the view that at least some apps are able to offer groceries only.

62. The proposed operation will continue alongside the current operation, but, access a new market. Uber and Deliveroo would continue to provide deliveries, with longer hours and the Appellant would operate his own system with two drivers. Under the present system, the Appellant stated that he could limit the number of orders for collection to two at a time. What is crucial is that he accepted that he cannot say how many orders per hour will be collected through the Uber and Deliveroo system. The court has heard

how quickly Uber and Deliveroo operate and orders are fulfilled. It can be assumed that there will be many more than two per hour.

63. The Appellant is not sure whether he would be able to limit the type of vehicle used for deliveries through agreement with Uber and Deliveroo; this is an unknown factor. With deliveries being undertaken by Uber and Deliveroo, the age and address criteria are conducted entirely outside the Appellant's control and therefore the Licensing Authority has no control either.
64. The Appellant intends to employ two delivery drivers. He stated that he would accept two deliveries per hour per driver. Those individuals have not been identified yet, nor have details about their employment status been decided. Relevant legal agreements and app technology have not yet been thought through. It is suggested that they will wait downstairs in the basement, but it is realistic to assume that they will want to stretch their legs.
65. A new hatch is proposed, meaning that handovers of deliveries would take place on the street. The reality of the operation is that customers will want alcohol for immediate consumption. If customers simply wanted groceries, the Appellant would already offer this delivery service. The operation is going to be alcohol driven. There is no difficulty with that taking place up until 11pm (or 10.30pm on a Sunday).
66. Cumulative impact was considered. There is a difference between the cumulative impact at the point of the premises and residents above on the one hand and at the point of delivery, on the other.
67. When considering the cumulative impact at the premises, it is important to consider the impact of the existing licences as well as the proposed new arrangements. These licensed premises are very close to residents' homes.
68. Cumulative impact at the point of delivery, it is acknowledged, is a more difficult point. The section 182 Guidance at paragraph 14.20 provides "cumulative impact is the potential impact on the promotion of the licensing objectives of a number of licensed premises concentrated in one area."
69. Paragraph 14.21 provides "in some areas where the number, type or density of licensed premises, such as those selling alcohol or providing late night refreshment, is high or exceptional, serious problems of nuisance and

disorder may arise outside or some distance from those premises. Such problems generally occur as a result of large numbers of drinkers being concentrated in an area, for example when leaving premises at peak times or when queueing at fast food outlets or for public transport.”

70. It is accepted that there is a tension, as there is at least an implication that cumulative impact relates to the concentration of licensed premises within one particular area, which does not sit comfortably when considering the point of delivery. PC Francis makes the point that if deliveries are in a local area then the court can consider the impact on the licensing objective of public nuisance. There is still a cumulative impact at the point of the premises which sits very comfortably within the guidance.
71. When considering public nuisance, the hearsay statements can be considered. The mistake in terms of the name at the top of the document is not as serious as made out by the Appellant. The name is that of the current premises licence holder. The statement from Mr Hunt has been signed and sent by email to instructing solicitors on 22 August 2021. Those hearsay statements should be given some weight.
72. The nature of the public nuisance will arise from the delivery drivers going to and fro talking. It is accepted that noise from vehicles will be less if deliveries are carried out by electric vehicles and bicycles. There is an issue about toilet facilities for Uber and Deliveroo drivers, although toilet facilities will be available for proposed employed drivers. There will certainly be noise through the delivery process. In addition, those ordering alcohol are likely to be customers ordering for immediate consumption.
73. The licensing objective of the protection of children from harm is engaged, inasmuch as the age verification process is not controlled. The Appellant has to ensure that that takes place. If the Appellant employs his own drivers, PC Francis accepted that they could be trained. However, when using Uber and Deliveroo couriers, the identification cannot be scrutinised by the Appellant nor the Licensing Authority which is a cause for concern.
74. When considering crime and disorder, PC Francis has set out incidents and scrutinised the available data. Those incidents might not have been caused by

alcohol, but it is reasonable to infer that alcohol was a contributing factor in some of the incidents. PC Francis has indicated that he is content with deliveries within the Framework hours.

75. The licensing policy of LBC and the section 182 Guidance recognise that after 11pm, matters are different. That is why the Framework hours have been set. Mr Agbley gave evidence that he was not aware of any 24 hour licence being granted by LBC; he is only aware of licences being granted within Framework hours. The court is asked to consider this and to be consistent.

On behalf of the Appellant

76. It was submitted that there was no evidence of complaint about delivery to homes. There had been no complaints in the last two years relating to the premises. The objection to the proposed licence was purely on policy grounds. It was astonishing that the court was being invited to consider that no other 24 hour licences had been granted and therefore to be consistent.

77. No residents have submitted complaints. No objections have been made by any councillors. No complaints have been made from environmental health on the basis of public nuisance.

78. It is reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. No representations have been made in this case by environmental health. They are the leading authority on public nuisance if it is thought that the licensing objectives are being undermined.

79. The Residents' Association make no complaint about the specific premises. Mr Kaner had not been asked to represent any residents. There was no primary evidence of data on issues of home delivery. The Association had not passed a specific resolution about this application but had simply had a general discussion. A standing resolution exists enabling representations to be made.

80. Dealing with the current operation, this is a local convenience store. It offers for sale a range of about a thousand goods. Prepacked bread is sold rather than fresh bread.
81. The Appellant wants to take advantage of new technology. Home deliveries have been taking place for years. He wants to find other ways of doing business.
82. Paragraph 2.5 of the section 182 Guidance confirms that "it will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority to ensure that the managers appointed at the premises are competent and appropriately trained." The local authority is not involved in micromanagement.
83. The Appellant as an employer, is vicariously liable and ultimately the responsibility for complying with requirements is his. When considering age verification, there is no evidence from PC Francis that the present system is not working.
84. The issue is not the number of orders which are made, but the number of persons collecting the orders. That is a matter that the Appellant will have to manage. There is no evidence of problems outside the premises or some distance away. There is a kebab shop next door and Charing Cross Road is busy at all times. The Appellant has indicated that he cannot manage the number of orders, but he can manage the slots and can control the flow of delivery times. On behalf the Respondent, it was suggested that the evidence had been different.
85. It was submitted that drivers do not want to wait around. They want to pick up their order and go on their way.
86. When considering the issue of age verification there has been a suggestion that there is no control over age verification when using apps. However, the proposed condition sets out the requirement that any courier utilised in the delivery process must adopt the challenge 25 policy. The Licensing Authority has indicated that it is content if the conditions set out at page 61 of the bundle are met.

87. Dealing with cumulative impact, the court was referred again to the section 182 Guidance at paragraphs 14. 21, 14. 22 and 14. 41.
88. A general assertion has been made that alcohol contributes to crime and disorder. Evidence relates to 42 dwellings and 51 incidents in the last year. No evidence has been introduced of a causal link between alcohol and those incidents. It has been suggested that it is reasonable to infer such a causal link. That is incorrect. Data must be presented properly with proper methodology otherwise it is arbitrary or unfair. There has been no evidence of a direct causal link between domestic incidents and alcohol.
89. Dealing with the issue of cumulative impact, if this licence were granted then nothing would be added it would simply enable delivery after 2am. The pre-existing licence permits of sales until 2am.
90. Cumulative impact relates to the numbers of premises. There is not a concentration of premises receiving home deliveries. It is suggested that there may be public nuisance as a result of drinking at home. The court has heard about domestic incidents and unlicensed music events, but very importantly environmental health should be the ones objecting on the grounds of noise. It is hard to argue that cumulative impact can arise from home delivery. Cumulative impact is where there are a number of premises and dispersal from premises is concentrated in a small area. Delivery at home cannot be part of cumulative impact.
91. The Licensing Authority has said that it is happy to grant the licence until 11pm, but not up to the existing licence time of 2am. This is a policy argument. From a practical point of view a person can obtain orders for alcohol on the phone from Ealing, Westminster and other areas.
92. If problems arise, there are review provisions. This premises licence has been extended without complaint. The business will not add to cumulative impact because it relates to home delivery.
93. On behalf of the Appellant, it was urged upon the court that the licence be granted with the proposed conditions as set out on page 61 of the bundle.

## **Legal Principles**

94. The appeal is by way of complaint and the strict rules of evidence do not apply. Hearsay evidence is admissible. (Westminster CC v Zetfair Ltd. (1989) 88 LGR 288.)
95. Licensing authorities (and by extension this court on appeal) must carry out their functions:
- a. with a view to the promotion of licensing objectives
  - b. having regard to the council's statement of licensing policy and the *Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018)*, ("the section 182 Guidance"). LBC's *Statement of Licensing Policy 2017-2022* ("the Licensing Policy"), which covers the period from 31 January 2017 to 30 January 2022.
96. The appeal is by way of rehearing of the Council's decision and the Court is not limited to the evidence which was before the Councillors (Sagnata Investments Limited v Norwich Corporation [1971] 2 QB 614).
97. The court ought to pay " *....great attention to the fact that the duly constituted and elected local authority have come to an opinion on the matter, and ought not lightly to reverse their opinion.....the function of a court of appeal is to exercise its powers when it is satisfied that the judgment below is wrong, not merely because it is not satisfied that the judgment was right.*" (Stepney BC v Joffe [1949] 1 KB 599).
98. The approach of the Court to appeals of this nature is set out in a number of cases including R v (Hope and Glory) v Westminster Magistrates Court [2011] PTSR 868, [2011] EWCA Civ 31, Noor Mohammed Khan v Coventry Magistrates' Court [2011] EWCA Civ 751 and Sevket Gurgur v London Borough of Enfield [2013] EWHC3482 (Admin).
99. In determining an appeal:
- (a) The Court must carry out its functions under the LA 2003 with a view to promoting the four licensing objectives. Of those the prevention of crime and disorder, public nuisance and the protection of children from harm are relevant to this appeal.
  - (b) The Court must 'have regard to' the Council's Licensing Policy and section 182 Guidance issued by the Secretary of State.

- (c) The Court must consider proportionality.
- (d) The Court should hear evidence including new evidence arising since the original determination, which may, if appropriate, include hearsay, and give proper weight to the evidence in reaching its judgment.
- (e) The Court is not concerned with the way the Respondent Licensing Authority approached its decision or the way it was made.
- (f) The Court must note the decision of the Respondent Licensing Authority with careful attention paid to the reasons given by the Authority.
- (g) The Court should not lightly reverse the decision of the LSC.
- (h) The Court should come to its own decision on the basis of the evidence before it and, if the Court disagrees with the decision of the LSC, in light of the evidence before it, the Court should go on to consider whether because the court disagrees with the decision of the LSC it was therefore wrong.
- (i) In determining an appeal, the Court may:
  - i) dismiss the appeal,
  - ii) substitute for the decision appealed against any other decision which could have been made by the Licensing Authority,
  - iii) or remit the case back to the Licensing Authority to dispose of it in accordance with the decision of the Court,  
and make such order as to costs as it thinks fit.
- (j) The Appellant bears the burden of persuading the Court that the LSC ought to have exercised its discretion differently.
- (k) The Court can take such steps as it considers appropriate for the promotion of the licensing objectives.



## **Analysis**

100. I bear in mind that the Appellant bears the burden of persuading the court on a balance of probabilities that the LSC was wrong to limit the operational hours of the proposed alcohol delivery service to the hours of 08:00 to 23:00/22:30.
101. It has been suggested on behalf of the Appellant, that the decision of the LSC was in some way undermined because of the presence of a cat in the company of one of the decision makers during the remote hearing. Nothing which I have heard leads me to consider that this has any bearing on the decision of the LSC or of the Court. The Appellant takes no point on the makeup of the LSC being two rather than three participants and I make no determination in that regard.
102. The premises are situated in the Seven Dials Cumulative Impact Policy Area where there is a presumption to refuse all new or variation applications. The presumption is rebuttable.
103. The premises were (at the time of this application) licensed for the off sales of alcohol by retail between the hours of 11:00 and 01:00 from Sunday to Thursday and 11:00 and 02:00 on Friday and Saturday. The evidence of the Appellant is that deliveries have been made from the premises, during those hours over the last two years. It is accepted by LBC that deliveries of alcohol are permitted under the two licences which existed before the LSC hearing on 13 August 2020. Those licences remain extant.
104. The application form for a premises licence submitted on behalf of the Appellant, describes the name of the premises as Kiera (Delivery Service). The description of the layout of the premises is recorded "delivery service only – the premises is on one floor with storage in the basement". In response to the question "Will the premises be exclusively or primarily used to sell alcohol?" the response is given as "yes". It appears therefore that the Appellant intends to increase the use of delivery services for off sales and for the operation to be alcohol driven.

105. Seven conditions were suggested in the operating schedule on the application form for the delivery service only, some of which were adopted by the LSC.
106. The Appellant's evidence was that currently, orders are received by way of an app. Deliveries are undertaken by couriers through Uber or Deliveroo. It was stated that the Appellant has written agreements with Uber and Deliveroo which requires them to verify delivery addresses and also requires couriers to verify the age of the recipient, that the recipient is not intoxicated and that delivery is not being made to a noisy venue. There is thus no direct scrutiny by the Appellant of the recipients of the deliveries. There is no scrutiny of the person receiving the goods or the circumstances which prevailed at the point of delivery.
107. Copies of the written agreements between the Appellant and Uber or Deliveroo have not been provided by the Appellant. The Appellant confirmed that he was not aware of the addresses to which deliveries were made. Uber and Deliveroo would not pass on this information to him, as it would be in breach of the Data Protection Act. There is therefore no scrutiny by him of the addresses to which deliveries are made; nor is it possible for the Licensing Authority to scrutinise arrangements.
108. The Appellant indicated that deliveries would be prepared in the basement and sealed, so that the contents could not be seen. In this case, if couriers are unaware of the contents of the delivery, they will not be put on notice that age verification is required.
109. The licensing objective of prevention of harm to children is engaged. The LSC was clearly alive to the issue, as conditions attached to the licence which it granted, prohibit the delivery of alcohol to a person under the age of 18 and require couriers to operate a challenge 25 scheme as a safeguard.
110. The Appellant was unable to say how he could enforce the agreement with Uber or Deliveroo to ensure that deliveries were not made to underage customers or noisy addresses. It is difficult to see how it could be enforced.
111. The Appellant was not able to indicate how many deliveries there would be if the appeal were successful. At present, it is possible to accept two

deliveries at a time, however he does not wish to limit the number of deliveries to two per hour. The number of couriers who would arrive in an hour would depend on the orders received.

112. The Appellant stated that he believed that an agreement could be put in place so that deliveries undertaken by Uber and Deliveroo would be by bicycle or electric vehicle only. However, no evidence from Uber or Deliveroo was provided that this is indeed possible. The evidence of the Appellant was simply something that the Appellant had been told by a friend who worked in a restaurant in Stratford.

113. The Appellant indicated that he has yet to develop an app or website for the new business operation. There appears to have been little planning for the requirements of the proposed business model.

114. The licensing policy of the LBC recognises the potential for public nuisance to be caused to those living near to licensed premises by deliveries being made in connection with the premises. It is recognised that deliveries outside daytime hours especially early in the morning and late evening or night, may cause public nuisance and measures should be put in place to ensure that arrangements prevent unreasonable disturbances caused by delivery of goods and services to the premises.

115. There remains a considerable risk of nuisance affecting residents. I attach some weight to the evidence of Adrian O'Brien, Andrew Hunt and Keith Hopkins. Their evidence is that noise levels are frequently high and the addition of more drivers arriving at the premises, waiting and leaving would add to the level of noise produced. It is felt that the presence of more people would add to problems which already exist.

116. The evidence of Mr Kaner is that noise and disturbance will take place during the collection process. The premises are on the ground floor of a residential building. There is a particular concern about toilet facilities for delivery personnel, as public toilets are closed after 23:00.

117. I accept that deliveries after 23:00 are likely to be to residential addresses and there is a risk of noise at the delivery point. As pointed out, where premises comprise blocks of flats, the sound of the main doorbell to

one flat can be audible in another. Doors opening and closing and conversation at the point of delivery is also capable of disturbing neighbours late at night.

118. Mr Kaner stresses that a late-night delivery service of alcohol, is likely to be for immediate consumption. From his experience, this type of delivery service is more often used by people who are staying in short-let accommodation or are holding an unlicensed music event. It is likely that the person ordering alcohol for delivery has already been drinking. When a delivery is made, it is not possible to manage the situation, and it would be a brave delivery person who decided that the recipient was already drunk enough and refused to hand over the alcohol.

119. I accept his evidence and consider his concerns to be valid. It is difficult to see how any conditions can be imposed which would prevent additional noise nuisance as feared. As already highlighted, the Appellant does not at present have any information about the addresses to which deliveries are made.

120. The Appellant, it appears, still wishes to sell alcohol to persons attending the convenience store. The Appellant has not offered to surrender the two pre-existing licences.

121. PC Francis states that delivery services usually focus on keeping delivery times as low as possible to make the operation efficient and popular with customers. Reduced delivery times are achieved by prioritising venues in the closest proximity to customers' addresses. This means that there is a realistic chance that deliveries will be made within the cumulative impact area so and have an impact. Unsupervised drinking in the home in the early hours of the morning can impact others living in the home and neighbours as well as the well-being and health of the person consuming alcohol.

122. Mr Agbley's evidence is that an alcohol delivery service may lead to the sale of alcohol to children and I accept that there is an increased risk that this would be the case.

123. Domestic incidents during the early hours exacerbated by intoxication are particularly problematic for police to resolve. PC Francis referred to LBC's

policy relating to Framework Hours, at paragraph 5.4 which states “against this background, we consider that the possibility of residents being disturbed late at night and in the early hours of the morning, is a proper matter for us to consider when addressing hours for licensable activities.”

124. Whilst the police opposed the granting of the application in its entirety, eight conditions were suggested, four of which were adopted by the LSC. It was suggested that off sales should be limited until 1am Sunday to Thursday and 2am Fridays to Saturdays in line with the already existing licences. Three other conditions not adopted related to the purchase of alcohol by the premises licence holder and designated premises licence holder.

125. Both parties agree that the pre-existing licences will continue to allow deliveries to be made until 1am and 2am in accordance with the permitted hours therein set out. The decision of the LSC in relation to this application limited the evening hours for deliveries to 23.00 (22.30 on Sundays). However, the pre-existing hours in the morning were changed to commence earlier at 8.00 (10.00 on Sundays). In my view the decision properly seeks to limit the hours of delivery and to impose safeguards, which the pre-existing licences do not.

126. The provisions of the pre-existing licences are not something which this Court can interfere with. Those licences are not before the Court for consideration. The Court is tasked simply with considering Mr Shoib’s appeal.

127. The Respondent raised the issue of cumulative impact. Referring to the section 182 Guidance, at paragraph 14.21, cumulative impact is the potential impact on the promotion of the licensing objectives of a number of licensed premises concentrated in one area.

128. Paragraph 14.21 states that in some areas where the number, type or density of licensed premises, such as those selling alcohol or providing late night refreshment, is high or exceptional, serious problems of nuisance and disorder may arise outside or some distance from those premises.

129. Paragraph 14.39 states “when publishing a cumulative impact assessment (“CIA”), a licensing authority is required to set out evidence of problems that are being caused or exacerbated by the cumulative impact of

licensed premises in the area described. The evidence is used to justify the statement in the CIA that it is likely that granting further premises licences and all club premises certificates in that area (limited to a kind described in the assessment), would be inconsistent with the authority's duty to promote the licensing objectives."

130. Paragraph 14.44 recognises that a CIA should never be absolute. "Statements of licensing policy should always allow for the circumstances of each application to be considered properly and for applications that are unlikely to add to the cumulative impact on the licensing objectives to be granted." Further on in that paragraph, it is stated "the impact can be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high-capacity public house might add to problems of cumulative impact, a small restaurant or theatre may not."
131. LBC's licensing policy states at paragraph 6.2 "a cumulative impact policy creates a rebuttable presumption that we will normally refuse an application for a new premises licence or a variation of an existing premises licence which is likely to add to the existing cumulative impact". There are two cumulative impact policy areas in the London Borough of Camden, one of which is the Seven Dials cumulative impact policy area, in which the premises are located.
132. At paragraph 6.13, it is stated "following research in 2004, we identified two areas within the borough where the number, type and density of premises selling alcohol for consumption *on* (my emphasis) the premises were having a serious negative impact on the local community and local amenities."
133. Further at paragraph 6.17 it is stated "we are satisfied that the two cumulative impact policy areas contain a high number, type and density of premises selling alcohol or providing late night refreshment and that serious problems with nuisance and disorder arise outside or some distance from the premises. It is our view that the impact on surrounding areas of the premises taken together has a negative impact on the promotion of the licensing objectives, and it is necessary to restrict the number of premises and

extensions to licensable activities at premises in those areas in order to manage that cumulative impact.”

134. At paragraph 6.22 the policy records “we will consider each case on its merits, although applicants should be aware that we would only depart from the policy in respect of cumulative impact in exceptional circumstances.”

135. Taken together it is clear from those paragraphs, that the cumulative impact policy relates primarily to premises with **on** sales and the problems caused by the consumption of alcohol as a result of large numbers of drinkers being concentrated in an area.

136. Whilst therefore the proposed 24 hour delivery service may not strictly add to the cumulative impact in the sense envisaged by both the section 182 Guidance and LBC’s licensing policy, nevertheless if this application is granted, it would effectively increase the availability of alcohol to consumers in an already stressed area, particularly during the night time, albeit by means of a delivery service.

137. PC Francis provides details of the domestic disturbances and other types of crime and disorder in proximity to the premises. Whilst I accept that there is no direct evidence of a link between those reported crimes and alcohol delivery services generally, increasing the unsupervised availability of alcohol for consumption off premises increases the risk of crime and disorder. In a domestic context, this also exposes children to the risk of harm. Extra pressure is inevitably placed on emergency services.

138. The risk is made more manageable by limiting the operational hours of premises licences.

139. At off licence premises, there is direct supervision when a customer places an order for alcohol. Staff can refuse to serve the customer who appears to be intoxicated or under-age. Refusal logs are kept; CCTV is available to be reviewed by the responsible authorities. Where alcohol is served by means of a delivery, the items have already been paid for before the courier arrives at the delivery location. It is not realistic to expect a courier, eager for the next job, to wait for a customer to produce ID documents or to establish that the recipient is the same person as the one

who placed the original order. The Appellant acknowledges the speed with which couriers undertake their tasks in his evidence, when indicating that drivers do not wait around, as they wish to finish the job as soon as possible. He has seen this from the way drivers come and go.

140. The responsible authorities are unable effectively to monitor couriers in a delivery only model as envisaged by the Appellant.

141. I do not consider the argument that similar delivery operations run elsewhere in London to be a persuasive one. In considering this application, I take into account the factors which are relevant to these premises and its location. Each application must be considered on its own merits and in accordance with LBC's statement of licensing policy.

142. I take into account the need to balance the Appellant's legitimate business interests against the requirement to promote the licensing objectives. I accept that home delivery for instance reduces footfall, however it carries the risks outlined above.

143. The LSC in their deliberations made the following remarks:

- "allowing a 24-hour licence would go against the hours policy and they would not be comfortable allowing licensable activities outside of Framework hours.
- If minded to grant the application, the panel would want condition 3 set out by the licensing authority to be added to the conditions of the licence:  
-off sale and delivery alcohol shall be limited to 08:00 – 11pm on Mondays to Saturdays and 10:00 to 10:30pm on Sundays.
- The conditions set out by the applicant should be included on the licence.
- There should be a maximum of two vehicles at the premises at one time, these should either be bicycles or electric vehicles to minimise the nuisance caused by drivers coming in and out.



- The panel believed that these conditions would help to avoid nuisance in the special policy area.”

144. I have considered the decision of the LSC having heard all the evidence in the case. I have heard evidence which was not available to the LSC. I take into account that I should not lightly reverse the decision of the LSC. In light of the evidence I have heard, I do not consider the decision of the LSC to be wrong. The Appellant has not in my judgement, discharged the burden of proving on the balance of probabilities, that the decision of the LSC was wrong. The hours cited fall within LBC’s policy on “Framework hours”. It is implicit in this policy and guidance that the public nuisance licensing objective is upheld when hours of delivery are limited to 08:00 – 23:00 and 10:00 until 22:30 on Sunday.

145. Eleven conditions were added to the licence:

- i) where the supply of alcohol includes delivery to the customer, the licence holder shall ensure that specific procedures are in place and that the activity does not cause nuisance at or near the premises.
- ii) Deliveries which contain alcohol will only be delivered to a person at the address who is over the age of 18. Alcohol will not be left at the address unless it is accepted by a person over the age of 18.
- iii) Off sales and delivery of alcohol shall be limited to 08:00 – 23:00 on Mondays to Saturdays and 10: 00 – 22:30 on Sundays.
- iv) No patron is allowed to leave the confines of the venue with any opened drinking vessel.
- v) Any couriers utilised in the delivery process must operate a Challenge 25 scheme as a safeguard against provision to underage recipients.
- vi) Payment of the off sales will only be accepted through card transaction or through bone fide online payment services prior to delivery, there should be no cash payments upon delivery.
- vii) No order of alcohol should be prepared in the presence of any customers.

- viii) Sales of alcohol should only be allowed if delivered to a verified or registered residential address and or business occupied by the customer.
- ix) Alcohol shall not be sold in an open container, be opened in the premises or be consumed in the premises.
- x) No delivery shall be made to an A1, A3 or A5 premises i.e. a convenience shop, restaurant or takeaway establishment.
- xi) There should be a maximum of two vehicles at the premises at one time; these should be either bicycles or electric vehicles.

146. These conditions were made up of a combination of suggestions made by the Licensing Authority, the police and the Appellant, as well as the final two conditions being imposed following the evidence which had been heard by the LSC.

147. I consider the conditions to be proportionate. I have weighed in the balance the competing interests of the Appellant and police and Licensing Authority and considered the promotion of the licensing objectives.

### **Decision**

148. In considering this appeal, I have had regard to the various tests set out above. I do not consider the LSC's decision was wrong. It follows therefore that I dismiss the appeal.

### **Costs**

149. My preliminary view is that costs ought to follow the event, subject to my assessment to ensure the quantum is just and reasonable, in accordance with s.64 of the Magistrates' Court Act 1980. I have had regard to any applicable principles set down in *Bradford MBC v Booth [2001] LLR 151* and *R (Perinpanathan) v City of Westminster Magistrates Court [2010] EWCA Civ 40*.

**Signed:**

**Dated:**