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Leeds District Licensing Department

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14th January 2016

Paul Nathan-Geary
 4 High Street
 Aldborough
 York
 YO51 9ET

cc. Entertainment Licensing Section – Leeds City Council Civic Hall Leeds LS1 1UR.
 cc. Health & Environmental Action Service – Leeds City Council Millshaw Park Way LS11 0LS

NOTICE OF OBJECTION BY A RELEVANT PERSON
TO A 'STANDARD' TEMPORARY EVENT NOTICE
SECTION 104(2) as amended – LICENSING ACT 2003

PREMISES: Café@Lamberts Yard, Second Floor 162/163 Briggate Leeds LS1 6LY.
(PREM/03519/001)

Your 'standard' temporary event notice was received by the West Yorkshire Police at the above address on 11th January 2016 via Leeds City Council electronically . The notice relates to licensable activities at the premises on 30th January 2016 from 1900 into 31st January 2016 until 0130-:

I, **Bob Patterson Leeds District Licensing Officer for West Yorkshire Police**, hereby give you notice that I intend to object to your 'standard' temporary event notice.

West Yorkshire Police are satisfied that allowing the premises to be used in accordance with the notice would undermine a licensing objective, for the following reasons-:

- *The Temporary Event Notice given here, is for premises which have a current premises licence which includes a condition that stipulates, "the licence would be conditioned such that no Temporary Event Notice will be applied for in relation to this Premises Licence",*
- *Failure to comply with any condition attached to a licence is a criminal offence, as it clearly states at paragraph 10.2 of the current statutory guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 (see attached), and*

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- *Therefore, this objection is raised by West Yorkshire Police who are satisfied that to allow the premises to be used in accordance with the notice would undermine the prevention of crime (and disorder) objective, solely by breach of this licence condition.*

The origins of this condition have a unique history which are completely relevant to these proceedings.

Leeds City Centre has been subject to a Cumulative Impact Policy (CIP) since 2005, and has subsequently gone through a number of changes. As from January 2014, the Leeds City Centre CIP was modified to adopt a red, amber and green zone policy, whereby premises applying for authorisations in the different zones were treated differently.

The red zone symbolised the most problematic area in terms of crime and disorder statistics provided by West Yorkshire Police in formulating the zonal policy.

In line with Leeds City Council's Statement of Licensing Policy at the time, the red zone then related to Call Lane and the immediate surrounding areas which included the lower end of Briggate, and applicants had to prove to be "exceptional cases" for the licensing authority to consider granting applications in this red zone area.

Café @ Lamberts Yard applied for a premises licence in September 2014. Representations based on the City Centre red zone policy were raised by the licensing authority, the environmental department and West Yorkshire Police. A hearing took place on 27th October 2014, and after persuading the sub-committee presiding on the day of the hearing that they were an 'exceptional case', a premises licence – PREM/03519/001 – was issued to Lamberts Yard Limited for premises at 162-163 Briggate for the second floor.

As a part of the hearing which took place on the 27th October 2014, and in an attempt to pass the 'exceptional test', the legal representative for the applicant on the day, amongst other things, significantly "...also confirmed that no Temporary Event Notices would be applied for in relation to the Premises Licence" - (see attached).

As part of the decision making process to treat this as an 'exceptional case', clearly the Sub-Committee on the day in question took this into consideration, as the licence was granted with this offer imposed as a condition of the licence, albeit this was not the only offer which the Sub-Committee considered.

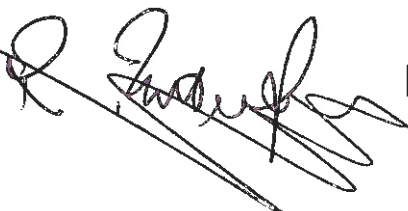
Temporary Event Notices (TEN's) normally, have to be ignored as they do not fall within the definitive wording of the City Centre CIP for all zones irrespective of colour. But a condition of a premises licence preventing TEN's being applied for outright is a unique and completely different set of circumstances anyway, and, especially as this was a condition specifically offered to obtain a licence in the red zone area, this cannot be ignored.

Since the inception of the red zone within the City Centre CIP in 2014, Sub-Committee's have taken applications in this part of the City Centre more seriously than normal. Applications which implicated the policy have been significantly amended or downgraded and in one case refused. Those which have passed the 'exceptional' test are rare, which include these premises, but where the subject condition was clearly a decisive factor in the Sub-Committee actually reaching that decision in this case.

Notwithstanding the contents of acknowledgement in the cover letter submitted by the applicant on this occasion, it is still the opinion of West Yorkshire Police, that allowing this TEN will completely circumvent the red zone CIP process and undermine all that has gone on since January 2014 in this area.

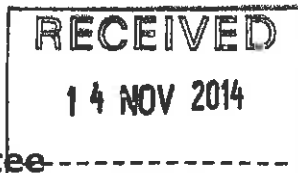
West Yorkshire Police therefore ask a presiding Sub-Committee at a subsequent hearing, to give the premises user a counter notice under Section 105 Licensing Act 2003, on the grounds stipulated at the beginning of this objection notice.

Bob Patterson.
Leeds District Licensing Officer.
West Yorkshire Police.



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Notice of Decision
Of the Licensing Sub Committee



Date of Hearing: 27th October 2014
Determination Date: 27th October 2014
Notice of Decision: 5th November 2014

Members: Councillor Jack Dunn (Chair)
Councillor Ghulam Hussain
Councillor Neil Buckley

Legal Officer: Joy Lounds

Committee Clerk: Angela Bloor

Licensing Officer: Philomena Carville

Applicant: Lamberts Yard Limited,

Premises: Cafe@Lamberts Yard, Second Floor, 162 - 163 Briggate,
Leeds, LS1 6LY,

Application: Grant of a Premises Licence

Attendees: Applicant; Mr N Geary & Mr M Firth
Solicitor for applicant; Mr C Rees Gay
West Yorkshire Police; Bob Patterson, Sgt Dave Shaw &
PC Cath Arkle
Environmental Health; Scott Higgins & Gary Mann
Entertainment Licensing; Susan Holden

This application was brought before the Licensing Sub Committee due to the receipt of relevant representations

The Licensing Sub Committee considered:

1. The report from the Head of Licensing and Registration
2. Licensing Act 2003.
3. Guidance issued by the secretary of State of Culture Media and Sport pursuant to Section 182 of the act.
4. Relevant Licensing Objectives.
5. The statement of Licensing Policy 2011 – 2013.
6. Representations received from responsible authorities.
7. Representations received from other persons.

Having taken all these matters into account the Licensing Sub Committee have agreed to **grant** the application in line with the copy of the licence attached at Appendix 2.

We would draw your attention to the following sections on the enclosed licence:

Page 1 and 2 detail the activities and hours of operation.

Annex 1 contains the mandatory conditions and embedded restrictions.

Annex 2 contains the conditions consistent with the operating schedule.

Annex 3 details of conditions attached after a hearing by the Licensing Authority.

The reason for this decision is as follows:

The Licensing Sub-Committee considered an application for the grant of a Premises Licence made by Lamberts Yard Ltd for Café @ Lamberts Yard, Second Floor, 162-163 Briggate, Leeds, LS1 6LY.

Mr Christopher Rees-Gay of Woods Whur Solicitors attended the Hearing to present the application. He was accompanied by Mr Nathan Geary and Mr Matthew Firth, the Premises Licence holder and the proposed Designated Premises Supervisor (DPS).

The premises are located within the red area of the Council's City Centre Cumulative Impact Policy and had attracted representations from a number of Responsible Authorities including the Police, Environmental Protection, the Licensing Authority and Health & Safety. Accordingly, PC Cath Arkle, Sergeant Shaw and Mr Patterson (of West Yorkshire Police), Mr Scott Higgins and Mr Gary Mann (of Leeds City Council Environmental Protection) and Ms Sue Holden (of Entertainment Licensing) attended the Hearing to comment on their representations and to answer questions from the Panel. A representative from Health & Safety did not attend the Hearing as conditions had been agreed prior to the Hearing and accordingly its representation had been withdrawn.

In addition to the papers contained within the report, the applicant provided copies of further documentation, copies of which had been supplied to all the Responsible Authorities. The applicant's additional information set out the background to the premises and proposed new conditions, together with copies of PR and publicity materials, the proposed dispersal policy, a copy of the noise assessment report, plans of the premises and other items.

In presenting the application, Mr Rees-Gay advised the Panel that the second floor premises at Lambert Yard, the proposed licensed area, would operate as a multi-functional gallery and events base, designed to complement the retail offer on the first floor. The second floor area would be used to host "pop-up" retail events, product launches, fashion shows, exhibitions and bespoke fashion events. During the day the second floor area would operate as a café, but from 6 pm onwards the space would only be open for promoted events and private hire.

Mr Rees-Gay referred to the regeneration of Lamberts Yard, which contained a Grade 2 listed building. Part of the earlier regeneration of the area had included the granting of a licence to "Rare" a restaurant which operated on the ground floor of Lamberts Yard. This was very much a food led offering, not an alcohol led offering, and the licence was conditioned to maintain a minimum of 70 covers at all times.

Mr Rees-Gay drew the Panel's attention to the Leeds Fashion Pioneer programme which was supported by Councillor Yeadon and partially funded by Leeds City Council. He referred to the money that had been invested in the redevelopment of Lamberts Yard and how, if the application were granted, it would lead to the employment of 18 people. Mr Rees-Gay emphasised that the food offering was not cheap and was designed to attract high-end and more discerning clientele. They did not want to attract the same sort of clientele that would frequent the surrounding high density vertical drinking establishments and late night clubs. Mr Firth referred to the minimum £600 room hire fee and that it was the intention to appeal to corporate clients such as KPMG, Royal Bank of Scotland and private parties.

* Mr Rees-Gay advised the Panel that in light of the representations received from the police and other Responsible Authorities the application had changed substantially since first submitted. He confirmed that there would be no application for a minimum of 20 occasions per year to operate to 02:00 hours. He also confirmed that no Temporary Event Notices would be applied for in relation to the Premises Licence.

During the Hearing Mr Firth volunteered that he was happy for the licence to be conditioned to state that no external promoters would be used in the running of any events held after 18:00 hours. Mr Firth advised that the second floor would only be open when events were held and that there would

be no admission of the general public to these events; i.e. they would be private corporate events and/or private parties with either admission on presentation of a ticket or on a guest list.

The applicant was conscious that the premises were in the red area of the Council's CIP, but noted that the premises were small, would close at midnight and was not alcohol led. Mr Rees-Gay submitted that these characteristics satisfied three of the factors that might lead to the premises rebutting the presumption of refusal of grant. The applicant commented on the representations received noting that the premises would offer a different sort of offering to local nightclubs; that there had been no noise or public nuisance complaints over the last 12 months whilst Rare had been trading; that they had offered a condition in relation to a noise limiter; that there have been no representations from local residents (as there had been when Rare applied for a licence) and that they had a proposed dispersal policy. The applicant maintained that in view of the nature of the operation and the conditions offered the operation would not add to the cumulative impact.

Mr Rees-Gay stated that the CIP was not engaged in any event, but that the application was exceptional. It was a professional and professionally led operation which sought to offer a different product to a high end clientele which would be heavily conditioned.

Mr Scott Higgins commented on the environmental health protection representation regarding the additional noise from the premises and its customers which could have an adverse impact on public nuisance and noise. He referred to the complaint history in the area since 2005, but noted that there had been no specific complaints relating to Rare. In response to questioning Mr Higgins stated that whilst he did not have evidence of increased noise, an additional 120 people in the area could have an impact if they all congregated in one place at the same time, but such a number would have less of an impact if more widely dispersed.

PC Cath Arkle presented the representation from the police commenting upon the potential for additional crime and disorder. Her concerns mainly related to the operation of the premises after 6 pm and the dispersal of 120 people into the lower end of Briggate at midnight at the very time that many other people come in to Leeds to attend local night clubs and bars. Her view was that the increased footfall in an area already experiencing issues of crime and disorder was not a good idea. She noted, however, that her concerns could be diminished if there were an earlier finishing time.

Ms Sue Holden of the Entertainment Licensing Department commented on the operation of the premises in the red area of the cumulative impact area. She noted that this was an area so saturated that any application or variation would have a negative impact almost regardless of the style of operation. She noted that the Brewdog premises, which the applicant had referred to, had only had space to accommodate 60 people whereas this space could accommodate 120. She also referred to the fixed bar area shown on the plans which suggested alcohol played a more significant part in the offering than have been presented.

Having heard from the applicant and the responsible authorities, the Panel adjourned to consider its response. The Panel was interested to explore more fully PC Arkle's comments that her concerns could be diminished if an earlier finishing time was suggested. The parties were, therefore, called back to consider whether the applicant would be prepared to agree to all licensable activities finishing at 23:30 hours rather than midnight as currently applied for.

Having sought instructions, the applicant agreed to this although there was no change in the Police's position. PC Arkle maintained that dispersal would still remain a concern.

Having deliberated further, the Panel made its decision as follows:

Decision

The Committee carefully considered the application and noted that this was a very finely balanced decision. This was a proposal for a multi-functional gallery and event space designed to complement the retail offering on the first floor. The space would operate as a gallery, exhibition space and host pop up events. During the day it would operate as a café from 9 am to 6 pm. After 6pm the space would only be open for promoted events and private hire. These would be ticketed only events and/or subject to guest lists. However, the premises are in a cumulative impact area and within the red zone where in accordance with the Council's policy applications would be refused unless exceptional. The premises, although described as small, could accommodate up to 120 people.

The committee noted that the cumulative impact policy created a rebuttal presumption of refusal for an application of this type.

Bearing in mind all the evidence heard and taking into account the representations made by the responsible authorities the Licensing Sub-Committee decided to grant the application subject to the following:

- 1) All licensable activities to cease at 23.30 with the premises to be closed by midnight.
- 2) That the licence would be conditioned such that no Temporary Event Notices will be applied for in relation to this Premises Licence.
- 3) That the licence will be conditioned to state that any admission to an event after 6 pm will only be to those on a prescribed guest list or by ticket and that there will be no admission of the general public.
- 4) That the licence will be conditioned to say that all promotions and/or events held after 6 pm will be run and managed by the Premises Licence Holder and/or DPS and that no external promoters will be employed.

The Licensing Sub-Committee also determined that the additional conditions already offered in relation to door staff, the dispersal policy and clear and legible notices and a noise limiter be included in the operating schedule.

Right of Appeal

There is a right of appeal to the Magistrates Court should you be dissatisfied with the decision made by the sub committee. You must make this appeal within 21 days of receiving this notice.

Appeals should be addressed to the Magistrates Court at:

**Clerk to the Justices
Leeds Magistrates Court
Westgate
Leeds
LS1 3JP**

and be accompanied by a copy of this notice of decision and the court fee of £400.00 if you are the premises licence holder/applicant and £200.00 for all other parties. Cheques should be made payable to HMCS.

Please note – Persons making appeals should be aware that the Magistrates have the power to award costs against any party as a result of appeal proceedings.

10. Conditions attached to premises licences and club premises certificates

General

10.1 This chapter provides further guidance in relation to conditions attached to premises licences and club premises certificates. General principles on licence conditions are set out in Chapter 1 (see paragraph 1.16).

* 10.2 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions that the holder of the premises licence or the club premises certificate will be required to take or refrain from taking in relation to the carrying on of licensable activities at the premises in question. Failure to comply with any condition attached to a licence or certificate is a criminal offence, which on conviction is punishable by an unlimited fine or up to six months' imprisonment. The courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.

10.3 There are three types of condition that may be attached to a licence or certificate: proposed, imposed and mandatory. Each of these categories is described in more detail below.

Proposed conditions

10.4 The conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule, which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.

10.5 It is not acceptable for licensing authorities to simply replicate the wording from an applicant's operating schedule. A condition should be interpreted in accordance with the applicant's intention.

Consistency with steps described in operating schedule

10.6 The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities or any other person, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required under the 2003 Act.

10.7 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule. If conditions are broken, this may lead to a criminal prosecution or an application for a review and it is extremely important therefore that they should be expressed on the licence or certificate in unequivocal and unambiguous terms. The duty imposed by conditions on the licence holder or club must be clear to the licence holder, club, enforcement officers and the courts.