

## Musson, Martyn

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**From:** [REDACTED]  
**Sent:** 10 January 2024 14:31  
**To:** Holroyd, Vanessa; Hart, Lisa  
**Cc:** Musson, Martyn; Entertainment Licensing  
**Subject:** Leeds  
**Attachments:** Outright Objection - EPT.pdf; Outright Objection - Planning.pdf  
**Importance:** High

Dear Vanessa and Lisa,

Hope you are well.

I refer to your representations attached.

I am hoping we can resolve this matter by way of an agreement, and without the need for a contested hearing by working in partnership.

I have reviewed the decision notice in relation to the previous licensing hearing, and the planning applications referred to in your representations.

The starting point to note, as you have acknowledged, is that the application was granted following the previous licensing hearing for the following hours:

- Sunday to Thursday until midnight.
- Friday and Saturday until 2am.

You will be aware that:

- (a) should this matter proceed to a contested hearing, the panel will be asked to determine what affect, if any, the grant of this application will have on the promotion of the four licensing objectives.

Planning considerations, for example, will not be relevant. This was correctly endorsed by subcommittee in the previous hearing when the current hours were granted. The subcommittee warned and stated "that issues relating to planning were separate to licensing matters, and that the role of the committee is to consider whether the applicant is able to promote the licensing objectives".

- (b) licensing committees are not bound by decisions made by a planning committee.

In light of the above, it can be seen that the representations will struggle on the following grounds:

### **Environmental Health Representation:**

1. This representation suffers from very vague and speculative references to noise nuisance in addition to some rather **misleading** comments surrounding loss of amenity from odour.
2. I will first deal with the comments surrounding noise nuisance. It is stated within the representation that **no recent complaints** about noise (and odour for that matter) have been received to date, with the cause being quickly diverted to the fact that the existing licence is not in use. Firstly, it can be accepted that trade until 23:00 sufficiently extends into the late night economy, and in absence of any substantive evidence, there is no logical basis to suggest that this position may change should the application be granted. Furthermore,

should some form of a proxy be required in the circumstances, it can also be accepted that an incredibly similar commercial outlet also trades in the immediate vicinity and without any apparent issues until 2am, and there remains no reason to suggest, nor are any reasons presented, to suggest why the applicant will be unable to replicate the same.

The representation also refers to the noise made by drivers, more specifically, and without any substantive evidence, “car doors slamming, car stereos, and raised voices”. It should be noted that the concerns referred to in this representation do not exist in isolation for this premises alone, they are in fact common and are effectively controlled within the late night economy. Furthermore, the applicant company is now the Papa John’s franchisor (and not an individual franchisee) and operates these premises with around 115 sites in various parts of the country. Many of which operate way beyond 2am and are located in various “stress” and other licensing sensitive zones including residential areas. Therefore, the applicant appreciates and effectively manages these types of premises responsibly on a daily basis. Looking at the decision notice, it is clear the current licensing hours were granted for consistency, at the time, with a competitor who had no noise issues operating these hours. However, there is no reason why the application later than these hours should not be granted.

3. A significant part of the representation is based on a reference to the previous planning applications being refused “due to potential loss of amenity from...odour” and also refers to nuisance from “extract ventilation”. However, this is not helpful to say the least and can be very misleading. The planning officers delegation report states clearly that:

“The operation of the commercial kitchen’s extract ventilation system will occur for prolonged periods and the tonal noise from this equipment will be more apparent when the background noise levels are relatively low during early hours. As a piece of fixed equipment this is perhaps easier to design appropriate measures to control noise outbreak. To this end, the applicant has assessed the current equipment and made recommendations to incorporate noise mitigating measures (e.g. silencer/ anti-vibration mounts/ enclosure for condenser etc). Whilst objection comments raise concern about the methodology and interpretations of the assessment it is considered that scope exists through the installation of noise attenuation measures on the fixed equipment that could reasonably contain noise during its operation. The Council’s Environmental Health officer does not raise concern on this particular aspect of the proposal and any such additional noise mitigation measures could be secured by planning condition. Accordingly, in view of the submitted assessments this element longer forms a reason for refusal”.

Accordingly, you will see that loss of “amenity from...odour” and nuisance from “extract ventilation” was dismissed as a reason for refusing the application and did not form part of the notice of decision.

Therefore, the basis of a very significant part of this objection is flawed, as well as being based on irrelevant planning matters.

4. Finally, the representation states that the grant of this application could set a precedent for other late night take aways to apply for later hours thereby changing the character of the area. It should be noted, there is no principle in licensing which refers to precedents in this sense. Applications should be granted on their own individual merits which concerns the here and now.

#### **Planning Representation:**

5. As alluded to earlier, whilst the planning and licensing regimes may be closely related, they involve entirely different considerations. As to what those considerations may entail, we are in a fortunate position whereby the relevant considerations for these premises have already been examined on a previous occasion by a licensing subcommittee. Similar to the circumstances we found ourselves with today, in absence of any substantive evidence, the committee found no reason not to grant the application and dismissed planning bases arguments.
6. In fact, there is a compelling argument to suggest that the position today is much stronger. For instance, unlike previous occasions, there are no representations from the residents on this occasion.

7. Furthermore, the previous planning applications were 6/7 years ago. The economic climate and attitude/trends towards the night time economy have changed, particularly in relation to delivery operations and especially after Covid; people are becoming more understanding and pro-business; which perhaps explains the lack of any representations from local residents against this application.

I take on board your comments about site and location, but you will be aware that these types of premises are not unique in these respects; in fact they are fairly common and many have a premises licence for later hours.

Therefore, it is evidently possible for residents and businesses like this to co-exist with suitable management controls.

As you aware, the Licensing Act is generally a permissive regime. Especially, in a case like this where there is no evidence of any complaints to show that there is any actual noise issues with these premises or the area, and which cannot be effectively managed. Once again, there are no representations from the residents which is a significant factor to take into account.

Having said that all that, and in an effort to work to work with you moving forward we would be happy to consider a reduction the hours which we have initially applied and to limit the additional hours to deliveries only. I am hoping that would be a fair compromise.

If an agreement can be reached, then it would be helpful if you could please let me have your reply as soon as possible and copy in the licensing authority (copied in), to hopefully avoid them having to do any further work to set up a hearing unnecessarily.

I look forward to hearing from you.

Kind regards

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