

LICENSING SUB-COMMITTEE No.1

Thursday 28th November 2013

Membership: Councillor Audrey Lewis (Chairman), Councillor Andrew Havery and Councillor Aziz Toki

Legal Adviser: Barry Panto
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon

Relevant Representations: Mr Alexander Sager and Councillor Ian Rowley (objecting to application) and Mr Robert Palmer (in support of application).

Present: Mr David Chambers (representing the Applicant), Mr Peter Hardwicke (Applicant), Mr Wally Watson (West End Street Traders Branch, National Market Traders Federation), Mr Rowel Genn (Solicitor, representing the objector), Mr Alexander Sager (Gainsborough Flowers, objecting to application), Councillor Ian Rowley (also objecting to application on Mr Sager's behalf) and Mr Yiannis Chrysanthou and Ms Nichola Stratford (Westminster Council Street Licensing Team).

Street Trading Pitch 925 – Marylebone High Street (considered under terms of the City of Westminster Act 1999)

13/07532/LI_STE

Amendments to application advised at hearing:

None.

Decision (including reasons if different from those set out in report):

Pitch 925 in Marylebone High Street had become vacant following the revocation of the previous licence on the grounds of persistent arrears of charges. The Applicant, Mr Hardwicke, was a displaced trader due to Crossrail works. He has been displaced from pitch 931 on Marylebone Lane and had not accepted any other vacant pitches that had been offered to him. Instead, he assisted his son, Samuel Hardwicke, who is the licence holder for pitch 917 on Melcombe Street. Samuel Hardwicke was licensed to sell flowers from that pitch but was himself displaced in October 2012. He was then temporarily relocated to sell flowers from pitch 925 and his father assisted him.

Mr Peter Hardwicke decided that he wanted to continue trading from pitch 925. As a displaced trader he was advised that he would have to submit an application for a new licence for that pitch which he did. He then received advice from Mr Chambers to the effect that he could actually apply to vary his licence rather than having to apply for a new licence. The licensing service did not think that a variation application

could be made in those circumstances but it was agreed with Mr Chambers that he had the right to submit such an application so as to be able to argue the point on its merits. In other words, the licensing authority was required to consider two applications for the pitch; one was an application for a new licence that was effectively submitted under protest, whilst the other was an application for variation of the existing licence so as to vary the pitch from 931 to 925. The significance of this, according to Mr Chambers, was that there were no grounds under the City of Westminster Act 1999 to refuse an application for variation of the licence such that the application would have to be granted as of right irrespective of any objections that had been received.

Mr Chambers, representing the Applicant at the hearing, confirmed that his client believed that it was appropriate in this instance to apply for a variation of the licence. He stated that if the application was a variation application there would be no need for the Sub-Committee to consider it on its merits as it would have to be granted irrespective of any views expressed by the objector. This was because in his view there were no grounds for refusing such a variation application in the City of Westminster Act. If, on the other hand, the Sub-Committee decided that it was the new application that had to be considered Mr Chambers did not believe that there were grounds to refuse the application in this instance either.

According to Mr Chambers, the only potential discretionary ground of refusal for a street trading application was 13(1)(a) which states that the grounds are that 'the Council considers that there are enough traders trading in the street or in any street adjoining the street in respect of which the application is made in the goods in which the applicant desires to trade'. In his view, that did not apply so as to give a shop trader the right to object to a street trader selling the same goods in the same street or (as in this case) an adjoining street. In support of that argument he made reference to the ground for refusal in section 13(1)(j) of the Act which refers specifically to a shop owner. Mr Chambers submitted that 13(1)(j) would not be required at all if section 13(1)(a) applied to shop keepers. Mr Chambers commented that he had sympathy for the objector. Mr Sager may have been given alleged assurances from a Council officer that Pitch 925 would not be used as a flower pitch on a permanent basis but that was not Mr Hardwicke's fault.

Mr Ghen, representing Mr Sager, made the point that a variation application implied that Mr Hardwicke was still using Pitch 931 which was not the case as he was working with his son at another pitch.

The Sub-Committee, taking into account legal opinion from Mr Panto, considered that the Applicant's position was correct and that the application should be considered as a variation. Members gave Councillor Rowley and Mr Ghen the opportunity to speak as to why the application should be refused in those circumstances. Councillor Rowley stated that Mr Sager had opened up a shop selling flowers and had acted in good faith in taking up a lease. He did so in the belief that there would no longer be any trader selling flowers from pitch 925. When Mr Sager had complained, it was alleged that Mr Hardwicke had threatened to sort him out. The behaviour had been inappropriate and if Mr Hardwicke was granted the licence the employees of the flower shop would have concerns.

Mr Ghen's grounds for refusing the application included that the Sub-Committee should also take into account in conjunction with the City of Westminster Act the application guidelines for isolated street trading pitches. Although the Guidelines set out that flowers should be prioritised over other commodities, they also provided that the Council could take into account 'the extent to which the sale of the commodity will provide a useful service to the local community not otherwise provided in the area'. In this instance there were 3 retailers within 100 metres of the site. Therefore the local community was amply provided for in terms of flowers. Mr Ghen referred to the Guidelines stating that applications would not normally be granted 'where the licence holder is subject to a complaint'. Mr Ghen advised this was the case following the threatening behaviour of Mr Hardwicke towards his client and Mr Hardwicke was an inappropriate person to hold a licence. He also questioned whether the licence holder was currently in arrears of charges in respect of Pitch 931 given that he was working for his son. Mr Chrysanthou advised the Sub-Committee that the charges for Pitch 931 had been waived by the Licensing Authority as it was unusable due to the Crossrail works.

Mr Ghen also made the point that Mr Hardwicke had declined the opportunity to move to other pitches and had sought to jump the queue. There had been a considerable waiting list for Pitch 925. His client Mr Sager had been informed by an employee of the Council that Pitch 925 would be used as a temporary pitch for 6 months. It was inequitable for the Council to go back on a statement made by an officer and on which Mr Sager relied to his detriment as he had taken up a lease. Mr Chrysanthou clarified that it had been stated by the Council that the vendor was being relocated temporarily. It had never been stated that the site would not be used again for the sale of flowers. Mr Ghen also commented that his client did not object to Mr Hardwicke being relocated to another pitch to sell flowers.

Mr Chambers responded to Mr Ghen's points with the comment that the City of Westminster Act was clear and the application could only be granted on the grounds set out in the Act. His client did not accept the account of his behaviour. It was Mr Hardwicke's position that Mr Sager had been rude to him. Flowers had always been a preferred commodity and selling flowers at Pitch 925 was a continuation of what had historically taken place there.

Mr Watson of the National Market Traders Federation advised the Sub-Committee that the only reason Mr Hardwicke had refused the offer of vacant pitches in recent years was that they were about to be de-designated. He had been required to move from Pitch 931 because of Crossrail works and after three years Mr Hardwicke as a displaced trader wanted to get back to work. He was a competent street trader

The Sub-Committee, having received legal advice, informed those present that statute in the form of the City of Westminster Act 1999 took precedence over the Application Guidelines For Isolated Street Trading Pitches. The Sub-Committee had decided to grant the application. Members had taken into account the legal advice and concluded that there were no clear grounds to refuse the application. The objectors had been given the opportunity to address the Sub-Committee as to why the application should be refused and had offered reasons, some of which related specifically to the Application Guidelines. Others such as that the licence holder was currently in arrears of charges were not correct and had not been taken into account.

The Sub-Committee considered that even if the Application Guidelines had been used as the primary grounds for reaching a decision, there was not clear evidence to state that the application should be refused. Members noted that there was a difference of opinion between Mr Hardwicke and Mr Sager. Assurances that had been given by officers to Mr Sager were not categorical. Mr Hardwicke had refused alternative sites because the pitches had been de-designated and rather than queue jumping, he had qualified for Pitch 925 as a displaced trader.