



City of Westminster

Licensing Committee Report

Date:	Wednesday 29 th November 2017
Classification:	For General Release
Title:	Gig and sharing economy: licensing implications associated with deliveries
Report of:	Director of Public Protection and Licensing
Wards Affected:	All
Financial Summary:	N/A.
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1. Executive Summary

- 1.1 The report provides an overview of the licensing implications associated with deliveries.

2. Recommendations

- 2.1 The Committee note the work being undertaken by the Council and to provide lessons learnt from previous licensing applications to inform future activity.

3. Reasons for Decision

- 3.1 As the Licensing Authority the Committee will have valid views on the lessons learnt from previous licensing related to controlling the negative impacts of deliveries.
- 3.2 The Leader of the Council also announced a range of measures to Council on 8 November to control irresponsible short term letting. While this sets some of the wider policy context which the Licensing Committee will wish to be aware of, the Council's wider work on short term lets follows policy direction provided by the Leader of the Council and therefore does not fall within the remit of the Licensing Committee.

4. Background information

- 4.1 There has been an increase in complaints from residents of nuisance behaviour by food deliveries. In particular, residents have complained of noisy delivery vehicles late at night and drivers congregating in residential areas at unsociable hours and creating noise nuisances. There have also been reported problems including wider environmental issues, littering, and street urination etc. Air quality is a contentious issue in Westminster and petrol/diesel based delivery vehicles do not do any favours for air quality.
- 4.2 The Council has a number of existing powers that we can use to tackle the impacts associated with the delivery of food from premises that are causing impacts to local residents and businesses.

Anti-Social Behaviour, Crime and Policing Act 2014

- 4.3 The Anti-Social Behaviour, Crime and Policing Act 2014 (2014 Act) can be used to take action relating to anti-social behaviour. The Council have considered the use of Community Protection Notices (CPNs) under the 2014 Act as a way of addressing disruptive anti-social behaviour from delivery drivers and businesses. There are three criteria which must be considered; activity/behaviour that is persistent and continuous; which affects quality of life and is unreasonable within a location. It is difficult to provide evidence of the same person meeting the required criteria in these cases. A Public Spaces Protection Order (PSPO) requires a lengthy process in gathering evidence and there is a need for resources to enforce such orders. The main issue with a PSPO is that the problem can very quickly displace once enforcement is implemented, and therefore the matter moves to another residential area. This ease of displacement has been the reason for not implementing PSPOs. PSPOs are resource intensive and do not offer a sustainable solution, given the context of the growing trend.

Planning Powers

- 4.4 We can use our planning powers where we can evidence a material change of use in premises, where an A3 restaurant level of sales takeaway is no longer considered ancillary.

A recent example of the effective use of planning powers was a restaurant in Westbourne Grove. This premise was served a Planning Contravention Notice (PCN). The PCN required the company, under planning legislation, to provide answers to key questions asked by the Council's planning enforcement officer. The premise responded that 36% of their business was take-away, this included walk in as well as moped deliveries. They maintained though that this was still ancillary to the primary use of the premises as a restaurant.

Under A3 planning use, this premises could provide takeaway food as an ancillary function and would not breach planning control. However, in this case the percentage of takeaway food was deemed to no longer be ancillary

and breached the planning permission for that premises. The Council served an enforcement notice on the operator of this premises who subsequently agreed to cease takeaway delivery services at this premises. There is no fixed percentage in the legislation with regard to when an A3 restaurant is required to apply for an A5 mixed use. Each case is taken on its merits and the impact on the local area and residents. Without a fixed percentage, the Council needs to engage with the local community and gather evidence of any ancillary use that impacts through impact statements and observations of the property.

- 4.5 The delivery business was a significant element of their business, their response to the PCN advised that they had on average 150 vehicular movements a day, and that they delivered to an area 2.2 kilometres from the store. Therefore, residents of other local authorities were affecting our residents. The residents provided evidence, on many occasions, that there were seven delivery mopeds parked at the venue. These would leave to make a delivery and be immediately replaced by another moped. They provided evidence of litter on the street where the mopeds had been gathering, and engine noise was reported as a constant nuisance, although not a statutory one.
- 4.6 A survey of premises in key locations could be considered to identify possible breaches and planning contravention notice issued, where a change in use class may have occurred.

Parking Regulations

- 4.7 Parking regulations are enforced where a contravention occurs. Delivery vehicles, predominantly mopeds, can often take up parking spaces close to takeaway venues. However, in the Westbourne Grove case vehicles parked legally on double yellow lines outside the venue as loading and unloading was permitted.
- 4.8 During the early stages of this case the complaints the Council's Parking Marshals were directed to the area and in a 6-week period they made 737 visits and patrolled Kensington Garden Square for 100 hours. They dealt with 143 parking contraventions, issuing 70 Penalty Charge Notices (PCNs) and moved on and gave advice to over 70 motorists.
- 4.9 This approach was resource intensive and the mopeds still attended the location and parked legally when they were there for the delivery services. In another location within Marylebone ward the moped riders parked in a Council motorcycle parking bay and during spot checks of those vehicles they were found to have all paid for a Council's annual parking permit and therefore parked legally.
- 4.10 The issue here was the nuisance generated by the noise from moped engines and the riders talking to each other whilst waiting for a job. No criminal offences have occurred in any of the locations the Council have had to deal

with to date. The main complaints have been low-level anti-social behaviour and predominately noise. However, the noise nuisance encountered in these locations falls short of the statutory level for enforcement.

Licence conditions

- 4.11 Voluntary 'conditions' and commitments can be set as part of the licensing process. Where late night refreshment (LNR) is offered (between the hours of 11pm and 5am), formal conditions can be applied to the Licensing Act 2003 premises licence. Conditions have been set on premises licences to define the type of vehicles that premises use such as cycles rather than motorised vehicles, such as mopeds. However, these conditions have been suggested by the applicant or by the Licensing Sub-Committee during a hearing. There is a risk that conditions restricting the vehicles that are used can be legally challenged via an appeal but no appeal has been made against the imposition of such conditions on a licence. Any conditions attached to premises licences for the delivery must relate to the licensing objectives.

5. Opportunities for improving our enforcement action

- 5.1 One of the key pieces of feedback from residents has been the perception that riders and drivers often congregate on residential streets at anti-social hours. This was validated in a recent interview in Time Out magazine with a Deliveroo rider who is quoted as saying: "If you see a gaggle of Deliveroo riders, you're in the middle of a district. Each area has a place that riders are allocated to sit while waiting for an order. It's in the most central part of that area and it'll literally be a random street. There'll usually be a small community of Deliveroo riders there waiting for a job."
- 5.2 We do not have powers to stop drivers and riders congregating and can only take action if it is causing anti-social behaviour or is immediately outside a premises from which there are activities that we license or grant planning permission.
- 5.3 The Licensing Committee is invited to give its views on how the learning from recent licensing applications could be applied to further improving enforcement action. For example:
- Are there other premises where there is evidence to introduce voluntary 'conditions' and commitments can be set as part of licensing process?
 - Could we learn from the recent Licensing Charter and work with the industry to implement a local accreditation scheme and voluntary code of practice?