



Licensing Team
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For the attention of Mr Kevin Kevin Jackaman

By email first to licensing@westminster.gov.uk

Direct tel	+44 (0)333 006 1358	Date	15 February 2019
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Dear Sirs

Licensing Act 2003

19/00705/LIPN | Premises Licence - New | Open for Consultation | 48 Albemarle Street London W1S 4JP

Abuse of process and application contrary to the Licensing Objectives

We write on behalf of The Gazelle Bar Ltd, the holders of a premises licence at 48 Albemarle Street, London W1S 4JP.

We supply this letter in connection with the "shadow" licence application submitted by Thomas & Thomas Partners on behalf of Tizzola Properties Ltd.

We consider that this application should be rejected entirely and if not, it should be refused by your Licensing Sub-Committee as being contrary to the Licensing Objectives.

We will start by explaining why the application is so fundamentally flawed that is invalid and that there is therefore no application for you to consider. However, because the defects could potentially be remedied by withdrawal and making a subsequent application we will deal with the application as if it were valid in the first instance and set out why it should be refused as to grant the application would be contrary to all four Licensing Objectives.

An application for a licence **must** be in the prescribed form (s17 of the Licensing Act 2003). This application should be rejected because it is not in the prescribed form, which requires the Applicant to formally declare that he/she understands that (page 16):-



"It is an offence, liable on conviction to a fine up to a level 5 on the standard scale, under Section 158 of the Licencing Act 2003, to make a false statement in or in connection with this application."

The prescribed form provides tick boxes at the end of the form to remind the Applicant of the essential documents **which are required**.

"I have attached a scanned copy of the consent form completed by the proposed premises supervisor."

Despite ticking this box there is no copy consent form scanned or otherwise.

The prescribed form also requires acknowledgement by the Applicant that:-

"I have enclosed (sic) the plan of the premises."

Whilst this box is ticked, no plan is enclosed (or scanned).

The next declaration explains why this is important and why this application should be rejected.

"I understand that if I do not comply with the above requirement my application will be rejected"

That box is also ticked. This application should be rejected.

Abuse of process

Should the committee not be with us we now set out why the application should be refused on the basis that the application for a "shadow" licence is an anomaly of the Licensing Act 2003 and that it should also be refused because it would be contrary to all four Licensing Objectives.

The Applicant is reminded that it is a criminal offence to make a false statement and requires acknowledgement of this with a tick box.

"I/we understand that it is an offence, liable on conviction to a fine of up to level 5 on the standard scale, under Section 158 of the Licensing Act 2003 to make a false statement in or in connection with this application."

The prescribed form also requires "please attach a proof of right to work" (for the DPS). This box is rightly not ticked because there is no DPS.

The next tick box (but one) requires the complier of the form to acknowledge

"Ticking this box indicates you have read and understood the above declaration."

And later the Applicant confirms that "The DPS named in this application form is entitled to work in the UK, (and is not subject to conditions preventing him or her from doing work relating to licensable activity) and I have seen a copy of his or her proof of entitlement to work, if appropriate (please see note 15)."

The Applicant wrongly confirms that this is true, however there is no DPS and there is no right to work.

We now refer to page 13 of the application where the details of the DPS are given. The difficulties that the agent has in completing this section demonstrate one of the reasons why an application for a "shadow" licence is an abuse of process and is abhorrent to the Licensing Act 2003.

The electronic prescribed form is set up so the complier cannot make a mistake and any deviation has to be intentional. This is achieved by the method that unless there is an entry in a box the complier is not able to continue to the next box or download the form as a proper application.

At page 13 of the application the complier enters details which he or she knows is false in order to give the impression that the application is bona fide.

The complier is then required to:

"please print the 'Consent of Individual to being specified as premises supervision' form (shown on page 19 and 20), and have the person specified above sign and confirm the details given."

As mentioned earlier the complier is required to make a declaration that the form is uploaded and that the DPS is entitled to work in the UK and that the complier has seen a copy of the proof of right to work. They haven't.

At page 6 the prescribed form asks "what Licensable Activities do you intend to carry on from the premises?" This application for a shadow licence cannot have an intention to carry on a licensable activity from the premises. The Applicant is a company registered in the BV Islands and is effectively applying for the licence as a Landlord in the conveyancing sense, so will consent to someone else providing Licensable Activities.

Part 3 Operating Schedules (page 5)

The Applicant has not completed the box concerning when it wants the premises licence to start, the Applicant doesn't know when it wants it to start (see later for the importance of this fact.)

The form requires the Applicant to give a "General description of premises". The application does not reveal a description of the premises but merely recites that it wants the application to be for a "shadow licence" of Gazelle and gives details of that. The description of the premises is designed to give members of the public an idea of what the premises is going to be like. An informed member of the public would not understand what a "shadow licence". A "shadow licence" is not a term of art and one could not even look up what this means in a dictionary.

The next reason why this application for a "shadow licence" is an abuse of process is that the Applicant has no present intention to use the licence him/herself.

We now turn to why an application for this sort is an abuse of process and not in the public interest.



The purpose of a shadow licence is to have a licence ready to bring into force immediately without having to apply for a new licence and to avoid the notice period and potential objections. What it does is it denies members of the public a chance have a say in whether a licence should be granted at the relevant time. Equally importantly, it denies the Licensing Authority an opportunity to consider whether a new licence should be granted at the relevant time and in those circumstances it must be contrary to the Licensing Objectives.

There are two circumstances when a shadow licence would be activated if it was granted.

A premises licence remains in force until it is either revoked or surrendered. There are a number of reasons why a licence is revoked but in this case the applicant is asking for a duplicate of the licence held by its tenant. The Act provides for a way that that licence can be transferred to the Landlord (Section 42 Licensing Act 2003) but that requires the consent of the existing licensee to be attached or "*if that is not practicable a statement of the reasons for the failure to provide the licence.*" The Landlord can rely upon this section and get the licence transferred if he has the consent of the Tenant. In the circumstances of a dispute between the Landlord and Tenant, the Licensing Authority has discretion to waive the requirement of producing the consent of the Licensee in accordance with Section 44 (6) Licensing Act 2003.

"The applicant (has to) show(s) to the Authorities satisfaction –

- (a) That he has taken all reasonable steps to obtain that consent; and*
- (b) That if the application was granted he would be in a position to use the premises for the licensable activity or activities authorised by the premises licence.*

This application for a shadow licence takes away that decision from the Licensing Authority. Westminster as Licensing Authority have in the past required the Applicant for the transfer and the Licensee to resolve their dispute, in the High Court if necessary.

Westminster as Licensing Authority may think there is a good reason for waiving the necessity to have the consent but it should be Westminster and not the Landlord of the Licensee that should make that decision. Not to retain that discretion appears to us to be an abuse of process.

The other alternative is that the licence is revoked. The revocation of a licence is the last resort for a Licensing Authority and will be a decision that is not taken lightly. Granting a "shadow" licence will allow the Landlord to effectively overturn any revocation and in an extreme case the Landlord could activate the licence and allow a Licensee to continue to trade under the authority of the "shadow" licence. This undermines the Licensing Objective of the Prevention of Crime and Disorder. We say that this is an abuse of process. The Licensing Act 2003 lays down

methods to activate or reactivate a licence but they all require the consent of the Licensing Authority where it can exercise its discretion. It must be contrary to the public interest to allow a Landlord to deprive the Licensing Authority from the exercise of its discretion.

We trust that the above is clear, please do not hesitate to contact us if you have any queries.

We would be grateful if we could be kept abreast of the Licensing Authority's decision in this matter and offered the opportunity to attend any Sub-Committee hearing in the event that the Licensing Authority are not minded to refuse this application outright as they should.

Yours faithfully



Luke Elford
Associate
for TLT LLP