

Written Submission on Behalf of Sugar and Spice, 2-4 Queen Street, Blackpool

Hearing Date 4th March 2020

Motivation for the Application

The Landlord of the premises until recently operated an Italian Restaurant (Nunzio's). Trade had suffered for many years at the location generally due to the trading environment. The location in the words of the Police is "*arguably the most problematic hot spot area for crime and disorder*" which did not assist in promoting a family friendly premises for customers. The pressures on business were very pronounced in the late evening and whilst the restaurant had a loyal custom base built up over many years, more and more customers were refusing to come into Queen Street much after 9pm. This in turn led to an ever decreasing trading window which meant that things were becoming unsustainable.

Nunzio's relocated in 2019 to a smaller premise on Abingdon Street with reduced overheads and allowed for a recalibration exercise to take place and bring the restaurant into a more profitable situation.

Nunzio Provenzano is the free holder of 2-4 Queen Street and once relocated sought to find a tenant for the vacant property.

The applicant, Emad Abuassi approached the Landlord in 2019 with a proposal to operate a hot food takeaway in part of the premises and the terms of a lease were agreed.

The tenant operated under the terms of the restaurant licence which has proved not to be fit for purpose.

The premises are surrounded by late night operators, information from the Public Licensing Register held by Blackpool Council paints a clear picture of the trading environment;

WA0089- Eastabout, 25 Queen Street 23.00-0500

WA0026-Flames,6-10 Queen Square 23.00-04.00

WA0039 Tasty,20 The Strand 23.00-05.00

WA0032 Godfather, 1 The Strand Fri 23.00-04.30, Sat 23.00-0500

WAQ0182 AL's Ranch,3 Queens Square 23.00-0500

WA0943 Feast About,9 Queens Square,23.00-05.00

WA0183 Fish U Like 7 Queens Square 23.00-0500.

The businesses listed above are hot food takeaways all located within 200 metres of the applicants premises and all expect one trade until 05.00hrs on a Saturday night

There are also a significant number of late-night alcohol retailers within a similar distance;

PL1591 Bar 19 Terminal hour for alcohol 04.00hrs

PL2110 Crazy Horse Saloon Terminal hour 04.00hrs

PL0097 Slug & Lettuce Terminal hour 03.00hrs

PL2139 Walkabout Terminal hour 04.00hrs

PL1646 Kraze Bar Terminal hour 03.00hrs

PL1252 Whippit Inn Terminal Hour 04.00hrs

PL1800 Soul Suite Terminal Hour 03.00hrs

There are numerous other premises that are on Queen Street, such as Salud, Buckingham's Kaos and the Flying handbag but are not relevant as the terminal hour is either much earlier than those mentioned or the location is beyond the relevant distance that we are focussing on (i.e. 200 metres)

The nature and style of premises in the immediate vicinity demonstrates that if you have a similar commercial offer there is limited prospect of success if your trading hours are drastically different, the applicant currently is only permitted to trade to 1am which has meant in its current format the business is unsustainable.

The cumulative impact policy recognises that premises of a similar type and style can have an adverse impact on crime and disorder and sets a guide that premises that could add to the issues in the area should be refused a licence, this presumption is open to rebuttal but the burden rests with the applicant to demonstrate that his/her proposals will not have an adverse effect on levels of crime and disorder in the area.

Pre-Application Enquiries

The Statement of Licencing Policy encourages discussion with Responsible Authorities before making an application, extracts from the policy are inserted below in italics;

Key Message

Applicants are encouraged to seek advice from the licensing authority and responsible authorities before submitting an application

Failure to comply with the statutory requirements may result in an application or notice being invalid/rejected

4.1.3 Applicants are not required to seek the views of responsible authorities before submitting their applications however they may find them a useful source of expert advice about the local issues that should be taken into consideration when making an application. Discussions with the responsible authorities, and where relevant local residents, before applications are submitted may minimise disputes during the application process.

The Section 182 Guidance also encourages discussion much in the same way as the policy so the Landlord and the Applicant met with the Police and Mr Petrack from the Licensing Authority on the 3rd July 2019 where they were advised about the restrictive policy in place and informed that any extension to a terminal hour may prove difficult.

We accept that it is not an Authorities job to advice people what steps need to be made to get through a policy, they can only negotiate on applications where they feel there will be no significant

harm to the Licensing Objectives. Harm was clearly envisaged by the Authorities should a later terminal hour be applied for so no further advice could be given at that time.

The Application

The original application was made for an extension in the hours for LNR (Late Night Refreshment) and the removal of a Licensable Activity (alcohol) and amendments to existing Licensing Conditions. The initial proposal was to extend the hours till 05.00hrs with some variations to timings during the week days. To put it mildly the application was “not easy to follow”, rightly identified in the Licensing Authority Representations.

The Licensing Authority Representation was drafted fairly early on in the process and has been dated the 13th January 2020.

An amendment was submitted on or around the 17th January 2020 to address a substandard application, the initial application was in effect seeking to do the same thing, at the same time in the same location as numerous other premises in the vicinity and could never be regarded as anything exceptional.

The timings were modified to a 4am terminal hour at the weekend with a prompt closing time of 04.20hrs, robust CCTV conditions were offered along with a security provision which was much earlier than any other like for like competitor. The additional control measure was to reduce the availability of floor space and seating to reduce the risk of disorder in the premises. All of these measures do not appear on any other takeaway premises in this locality.

Exceptional Circumstances/Reasons

The statement of licensing policy does not give examples of what it considers exceptional, it merely indicates that the departure from the policy to refuse an application will only be made in genuinely exceptional cases;

4.7.7 This policy does not act as an absolute prohibition on the granting of new licences however the policy will only be overridden in genuinely exceptional cases where the applicant can demonstrate that the granting of the application will not undermine the policy and the reasons for it.

4.7.8 An application is not likely to be classed as exceptional merely on the ground that the premises have been or will be operated within the terms of its licence or that they are/will be well managed. This is to be expected of any application

As described earlier a successful entrepreneur operated these premises for many years, usually a food led operation with seated customers would be considered relatively low risk especially if it did not trade into the early hours of the morning, but if a strong local brand like Nunzio's with generations of loyal customers cannot make it work, then any other applicant with similar ideas may inevitably face the same trading difficulties. For this reason this applicant cannot show that his “offer is exceptional”

However the policy does not ask for an exceptional offer , it will depart from its policy in exceptional cases, exceptional could mean that it is a rare occasion that it will do this or it could mean that the

proposal are very different from surrounding premises and that in its self is exceptional or it could be a combination of differing positive factors that make the application exceptional .The policy has to be the guide for both the Responsible Authorities and the Applicant , the list below has been considered by the applicant;

(Italics in black are extracted from the Blackpool's Statement of Licensing Policy)

3.2.3 Where relevant representations are made, the following factors will normally be taken into account:

☒ *The style of operations, the number of customers and profile of customers expected to attend the premises. The style of operation will be one that trades earlier than its competitors save for Flames, in order to distinguish itself from Flames the applicant has reduced its trading footprint significantly. The profile of customers will be much the same as nearby competitors but they will be supervised by a registered SIA door supervisor at least 1 hour earlier than any other takeaway in the vicinity.*

☒ *The location of the premises and its proximity to noise sensitive properties ☒ The proposed hours of operation. The premises will be low impact from a noise perspective with low level background music only, there have been no noise sensitive premises identified nearby that could be affected by the activities proposed.*

☒ *The transport arrangements for customers attending or leaving the premises and any possible impact on local residents or businesses. Queen Street is in the heart of the town centre with excellent transport arrangements including a major well serviced taxi rank directly in front of the premises*

☒ *The proposed methods for the dispersal of customers. A registered door supervisor will be on duty during the problematic trading hours to ensure effective dispersal of customers from the premises*

☒ *The scope for mitigating any impact. The reduced trading hours are the major mitigating factor, given the fact that there are some large capacity venues in the vicinity such as Walkabout, and Bar 19 our knowledge of the area tells us that a large proportion of customers in the area remain in these premises till well after 4am, we say that by closing before these large venues we reduce the risk of becoming part of the dispersal problem being suffered in the area.*

☒ *The extent to which the applicant has offered conditions to mitigate the impact. Robust CCTV Conditions, a reduction in the public space available for customers and the door supervisor coming on duty one hour earlier than any competitor gives real scope to mitigate any problems*

☒ *How often the activity occurs. The activity has been reduced to 3am during the week meaning only 2 late nights are proposed, Mondays can be problematic but we have kept this out of the application again to mitigate the problems as much as possible.*

4.1.1 The authority wishes to encourage high quality, well managed premises. The operating schedule should describe how these high management standards will be achieved. In particular applicants will be expected to demonstrate:

☒ *Knowledge of best practice the applicant has operated a takeaway on Queen Street between 2006 and 2012.*

☒ *That they understand the legal requirements of operating a licensed business the applicant always enjoyed a positive relationship with Responsible Authorities and complied with all legal requirements expected of him*

☑ *Knowledge and understanding of the licensing objectives, relevant parts of the licensing policy, and their responsibilities under the Licensing Act 2003* *The applicant understands the relevant parts of the policy and has been forced to make an application simply to survive in business, he has recognised that applying for the same times as his competitors is something that will cause grave concern for the Authorities. Whilst it would be a financial advantage to operate till 5am the applicant has taken a decision to modify his terminal hour to try and meet the needs of the area but hopefully give a modest increase in business opportunity*

4.1.5 For an applicant to assess what steps are appropriate for the promotion of the licensing objectives, they must first understand the area in which they intend to operate. By way of example the controls required in an area suffering from a high level of deprivation, alcohol dependency and street drinking may be completely different to those required in other areas. Applicants are expected to make their own enquiries and demonstrate how they have considered the following in the operating schedule:

☑ *The layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children and young persons may congregate; The area is well understood, the applicant has operated for many years in the area as well as being in the industry for 20 years.*

☑ *Any risk posed to the local area by the proposed licensable activities; and by offering the steps proposed it is envisaged that any risks will be reduced.*

☑ *Any local initiatives (for example local crime reduction initiatives or voluntary schemes which may help mitigate potential risks) Numerous local initiatives are in place such as the pub watch scheme and street angles, support will only be called for in exceptional cases, the impact of this operation will be minimised by management process and steps put forward in the operating schedule.*

Further Reason for Departure of Policy

The Police representations give an overview of some of the incidents that occur on Queen Street, very often they occur on the street as people migrate between premises, and this could be going pub to pub, on the way for food or on the way to get transport home.

Only one incident is highlighted that occurred inside a takeaway, it appears to be domestic related and it is arguable that the business premises has been a victim of crime rather than the cause of crime. The other thing that is clear is that the incidents where a narrative is provided usually relate to issues on the street rather than inside takeaways and given the number of takeaway premises in the vicinity this is encouraging.

Therefore, the existence of takeaway per se is not necessarily a cause of crime but its late opening could protract dispersal from the area and to quote the Polices Representation “*they provide a haven for people to congregate, once outside these venues where they are no longer supervised as closely and disorder then occurs*”

The applicant has sought to address this concern by bringing supervision on much earlier than his competitors and closing before the “rush of people leaving the larger later premises in the area”

Having a premise that is set up to serve food only then see people on their way could be a positive step for the area, it may open up more choice meaning a reduction in queuing or waiting time in nearby premises which can be a point of frustration for drunken customers. Whilst in the premises any customer would be closely supervised by CCTV and a member of security staff and by reducing the trading area it takes away any opportunity for customers to hang around and potentially get into conflict with one another.

We believe the area is well serviced by taxis so again the whole need for people to hang around is reduced.

Conclusion.

Whilst the Cumulative Impact Policy applies to late night takeaways the main aim is to limit and restrict premises selling alcohol, reference to the retailing of alcohol is repeated in many paragraphs of the policy and reference to takeaways is no more than a short reference in paragraph 4.7.3.

It is entirely accepted that takeaways can be an issue, they can be operated by unscrupulous individuals who have little regard for the impact they may have on the Licensing Objectives, but if operated correctly and adjustments to the style of trading they can be a business that does not impact on crime or disorder.

Factors that can give reassurance include;

The landlord and Tennant relationship is transparent, we know who owns the building and who will be running the business, and this in itself is a rarity with regards to some of the late night takeaways that appear before the Licensing Authority.

The applicant is of good character, is experienced and has run a business of the same type and style without issue for many years.

The hours are different from his competitors, only one premises operates the same hours and the applicant has sought to distinguish himself from this business by brining security on earlier and reducing the trading footprint significantly.

The measures offered are unique, no takeaway in the vicinity has conditions that are as robust and as targeted at the harms in the area.

Financial losses being suffered by a business are not a relevant consideration for these proceedings but they are the motivating factor for the application, without a reasonable adjustment to the trading hours the takeaway business will fail. It is already suffering unsustainable financial losses which has an impact on the Tenant, the Landlord and indirectly the Council.

The applicant is sincere making his intentions and reasons for the application clear, he has approached the application in good faith attempting to enter into dialogue with the Authorities , the initial plans were not robust enough to discharge the burden of proof which is “ On the balance of probabilities, would this application, if granted impact on the Licensing Objectives” However the amendments have sought to focus on the issues in the area and we say that on balance the burden has been discharged.

The final threshold is distinguishing the application as exceptional, the pedigree of the applicant, the transparent ownership thread, the robust conditions and the sensible timings offered equate to a series of positive measures which set this application apart from any takeaways in the immediate locality, when there is a significant difference to everyone around you by definition there are exceptional circumstances.