

Revised August 2014

## Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

### PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.  
If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

#### I **NELSON LUKE RICHARDSON**

*(insert name of applicant)*

**apply for the review of a premises licence under section 51 of the Licensing Act 2003 for the premises described in Part 1 below.** *(delete as applicable)*

#### Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description			
This is an application for the review of the new premises licence granted in respect of:-  Public house Ref: 06780001820001 182 Clapham High Street Basement Unit			
<b>Post town</b>	London	<b>Post code</b> <i>(if known)</i>	SW4 7UG

Name of premises licence holder or club holding club premises certificate <i>(if known)</i>
London Cocktail Club Ltd
Number of premises licence or club premises certificate <i>(if known)</i>
Premises licence Prem645

#### Part 2 – Applicant Details

I am

1) an individual, body or business which is not a responsible authority



**(A) DETAILS OF INDIVIDUAL APPLICANT** (fill in as applicable)

Mr			
<b>Surname</b>	RICHARDSON		
<b>First names</b>	Nelson Luke		
<b>I am 18 years old or over</b> <input checked="" type="checkbox"/>			
<b>Current postal address</b>	█ The Village Charlton		
<b>Post town</b>	London	<b>Post code</b>	SE7 █
<b>Daytime contact telephone number</b>	█		
<b>Email address (optional)</b>	█		

**(B) DETAILS OF OTHER APPLICANT**

<b>Name</b>	I also make this application, for, on behalf of and as the duly authorised representative of the following leaseholders at █ Clapham High St:-
<b>Address</b>	█ – PAUL STEPHENSON – BRUTON LONDON LIMITED █ STEFANIA BOIANO – HEIDI BANNISTER – STANLEY CHIN – HELLEN DALTON █
<b>Telephone number (if any)</b>	█
<b>Email address (optional)</b>	█

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

<b>Name</b>	London Borough of Lambeth - Licensing
<b>Address</b>	6 <sup>th</sup> Floor International House Canterbury Crescent London SW9 7QE
<b>Telephone number (if any)</b>	Tel: 020 7926 6108
<b>Email address (optional)</b>	licensing@lambeth.gov.uk

**This application to review relates to the following licensing objective(s)**

- 1) Prevention of crime
- 2) Public safety
- 3) Prevention of public nuisance
- 4) Protection of children from harm

**Please state the ground(s) for review** *(please read guidance note 2)*

Please see document attached.



An application made by:

**NELSON RICHARDSON & 6 OTHERS**

*Applicants*

-for a review of-

**PREM645**

*Premises Licence*

-granted to-

**THE LONDON COCKTAIL CLUB LTD**

*Licence Holder*

-in respect of-

**182 CLAPHAM HIGH STREET**

*Premises*

-following-

**(1) 19/00025/PRMTRN transfer application**

**(2) 19/00065/PRMMIN minor variation**

*Applications*

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**APPLICATION FOR REVIEW OF PREMISES LICENCE**

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## I. APPLICATION FOR LICENCE REVIEW

1. The applicants request a review of premises licence **Prem645**, granted to the London Cocktail Club Ltd (“the LCC”) in respect of 182 Clapham High Street, following applications 19/00025/PRMTRN (transfer application) and 19/00065/PRMMIN (minor variation).
2. This application is made following:-
  - (1) Denial of any and all wrongdoing by the LCC<sup>1</sup>;
  - (2) Several unsuccessful attempts to make contact with local MP, Florence Eshalomi.<sup>2</sup>
  - (3) The absence of any response following an attempt to engage with the Principal Licensing Officer, Rob Gardner;<sup>3</sup> and,
3. The grounds for this application include (but are not limited to) the following:-
  - (1) **Ground 1** – A transfer application made under s42 of the Licensing Act 2003 (“the Act”) **cannot** be used to transfer a premises licence from one premises to another;
  - (2) **Ground 2** – The premises licence had already **lapsed**, pursuant to s27 of the Act, as the licence holder, Obar Limited (“Obar”) had become insolvent;<sup>4</sup>
  - (3) **Ground 3** – A minor variation application made under s41A of the Act **cannot** be used to “vary substantially” the premises to which it relates;
  - (4) **Ground 4** – Given (1), (2) and (3) above, the LCC and its landlord, Five Guys JV Ltd (“Five Guys”) appear to have committed licensing fraud for pecuniary advantage, including the commission of multiple offences under s158 of the Act;
  - (5) **Ground 5** – The Licensing Authority has acted unlawfully and the officers involved, negligently (or worse), in granting the applications; and,
  - (6) **Ground 6** – All four licensing objectives have been negatively impacted as a result of the actions of all three parties involved.
4. The applicants request that the licence be **revoked** and the matter referred to the appropriate authority for investigation and criminal prosecution.
5. The licensing fraud alleged is part of a programme of unauthorised development in breach of planning control undertaken by the LCC and Five Guys and is the subject of a claim for judicial review against Lambeth Borough Council (“the Council”) before the courts. The conduct which forms the subject of this application is, however, **unlawful**, irrespective of the outcome of the judicial review proceedings.

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<sup>1</sup> See APPENDIX C of this document, item 5.

<sup>2</sup> Emails to MP, Florence Eshalomi, sent 15 March, 31 March and 12 April 2021, respectively.

<sup>3</sup> Email to Principal Licensing Officer, Rob Gardner, sent 7 April 2021.

<sup>4</sup> See APPENDIX C of this document, item 4.

## **II. LEGAL FRAMEWORK**

6. The relevant provisions of the Licensing Act 2003 are as follows:-

**27 Death, incapacity, insolvency, etc. of licence holder**

- (1) A premises licence lapses if the holder of the licence—
- (c) becomes insolvent,
- (4) For the purposes of this section, a company becomes insolvent on—
- (a) the approval of a voluntary arrangement proposed by its directors,

**41A Application for minor variation of premises licence**

- (1) Subject to subsection (3), the holder of a premises licence may apply under this section (instead of under section 34) to the relevant licensing authority for variation of the licence.
- (3) An application may not be made under this section to vary a premises licence so as to—
- (b) vary substantially the premises to which it relates,

**42 Application for transfer of premises licence**

- (1) Subject to this section, any person mentioned in section 16(1) (applicant for premises licence) may apply to the relevant licensing authority for the transfer of a premises licence to him.

**47 Interim authority notice following death etc. of licence holder**

- (1) This section applies where—
- (a) a premises licence lapses under section 27 in a case within subsection (1)(c) of that section (insolvency of the holder), but
  - (b) no application for transfer of the licence has been made by virtue of section 50 (reinstatement of licence on transfer following death etc.)
- (2) A person who—
- (a) has a prescribed interest in the premises concerned,
- may, during the initial 28 day period, give to the relevant licensing authority a notice (an “interim authority notice”) in respect of the licence.
- (7) But the premises licence lapses again—
- (b) at the end of the interim authority period, unless before that time a relevant transfer application is made to the relevant licensing authority.

**158 False statements made for the purposes of this Act**

- (1) A person commits an offence if he knowingly or recklessly makes a false statement in or in connection with—
- (a) an application for the grant, variation, transfer... of a premises licence,
  - (c) an interim authority notice or any other notice under this Act,
- (2) For the purposes of subsection (1) a person is to be treated as making a false statement if he produces, furnishes, signs or otherwise makes use of a document that contains a false statement.

### **III. POLICY FRAMEWORK**

7. The relevant provisions of the Statement of Licensing Policy 2019-2024 are as follows:-

#### **Lambeth Statement of Licensing Policy 2019-2024**

1.6 *The Licensing Act 2003 also outlines five other key aims that are important for all those involved in licensing to support and promote through good practice. These are:*

- *Protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;*
- *Encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may impact upon them.*

2.7 *It is understood that the Planning regime in Lambeth has an impact on the Licensing regime. It is also noted that each of these regimes is covered by a separate legislative framework and is administered through different parts of the Council, with separate Committees overseeing the processes. However, the Authority commits to working in alignment with the Planning regime as closely as is possible under the separate regimes to ensure as much consistency between the two as is appropriate and possible.*

2.8 *The use of premises for the sale or supply of alcohol, provision of entertainment or late night refreshment or indoor sports is subject to planning control and requires planning permission or must otherwise be lawful under planning legislation. Planning permission is generally required for the establishment of new premises or for a premises' change of use.*

2.9. *In general, all premises which are the subject of a licensing application should have the benefit of planning permission or be deemed permitted development. Licensing and Planning are separate regimes as mentioned above but consents from both must be in place to operate legally.*

16.12 *Where reviews arise and the Authority determines that the crime prevention objective is being undermined through the premises being used in connection with crime or the committing of a criminal offence(s), it is expected that the revocation of the licence- even in the first instance - will be seriously considered*

#### **Appendix 10: Clapham Cumulative Impact Policy**

*The policy creates a rebuttable presumption that any new applications for premises licences or club premises certificates, along with any major variations that could impact negatively on the licensing objectives will be refused, unless the applicant can demonstrate that there will be no negative impact on any of the licensing objectives.*

#### **IV. FACTUAL BACKGROUND**

8. The building at 182-184 Clapham High Street stands at the centre of the Clapham Conservation Area and was described by the Planning Inspector who dismissed Five Guys' 2017 Planning Appeal as being "in the finest traditions of Victorian architecture."<sup>5</sup>
9. The applicants are current and former residential leaseholders and owners of the 12 flats on [REDACTED]
10. Development of the site remains subject to 98/01525/FUL Development Consent, which granted planning permission for the conversion of the former class A1 retail shops, 182 and 184, into a single class A3 food and drink establishment, 182-184, subject to a number of planning conditions expressly intended to safeguard the amenity of the flats upstairs.
11. Access to 182-184 was limited to the lobbied entrance at the southern end of 184, being the farthest point away from the residential entrance at 182a. The basement (which is less than half the size of the ground floor) could only be accessed internally from inside 184, and was used solely to accommodate toilet facilities for customers and staff.
12. Until 2017, Obar leased the premises, trading as the 'Bison & Bird' bar and restaurant.
13. On 13 March 2017, Five Guys acquired the commercial leasehold (in breach of s5 of the Landlord and Tenant Act 1987, a criminal offence), paying £800,000 for a 25 year lease (broadly equivalent to an annual rental of £32,000). Details of the agreement between Five Guys and Obar remain at large, but it would appear that terms included a commitment from Obar to agree to a transfer of its licence when called upon to do so.
14. In preparation to subdivide the premises, Five Guys obtained valuations for both the ground floor and basement as separate public houses from the Valuation Office Agency. Three certificates of rateable value were issued to the Council, effective 1 April 2017:-
  - (1) For 182-184, the former combined unit (Public house 06780018210005<sup>6</sup>);
  - (2) For 184, the proposed ground floor unit (Public house 06780001820002<sup>7</sup>); and,
  - (3) For 182, the proposed basement unit (Public house 6780001820001<sup>8</sup>)
15. All three units cannot co-exist simultaneously, of course. If/when either of the proposed new units was brought into use, the other would necessarily be brought into use with it, and, in the same moment, the former combined unit would cease to exist.

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<sup>5</sup> Appeal Decision APP/N5660/Z/17/3183067, dated 19 January 2018.

<sup>6</sup> <https://www.tax.service.gov.uk/business-rates-find/valuations/23748680000>

<sup>7</sup> <https://www.tax.service.gov.uk/business-rates-find/valuations/23825842000>

<sup>8</sup> <https://www.tax.service.gov.uk/business-rates-find/valuations/23825944000>

16. Between 13 March and 11 June 2017, Five Guys undertook unauthorised development in breach of planning control to subdivide the premises into the two new units, including undertaking demolition without consent in a conservation area, a criminal offence under s196D of the Town and Country Planning Act 1990 (“the TCPA 1990”). The development undertaken included the creation of a new entrance to the basement unit on the High Street, **immediately** beside the entrance to the residential flats above, at 182a.<sup>9</sup>
17. During that same period:-
- (1) The Council logged an enforcement cases against Five Guys<sup>10</sup>, on 4 April;
  - (2) Five Guys submitted licensing application 17/00102/PRMNEW Premises Licence (new application) in respect of the new ground floor unit (being that which is described in the premises plan included as part of the application), on 18 April;
  - (3) Five Guys also submitted application 17/02135/FUL for retrospective planning permission, on 4 May (having already completed the development); and,
  - (4) The applicants made representations opposing Five Guys’ planning application, on 30 May. (The applicants did not make representations in respect of the licensing application 17/00102/PRMNEW simply because they were unaware of it.)
18. On 12 June 2017, Five Guys opened for business, thereby implementing a purported permitted development right to change the use class from class A4 to class A3<sup>11</sup> and, inextricably with it, the subdivision of the former combined unit into two.
19. Whilst the *lawfulness* of that development is disputed,<sup>12</sup> the fact that the subdivision *took place* on that date is common ground and is undisputed. It was, therefore, on that date, 12 June 2017, that the two new planning units, 184 and 184, came into use and the former combined unit, 182-184, ceased to exist.
20. On 15 June, the Council granted licensing application 17/00102/PRMNEW for a new premises license in respect of the ground floor unit, five days ahead of the Licensing Sub-Committee Meeting (on 20 June 2017) at which the application was to be heard.

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<sup>9</sup> See APPENDIX C of this document, item 1.

<sup>10</sup> Case reference: 17/00242/3COU.

<sup>11</sup> Under Class B of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (“the GDPO 2015”).

<sup>12</sup> The permitted development right asserted by Five Guys was **expressly precluded** by the operation of article 3(4) of the GDPO 2015 in conjunction with the planning conditions imposed by 98/01525/FUL Development Consent and, specifically, condition 8 of that permission. Article 3(4) of the GDPO 2015 states, “Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.” Condition 8 of the permission states, “Development shall not be carried out otherwise than in strict accordance with the plans herein approved without prior consent in writing of the Local Planning Authority.” The Court of Appeal has ruled, in *Dunnett Investments v SOS [2017] EWCA Civ 192*, that a condition of this formulation precludes reliance on permitted development rights. As Five Guys did not have prior written consent, the permitted development was precluded and, therefore, the development was unlawful.

21. The licence was granted despite representations opposing the application having been made (in advance) by the Principal Licensing Officer, Mr Rob Gardner.
22. On 20 June 2017, the Council logged a second enforcement cases against Five Guys.<sup>13</sup>
23. On 3 July, the Council refused Five Guys' application 17/02135/FUL for retrospective planning permission. The Delegated Register for that decision records:-
  - 7.7 *There is no evidence that the proposal would have any public benefits which would outweigh this harm.*
  - 7.11 *Residents have raised concerns that the proposal would result in unsocial behaviour in close proximity to the residential entrance of the host building. In particular residents are concerned that the proposed new basement entrance would be immediately next to the residential entrance.*
  - 12.1 *The application was... in significant conflict with Lambeth's Local Plan.*
24. At this juncture, the Council's own Planning Enforcement Protocol requires as follows:-
  - 5.7 *If informal negotiations fail or a retrospective planning application is refused, we will consider the appropriateness and expediency of taking formal action in the form of serving a notice.*
  - 6.2 *Where there is a breach of planning control but it is not considered expedient and appropriate to take enforcement action... recommendations must be signed off by two of either the Delivery Lead for Planning Enforcement, Principal Planning Enforcement Officer or Senior Planning Enforcement Officer, before the case be closed.*
25. The applicants received a letter from the Council confirming that the planning application had been refused and that an enforcement investigation was underway. The letter asked for the applicants' patience, but affirmed that the Council would inform us of the outcome of its investigation, what action would be taken (if any) and why (or why not).
26. The applicants never heard from the Council again.
27. Instead, on 22 November 2017, the Council submitted an appeal against its own refusal of Five Guys' retrospective application to the Planning Inspectorate.<sup>14</sup> In an attempt to manipulate the outcome in Five Guys' favour, the Council concealed the extent of the unauthorised development undertaken (as well as the representations made opposing it) from the Planning Inspector, as well as the very existence of the appeal altogether from the applicants. The Council kept both parties in the dark and neither was the wiser.
28. Despite the Council's gerrymandering, the Inspector concluded, "There are no public benefits of the proposal... that would outweigh the harm caused", and dismissed the appeal.

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<sup>13</sup> Case reference: 17/00443/3CNS.

<sup>14</sup> Planning Appeal APP/N5660/Z/17/3183067.

29. Undeterred, on 3 April 2018, the Council unlawfully accepted application 18/01450/LDCE from Five Guys' prospective sub-tenant, the LCC, for a Certificate of Lawful Use, in breach of its statutory duty (under s191(4) of the TCPA 1990) to refuse such an application. On 15 August, the Council unlawfully granted that application and issued a Certificate of Lawful Use to the LCC in contravention of the extant planning control. The Council did not alert the applicants, of course, who continued to wait in vain for news of enforcement, news that would never come. (The applicants did not discover the subterfuge until 2019.)
30. The Council concealed its reasons for this decision (a further breach of its statutory duty under s191(5) of the TCPA 1990) and said and did nothing.
31. As recently as February 2020, some two and a half years later, the Council initially claimed in the High Court that:-<sup>15</sup>
36. *The Council has not taken any final decision in respect of formal enforcement action... Had the Council taken such a decision, the case would have been closed and a report been provided in respect of the reasons for taking no action. This is not the case. The enforcement case remains open...*
32. That, of course, was pure fiction. Not only had the Council decided (not to take action), it had also decided 'not to decide' (not to take action), and not to declare that it had (not) done so, nor explain why, and thereby avoid any challenge to its decision.
33. The decision as to whether to take enforcement action was entirely at the Council's discretion, subject only to a requirement to give reasons if it decided not to do so. Yet, rather than simply disclose its reason(s), the Council has instead gone to quite extraordinary lengths to avoid having to do so. Naturally, one can only wonder just exactly what it is that the Council is so desperate to hide.
34. Knowing that the applicants were already extremely upset over the new basement entrance that had somehow popped up on the High Street immediately beside the entrance to their homes, Five Guys and new sub-tenant, the LCC, rightly surmised that the residents would be vociferously opposed to any possibility of that entrance being used as the entrance to a late night drinking establishment. But rather than engage with their neighbours – some of whom who had called the building home for the past 12 years – they simply decided to avoid having to deal with the residents altogether.
35. So, rather than make an application for a new licence as was required, the LCC instead:-
- (1) Made a transfer application in respect of Obar's lapsed licence; and then,
  - (2) Made a minor variation application to replace the old premises plan with a new one of the basement unit, thereby obtaining a new premises licence without challenge.

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<sup>15</sup> Lambeth Borough Council's Summary Grounds of Resistance, dated 7 February 2020.

## **V. GROUNDS FOR REVIEW**

36. The grounds for this application, identified in Part I, are further detailed as follows:-

### **GROUND 1 - A transfer application made under s42 of the Act cannot be used to transfer a premises licence from one premises to another**

**Re:** 19/00025/PRMTRN Premises Licence (transfer application)  
**Made:** 17 January 2019;  
**Granted:** 31 January 2019,  
**Officer:** Pamela Riley

- (1) Although a transfer application may be used to transfer a licence from one licence holder to another, it **cannot** be used to transfer a licence from one premises to another, irrespective of whether the latter is immediately next door or 100 miles away.
- (2) Premises licence **Prem645** was granted in respect of the former combined unit 182-184, known as the 'Bison & Bird' (Public house ref. 06780018210005).
- (3) As set out in paras 18 and 19 above, that combined unit ceased to exist on 12 June 2017 when the two new units, 182 and 184 (Public house ref. 06780001820001 and 06780001820002, respectively), were brought into use.
- (4) Although the *lawfulness* of this subdivision has been challenged by the applicants, the fact that the subdivision *took place* on this date is common ground and has been affirmed by the Council and the LCC in their statements to the court, as well as by the Council in documents of public record that pre-date the application, including, for example, the Delegated Register for 18/01450/Certificate of Lawful Use.
- (5) Irrespective of whether **Prem645** could somehow be deemed to have survived the subdivision and remain alive despite the passing of its host, it still could not be transferred to another premises, even if that premises happened to occupy a part of the same location.
- (6) It would appear that the means by which this transfer was able to be effected was the continuation of the rateable valuation certificate for the former premises some two years past the point at which the subdivision took effect, although we admit we cannot be certain, as the Council has yet to disclose any of the documentation in this respect.
- (7) Irrespective of the means, however, the licence was transferred **unlawfully**.

**GROUND 2 – The premises licence had already lapsed, pursuant to s27 of the Act, as the licence holder, Obar, had become insolvent**

**Re:** 19/00025/PRMTRN Premises Licence (transfer application)  
**Made:** 17 January 2019;  
**Granted:** 31 January 2019,  
**Officer:** Pamela Riley

- (1) Former licence holder, Obar, went into liquidation on 7 November 2018.<sup>16</sup>
- (2) Therefore, it would appear that the licence had **already lapsed** before the application was made.
- (3) There is no record of any interim authority having been granted and in any event such an interim authority would have been invalid for the reasons above and below.

**GROUND 3 – A minor variation application made under s41A of the Act cannot be used to “vary substantially” the premises to which it relates**

**Re:** 19/00065/PRMMIN Premises Licence (minor variation)  
**Made:** 22 February 2019  
**Granted:** 9 March 2019  
**Officer:** Sarah Williams

- (1) Although a minor variation application may be used to make minor alterations to the internal layout of a premises, it **cannot** be used to transfer a licence from one premises to another and **cannot** be used to make substantial variations to the premises.
- (2) The alterations in this case are far beyond any applicable discretion of ‘fact and degree’ that the Licensing Authority may have. Proof of the same being that the alterations brought into use an entirely new planning unit and included (but by no means were limited to):-
  - (a) The loss of the lobbied entrance (to which the licence conditions expressly refer);
  - (b) The reduction in size (floor area) of the premises by a factor of three (with which the capacity of 450 persons specified by the licence conditions is dangerously incompatible); and,
  - (c) The reduction in the number of secondary means of escape (SME) from 2 to 0.5 and a corresponding reduction in SME capacity by a factor of 4, which presents a danger to life, given that the majority of the capacity (floor area) is now below ground.

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<sup>16</sup> It would appear that Obar’s Directors, Olly Bengough and Alex Rutherford, paid themselves a dividend of £5,250,006 following the acquisition by Five Guys and then went into voluntary liquidation, leaving £169,074.65 in unpaid debts.

**GROUND 4 – The LCC and Five Guys appear to have committed licensing fraud for pecuniary advantage as well as multiple offences under s158 of the Act**

- (1) The LCC and its landlord, Five Guys, would appear to have deliberately and unlawfully used transfer and minor variation licensing applications instead of making a new license application as required, so as to circumvent:-
  - (a) The requirements for public notice to be given;
  - (b) The certainty of representations being made against such an application; and,
  - (c) The very high probability that such an application would then be refused by the Licensing Sub-Committee in view of such representations, given the Clapham Cumulative Impact Policy contained in the Lambeth Statement of Licensing Policy and reproduced in Part III of this document.
- (2) Put simply, the LCC and Five Guys made transfer and minor variation applications to obtain a new premises licence that the LCC would otherwise not have been unable to.
- (3) Both Five Guys and the LCC are experienced operators holding multiple licences and retain experienced professional advisers. Neither can claim that their respective actions were due to a ‘misunderstanding’ or that they simply constitute a ‘mistake’.
- (4) Although the fraud was perpetrated by the LCC in the first instance, Five Guys is directly as the architect of the fraud, having secured the cooperation of the previous licence holder, Obar, some two years in advance.
- (5) We would draw your attention to the fact that Five Guys made no attempt to transfer Obar’s premises licence to itself in 2017 before undertaking the subdivision (referenced in the Minutes of the Licensing Sub-Committee Meeting of 20 July 2020, at which Five Guys’ licensing application 17/00102/PRMNEW was due to have been heard.)
- (6) Both the LCC and Five Guys continue to profit from this fraud:-
  - (a) The LCC making “current profits of some £150,000 per year”;<sup>17</sup> and,
  - (b) Five Guys having let the basement to the LCC for ‘key money’ of £125,000 plus an annual rental of £75,000, more than double the equivalent annual rental of £32,000 paid by Five Guys for both the ground floor and basement together.<sup>18</sup>
- (7) Meanwhile, the residential leaseholders have each incurred depreciation of £60,000 on their properties as a result, and at least one has been forced to sell, the property having been deemed no longer suitable as mortgage security.

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<sup>17</sup> See APPENDIX C of this document, item 5.

<sup>18</sup> Ibid.

**GROUND 5 – The Licensing Authority has acted unlawfully and the officers involved, negligently (or worse), in granting the applications**

- (1) The provisions of the Licensing Act 2003 and the accompanying Home Office guidance are perfectly clear and, indeed, the Licensing Authority repeats much of this guidance on its website. Neither the Licensing Authority nor its officers can credibly claim not to have known or not to have understood the law.
- (2) The subdivision was a matter of public record and was known to the Licensing Authority.
- (3) By not only granting the premises licence to the LCC in respect of the premises in question, but by having done so in a manner which precluded Licensing Sub-Committee oversight, public scrutiny and the right of members of the public to object, the Licensing Authority has acted in a manner which is incompatible with:-
  - (a) A ECHR Convention right, specifically, Article 6;
  - (b) The aims stated in para 1.6 of its Statement of Licencing Policy and being specifically:-
    - *Protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;*
    - *Encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may impact upon them.*
  - (c) The policies set out in paras 2.7, 2.8 and 2.9 of its Statement of Licencing Policy, reproduced in Part III of this document.
  - (d) The Clapham Cumulative Impact Policy, also reproduced in Part III.
- (4) The Licensing Committee has, therefore, acted unlawfully, pursuant to:-
  - (a) Section 6 of the Human Rights Act 1998; and,
  - (b) The fact that it is trite law that a failure by a public authority to follow its own established policy without good reason can be an error of law (as per *Lumba v Secretary of State [2011] UKSC 12*).
- (5) Whether the actions of the officers involved constitute negligence or misfeasance in public office remains to be determined by the courts.
- (6) It is indicative, however, that the LCC was willing to pay the sum of £125,000 and enter into a 15 year lease commitment at an annual rental of £75,000, a total commitment of £1.25m, before even making the first application, let alone obtaining the licence.

**GROUND 6 – All four licensing objectives have been negatively impacted as a result of the actions of the three parties involved**

- (1) The licensing objectives have been negatively impacted as follows:-
- (a) **The prevention of crime and disorder** – The LCC’s and Five Guys’ actions in obtaining a premises license for the basement unit constitute the commission of crime in themselves.;
  - (b) **Public safety** – The transfer of a premises licence with a premises capacity of 450 persons granted in respect of a predominantly ground floor premises, to a basement unit one third of the size and having only one quarter the capacity of secondary means of escape presents a danger to life.
  - (c) **The prevention of public nuisance** – The grant of a premises licence to the LCC has done nothing to prevent public nuisance, quite the opposite. It has caused significant nuisance and distress to the residential leaseholders living upstairs, some of whom now fear entering and leaving their own homes. Please refer to the six witness statements attached, as submitted to the Court of Appeal, which speak for themselves.<sup>19</sup>
  - (d) **The protection of children from harm** – Further to (c) above, at least one of the flats is occupied by a family with a child.
- (2) Each and every one of the applicants is more than willing to give evidence in person at a public hearing, in front of news media if possible, of the nuisance and distress caused by – and the financial losses suffered as a result of – the greed of these rogue operators and the unlawful actions of those officers who enabled them and have continued to protect them since..

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<sup>19</sup> See APPENDIX C of this document, item 6.

## APPENDIX A

### *Re: 17/00102/PRMNEW Premises Licence (new licence)*

**Re:** 17/00102/PRMNEW Premises Licence (minor variation)  
**Made:** 18 April 2017  
**Granted:** 15 June 2017  
**Officer:** Naomi Rochester  
**Sub-Committee:** Cllrs Amélie Treppass, Fred Cowell &. Max Deckers Dowber

- (1) No application for a review of the premises licence held by Five Guys at Clapham High Street is made at this time as:-
- (a) The allegations of criminality have yet to be proven in court; and,
  - (b) There is negligible impact on the other three licensing objective as Five Guys (unlawfully) operates the site as a takeaway.
- (2) We would, however, draw your attention to a false statement of some significance made by Five Guys in its 2017 application for a new premises licence (a criminal offence under s158 of the Act).
- (3) The statement in questions is made under section 18 of the application, 'Licensing Objectives'. Five Guys states, "It is wholly confident that its operation will not lead to adverse cumulative impact in this area." The applicants submit that Five Guys' operation in the area extends to include its unlawful subdivision of the former combined premises and its sub-letting of the new basement unit to the LCC.
- (4) The proof that Five Guys already knew, prior to its own new premises licence being granted, that its operations would have a negative impact on the licensing objectives is as follows:-
- (a) The residential leaseholders had already made representations opposing Five Guys' retrospective planning application 17/02135/FUL, on 30 May 2017.<sup>20</sup>
- The residents raised concerns that the proposal would result in unsocial behaviour in close proximity to the residential entrance of the host building. In particular the residents were concerned that the proposed new basement entrance would be immediately next to the residential entrance.
- These concerns are referenced at para 7.11 of the Delegated Register which documents the Council's refusal of that application.

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<sup>20</sup> See APPENDIX C of this document, item 3.

- (b) Only a few months earlier, Five Guys had managed to successfully appeal the Royal Borough of Kensington and Chelsea's refusal of planning permission for Five Guys to change the use of the former Boujis Nightclub at 43 Thurloe Street.

Five Guys' appeal was based on submissions to the effect that its business operation would cause relatively less nuisance to neighbouring amenity than the former late night drinking establishment had.

Yet, at Clapham High Street, Five Guys created out of nowhere exactly the problem for its neighbours that its Thurloe Street appeal claimed to solve: The nuisance caused by the operation of a late night drinking establishment in immediate proximity to private residential accommodation.

Five Guys claimed:-

**43 Thurloe Street Planning Statement November 2016<sup>21</sup>**

7.15 *When compared with the existing use, it is considered that, in terms of general levels of noise and disturbance, the proposed use will have a lesser impact on neighbouring residents and businesses.*

7.16 *Furthermore, the unsociable hours of the existing nightclub have resulted in noise and disturbance in the early hours of the morning with the club closing at 3am both during the week and at weekends, this will not be the case for Five Guys. The change of use would also result in a reduction in the potential for crime, particularly considering that alcohol would only be sold as an accompaniment to meals.*

7.17 *As a result of the above it is considered that the change of use would have a positive impact on the amenity of the surrounding area when compared to the existing use, particularly in terms of late night disturbance, noise disorder and crime.*

Five Guys knew exactly the problem it was going to cause its new neighbours at Clapham High Street... **It just didn't care.**

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<sup>21</sup> See APPENDIX C of this document, item 2.

**APPENDIX B**  
***Statement of Truth***

I, Nelson Luke Richardson, of [REDACTED] The Village, Charlton, London SE7 [REDACTED], believe that the facts stated in this Witness Statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed

[REDACTED]

Nelson Richardson  
April 2021

**APPENDIX C**  
***Supporting Evidence***

1. Photograph of LCC and residential entrances
2. Five Guys' Statement re 43 Thurloe St, November 2016 [extract]
3. Representations opposing 17/02135/FUL application, 30/05/2017
4. Appointment of Liquidator by Obar Limited, 22/10/2018
5. LCC's Summary Grounds, submitted to High Court, 07/02/2020
6. Witness Statements submitted to Court of Appeal (6 No.)



# 43 THURLOE STREET LONDON

## PLANNING STATEMENT

PREPARED BY PEGASUS GROUP | FIVE GUYS JV LTD | AUGUST 2016 | LON.0749



# **PLANNING APPLICATION FOR CHANGE OF USE FROM NIGHTCLUB (SUI GENERIS) TO RESTAURANT (CLASS A3) WITH ANCILLARY TAKEAWAY USE**

## **PLANNING STATEMENT**

**BOUJIS, 43 THURLOE STREET, LONDON SW7 2LQ**

**ON BEHALF OF FIVE GUYS JV LTD**

**TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)  
PLANNING AND COMPULSORY PURCHASE ACT 2004**

**Prepared by: RHU/EMO**

## **Pegasus Group**

First Floor | South Wing | Equinox North | Great Park Road | Almondsbury | Bristol | BS32 4QL

**T** 01454 625945 | **F** 01454 618074 | **W** [www.pegasuspg.co.uk](http://www.pegasuspg.co.uk)

Birmingham | Bracknell | Bristol | Cambridge | Cirencester | East Midlands | Leeds | London | Manchester

**PLANNING | DESIGN | ENVIRONMENT | ECONOMICS**

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- 7.13 Replacement condensers are proposed to be installed at site. The new units will be modern units which are quieter and more efficient than those currently in use at the site. They will be located away from sensitive receptors and will cause no adverse impacts on the surrounding area.
- 7.14 The location of the extract and ventilation equipment has been chosen so that it will not be visible from the public realm. Therefore there will be no adverse impact on the appearance of the Conservation Area as a result of this plant.
- 7.15 When compared with the existing use, it is considered that, in terms of general levels of noise and disturbance, the proposed use will have a lesser impact on neighbouring residents and businesses. The majority of Five Guys' custom is for eat-in dining and no congregation is permitted outside of the restaurant (other than for the purposes of queuing).
- 7.16 Furthermore, the unsociable hours of the existing nightclub have resulted in noise and disturbance in the early hours of the morning with the club closing at 3 am both during the week and at weekends, this will not be the case for Five Guys. The change of use would also result in a reduction in the potential for crime, particularly considering that alcohol would only be sold as an accompaniment to meals.
- 7.17 As a result of the above it is considered that the change of use would have a positive impact on the amenity of the surrounding area when compared to the existing use, particularly in terms of late night disturbance, noise disorder and crime.

Applications Neighbour/Contributor Comments

UPRN Number: 100023363996  
 Application Ref: 17/02136/ADV  
 Site Address: The Bison Bar  
 182 Clapham High Street  
 London  
 SW4 7UG

No. of original Consultees	53	No of Contributors	1	No. of Representations	0	No. of Supporting Contributions	0	No. of Objections	1
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Contributor Name	Address	Comment Type	Date	Comment
[REDACTED]	[REDACTED]	O - Objection	30.05.2017	<p>Dear Sir/Madam,</p> <p>[REDACTED]</p> <p>I wish to object on the following grounds:</p> <ol style="list-style-type: none"> <li>1. The Applicant has, in fact, already completed its 'proposed' works, in advance of due and proper consideration of its application by Lambeth Council, and has thereby failed to adhere to - and shown scant regard for - local bylaws.</li> <li>2. The signage erected, although broadly in accordance with the drawings submitted, is in fact of visibly poor quality material and workmanship and is not in keeping with the building's status as being of local architectural significance, and, of course, being part of the local conservation area. The red 'background', for example, appears to be painted sheets of MDF, and has been somewhat roughly fixed directly over the previous 'Bison &amp; Bird' signage, also having the effect of making the signage unnecessarily bulky and clunky.</li> <li>3. By far and away, however, my greatest concern and strongest objection is to the creation of the 'proposed' new 'Basement Bar Entrance' on the right hand side of the frontage (facing), immediately proximate to the entrance to the residential portion of the building upstairs. (I understand that this proposed new 'Basement Bar' will in due course be the subject of a separate liquor licence application?) I understand that the Applicant is also the proprietor of the infamous 'Infernos' nightclub at 146 Clapham High Street.</li> </ol> <p>For information, please see:  <a href="https://www.yhttp://metro.co.uk/2014/08/27/10-reasons-infernos-in-clapham-is-the-best-4839945/elp.co.uk/biz/infernos-London">https://www.yhttp://metro.co.uk/2014/08/27/10-reasons-infernos-in-clapham-is-the-best-4839945/elp.co.uk/biz/infernos-London</a></p> <p>Having lived at [REDACTED] for some seven years now, and regularly having the occasion to walk past Infernos in the early hours of the morning, I am regularly disgusted by the large numbers of grossly intoxicated teenagers and persons in their early 20s shrieking and shouting, staggering about, and vomiting and/or urinating upon themselves, others and the neighbouring shop frontages.</p> <p>Myself and at least three other flat owners in the building are greatly concerned that creation of a 'proposed' new 'Basement Bar Entrance' immediately proximate to the entrance to our homes would almost certainly have a significantly negative impact upon our quality of life, our safety and the value of our properties, and as such, we are vehemently opposed to it.</p> <p>I am not aware of another late night bar or nightclub on Clapham High Street where the main entrance is immediately proximate to the main</p>

entrance to private homes.

We are by no means 'Nimbys', and we enjoy the High Street's vibrant nightlife as much as anyone. However, we lived in the building first, and the Applicant should not be allowed to impose such significantly negative impacts upon our lives and the value of our homes purely in the pursuit of profit, and especially without any prior consultation.

Thank you for your consideration.

Yours faithfully,



## Applications Neighbour/Contributor Comments

**UPRN Number:** 100023363996  
**Application Ref:** 17/02135/FUL  
**Site Address:** The Bison Bar  
 182 Clapham High Street  
 London  
 SW4 7UG

No. of original Consultees	53	No of Contributors	2	No. of Representations	0	No. of Supporting Contributions	0	No. of Objections	2
----------------------------	----	--------------------	---	------------------------	---	---------------------------------	---	-------------------	---

Contributor Name	Address	Comment Type	Date	Comment
[REDACTED]	[REDACTED]	O - Objection	30.05.2017	<p>Dear Sirs</p> <div style="background-color: black; height: 30px; width: 100%; margin-bottom: 10px;"></div> <p>I wish to object on the following grounds:</p> <ol style="list-style-type: none"> <li>1. The Applicant has, in fact, embarked on its 'proposed' works, in advance of due and proper consideration of its application by Lambeth Council, and has thereby failed to adhere to - and has shown scant regard for - local bylaws.</li> <li>2. The signage erected, although broadly in accordance with the drawings submitted, is in fact of visibly poor quality material and workmanship and is not in keeping with the building's status as being of local architectural significance, and, of course, being part of the local conservation area. The red 'background', for example, appears to be painted sheets of MDF, and has been somewhat roughly fixed directly over the previous 'Bison &amp; Bird' signage, also having the effect of making the signage unnecessarily bulky and clunky.</li> <li>3. My greatest concern and strongest objection is to the creation of the 'proposed' new 'Basement Bar Entrance' on the right hand side of the frontage (facing), immediately proximate to the entrance to the residential portion of the building upstairs. (I understand that this proposed new 'Basement Bar' will in due course be the subject of a separate liquor licence application?) I understand that the Applicant is also the proprietor of the infamous 'Infernos' nightclub at 146 Clapham High Street.</li> </ol> <p>For information, please see:  <a href="https://www.yhhttp://metro.co.uk/2014/08/27/10-reasons-infernos-in-clapham-is-the-best-4839945/elp.co.uk/biz/infernos-London">https://www.yhhttp://metro.co.uk/2014/08/27/10-reasons-infernos-in-clapham-is-the-best-4839945/elp.co.uk/biz/infernos-London</a></p> <p>Myself and other flat owners in the building are greatly concerned that creation of a 'proposed' new 'Basement Bar Entrance' immediately proximate to the entrance to our homes would almost certainly have a significantly negative impact upon our quality of life, our safety and the value of our properties, and as such, we are vehemently opposed to it.</p> <p>I am not aware of another late night bar or nightclub on Clapham High Street where the main entrance is immediately proximate to the main entrance to private homes.</p> <p>Whilst we enjoy the High Street's vibrant nightlife as much as anyone, we lived in the building first, and the Applicant should not be allowed to impose such significantly negative impacts upon our lives and the value of our homes purely in the pursuit of profit, and especially without any prior consultation.</p>

Contributor Name	Address	Comment Type	Date	Comment
Mr Nelson Richardson	██████████ Clapham High Street London SW4 ██████████	O - Objection	30.05.2017	<p>Thank you for your consideration.</p> <p>Yours faithfully ██████████</p> <p>Dear Sir/Madam,</p> <p>I am the owner of ██████████ Clapham High Street, ██████████ ██████████ proposed new 'Five Guys' licensed restaurant.</p> <p>I wish to object on the following grounds:</p> <ol style="list-style-type: none"> <li>1. The Applicant has, in fact, already completed its 'proposed' works, in advance of due and proper consideration of its application by Lambeth Council, and has thereby failed to adhere to - and shown scant regard for - local bylaws.</li> <li>2. The signage erected, although broadly in accordance with the drawings submitted, is in fact of visibly poor quality material and workmanship and is not in keeping with the building's status as being of local architectural significance, and, of course, being part of the local conservation area. The red 'background', for example, appears to be painted sheets of MDF, and has been somewhat roughly fixed directly over the previous 'Bison &amp; Bird' signage, also having the effect of making the signage unnecessarily bulky and clunky.</li> <li>3. By far and away, however, my greatest concern and strongest objection is to the creation of the 'proposed' new 'Basement Bar Entrance' on the right hand side of the frontage (facing), immediately proximate to the entrance to the residential portion of the building upstairs. (I understand that this proposed new 'Basement Bar' will in due course be the subject of a separate liquor licence application?) I understand that the Applicant is also the proprietor of the infamous 'Infernos' nightclub at 146 Clapham High Street.</li> </ol> <p>For information, please see: <a href="https://www.yhttp://metro.co.uk/2014/08/27/10-reasons-infernos-in-clapham-is-the-best-4839945/elp.co.uk/biz/infernos-london">https://www.yhttp://metro.co.uk/2014/08/27/10-reasons-infernos-in-clapham-is-the-best-4839945/elp.co.uk/biz/infernos-london</a></p> <p>Having lived at ██████████ Clapham High Street for some seven years now, and regularly having the occasion to walk past Infernos in the early hours of the morning, I am regularly disgusted by the large numbers of grossly intoxicated teenagers and persons in their early 20s shrieking and shouting, staggering about, and vomiting and/or urinating upon themselves, others and the neighbouring shop frontages.</p> <p>Myself and at least three other flat owners in the building are greatly concerned that creation of a 'proposed' new 'Basement Bar Entrance' immediately proximate to the entrance to our homes would almost certainly have a significantly negative impact upon our quality of life, our safety and the value of our properties, and as such, we are vehemently opposed to it.</p> <p>I am not aware of another late night bar or nightclub on Clapham High Street where the main entrance is immediately proximate to the main entrance to private homes.</p> <p>We are by no means 'Nimbys', and we enjoy the High Street's vibrant nightlife as much as anyone. However, we lived in the building first, and the Applicant should not be allowed to impose such significantly negative impacts upon our lives and the value and mortgageability of our homes purely in the pursuit of profit, and especially without any prior consultation.</p> <p>Thank you for your consideration.</p> <p>Yours faithfully, Nelson Richardson</p>

# 600

## Notice of appointment of liquidator in a members' or creditors' voluntary winding up



Companies House

WEDNESDAY



A09 \*A7H9R2BK\* 24/10/2018 #153  
COMPANIES HOUSE

fer to

### 1 Company details

Company number	0 4 0 6 5 6 3 8
Company name in full	Obar Limited t/a Infernos

→ **Filing in this form**  
Please complete in typescript or in bold black capitals.

### 2 Liquidator's name

Full forename(s)	Lawrence
Surname	King

### 3 Liquidator's address

Building name/number	Beaver House
Street	23-38 Hythe Bridge Street
Post town	Oxford
County/Region	OX1 2EP
Postcode	
Country	

### 4 Liquidator's email address or telephone number <sup>①</sup>

Email address	lking@critchleys.co.uk
Telephone number	01865 261100

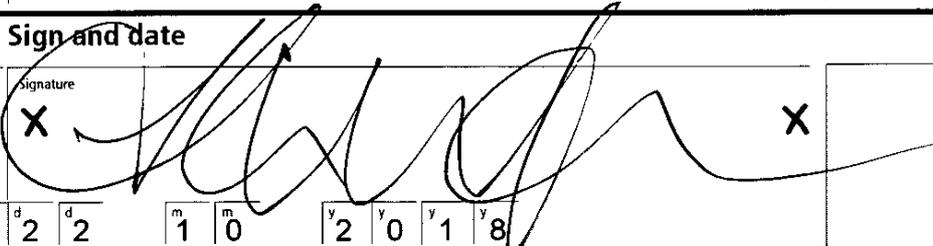
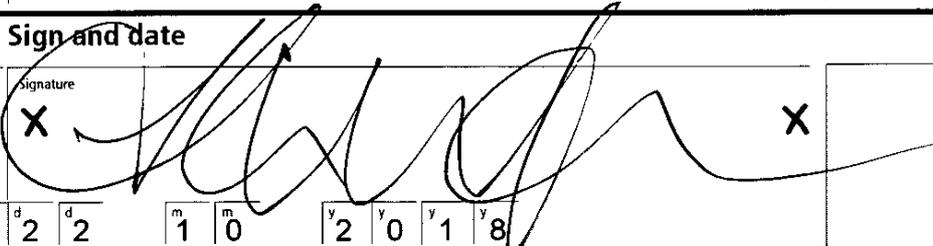
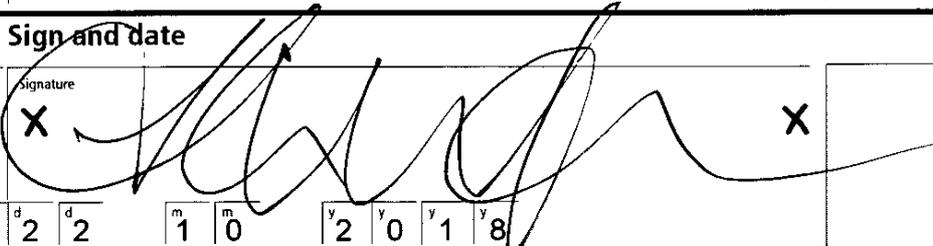
① You must give an email address or telephone number. All information on this form will appear on the public record.

### 5 Insolvency practitioner number

Number	1 0 4 5 2
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600

Notice of appointment of liquidator in a members' or creditors' voluntary winding up

<b>6</b>	<b>Liquidator's name<sup>1</sup></b>																	
Full forename(s)	Milan	<b>1 Other Liquidator's details</b> Use this section to tell us about another liquidator.																
Surname	Vuceljic																	
<b>7</b>	<b>Liquidator's address<sup>2</sup></b>																	
Building name/number	Beaver House	<b>2 Other Liquidator's details</b> Use this section to tell us about another liquidator. Use the continuation page to tell us about more than two liquidators.																
Street	23-38 Hythe Bridge Street																	
Post town	Oxford																	
County/Region	OX1 2EP																	
Postcode																		
Country																		
<b>8</b>	<b>Liquidator's email address or telephone number<sup>3</sup></b>																	
Email address	MVuceljic@critchleys.co.uk	<b>3 You must give an email address or telephone number. All information on this form will appear on the public record.</b>																
Telephone number	01865 261100																	
<b>9</b>	<b>Insolvency practitioner number</b>																	
Number	2 0 1 7 2																	
<b>10</b>	<b>Statement of appointment</b>																	
	I confirm the appointment of the liquidator(s) on																	
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<b>11</b>	<b>Appointment details</b>																	
	The appointment was made by (Tick one)																	
	<input type="checkbox"/> Company																	
	<input checked="" type="checkbox"/> Creditors																	
<b>12</b>	<b>Type of liquidation</b>																	
	Tick to confirm the liquidation type																	
	<input type="checkbox"/> Members																	
	<input checked="" type="checkbox"/> Creditors																	
<b>13</b>	<b>Sign and date</b>																	
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d	2	d	2	m	1	m	0	y	2	y	0	y	1	y	8			

## SECTION C

Summary of grounds for contesting the claim. If you are contesting only part of the claim, set out which part before you give your grounds for contesting it. If you are a court or tribunal filing a submission, please indicate that this is the case.

1. The London Cocktail Club Limited ("LCC") is the Third Interested Party in this matter and is the tenant and licensee of licensed premises in the basement of 182-184 Clapham High Street, London SW4 7UG ("the premises"). LCC is a UK Company with its registered address at 3rd Floor, 33 Percy Street, London W1T 2DF and registered number 07438012.
2. The claim is denied and contested in full. It is totally without merit. It is furthermore substantially out of time for making a claim for challenging by way of judicial review any of the decisions the subject of the claim.
3. In accordance with CPR 54.12(7) the claim should be stated by the Court to be totally without merit and should be dismissed for the reasons given by the Defendant which have been filed herein, are not repeated here and are adopted by LCC.
4. The facts and matters contained in the witness statement of Neville William Maling on behalf of Five Guys JV Ltd ("Five Guys"), an interested party in this matter, are true in so far as they are within the knowledge of LCC.
5. The lease of the premises was entered into by LCC on 21st December 2018 for a term of 15 years with a premium of £125,000 with rent of £75,000 per annum with the next rent review in 2023, the landlord being Five Guys.
6. Since the lease with Five Guys was entered into, LCC has carried out extensive refitting and upgrading works to the premises and has expended around £500,000 in doing so, excluding management time. The cocktail bar was opened to clients in July 2019 after completion of the refurbishment works. It is a well run, popular cocktail bar locally which contributes greatly to the Clapham area bringing social and economic benefits to the local area and beyond.
7. LCC would strongly resist the granting of any Order by the Court in the terms sought by the Claimant or at all. There is no basis whatsoever for any order in favour of the Claimant to be granted.
8. LCC reserves the right to serve evidence and to add to these grounds and the grounds of resistance of the Defendant in the event that permission is granted by the Court for the Claimant to proceed with his claim for judicial review or if in the event of refusal of permission the Claimant seeks an oral renewal hearing (other than if the claim is declared by the Court to be totally without merit – see above in relation to CPR 54.12(7) when there is then no power for a Claimant to seek an oral renewal hearing).
9. LCC strongly further denies that there are any grounds whatsoever for the Local Planning Authority Lambeth Council lawfully to issue and serve on it an enforcement notice as alleged by the Claimant or at all. The use of the premises is entirely lawful. As stated in paragraph 12 of the Response dated 20 December 2019 to the Claimant's letter before claim for judicial review sent by Browne Jacobson, solicitors, on behalf of the Defendant Lambeth Council, a Certificate of Lawful Use Ref 18/01450/LDCE was granted on 8 August 2018 under section 191 of the Town and Country Planning Act 1990 by the Defendant Council in respect of its current use. Further that, as stated in the Certificate of Lawful Use, the planning permission issued in 1998 referred to in the claim, as later varied, had the effect of authorising the use of the premises as a drinking establishment. A premises licence was issued by the Licensing Authority for use of the premises as a drinking establishment on 31 January 2019, ref 19/00025/PRMTRN.
10. LCC would suffer substantial prejudice if the orders sought were to be granted. If any order is made by the Court as sought or otherwise seeking to curtail the activities of the premises as a drinking establishment, it would be highly disruptive to LCC's business and cause LCC to suffer substantial loss and damage which would not be likely to be recoverable. The business including the lease of the premises is valued at £3.5m and current profits of some £150,000 per year, expected to increase during this financial year. If trading is interrupted for whatever reason by this action, LCC stand to lose a considerable sum and would have to consider, depending on the circumstances, of laying off staff. Currently, LCC employ seven staff at the premises.
11. In so far as the facts therein set out are within its knowledge, LCC adopts the facts, matters and response set out in the Response Letter to the Claimant by Browne Jacobson on behalf of Lambeth Council in their letter dated 20 December 2019 and in their Grounds of Resistance.

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE ADMINISTRATIVE COURT**  
**PLANNING COURT**

Mr James Strachan QC (sitting as a Deputy Judge)  
Refusal of Permission for Judicial Review  
CO/65/2020  
17 July 2020

**BETWEEN:**

**THE QUEEN**  
**(on the application of**  
**(A1) NELSON RICHARDSON**  
**(A2) PAUL STEPHENSON**  
**(A3) STEFANIA BOIANO**  
**(A4) HEIDI BANNISTER**  
**(A5) STANLEY CHIN**  
**(A6) HELLEN DALTON**  
**(A7) NICOLA SQUICCIMARRO)**

Former Owner, [REDACTED]  
Owner, [REDACTED]  
Owner, [REDACTED]  
Owner, [REDACTED]  
Owner, [REDACTED]  
Owner, [REDACTED]

Appellants

-and-

**(R1) LAMBETH BOROUGH COUNCIL**  
**(R2) PLACID HOLDINGS INC**  
**(R3) FIVE GUYS JV LTD**  
**(R4) THE LONDON COCKTAIL CLUB LTD**

Local Authority  
Freeholder  
Leaseholder  
Sub-Tenant

Respondents

---

**WITNESS STATEMENT**  
**OF**  
**(A2) PAUL STEPHENSON**  
**OWNER, [REDACTED]**

---

- 
1. I, Paul Stephenson, say as follows:-
  2. I am the legal owner of [REDACTED] Clapham High Street.
  3. I was never informed of, nor consulted with respect to, Five Guys' 2019 Premises Licence Transfer Application.
  4. I was never informed of, nor consulted with respect to, Five Guys' 2019 Planning Application.
  5. I was never informed of, nor consulted with respect to, Five Guys' 2020 Planning Application.
  6. Since it opened for business in 2017, Five Guys' business operation has caused my tenants unreasonable nuisance due to the number of Deliveroo scooter drivers constantly coming and going. Customers of Five Guys have always created a large amount of noise into the early hours of the morning. There are always groups outside smoking which cause our property to smell during the summer months and the groups of people that congregate outside our main entrance creating an uneasy environment.
  7. I have also noticed that Five Guys' restaurant always seems to be empty.
  8. Since it opened for business in 2019, the LCC's business operation has caused my tenants unreasonable nuisance due to intoxicated customers entering and leaving the premises, until as late as 3am, via the door immediately beside the entrance to our flats and also because of the safety issue for the residents.
  9. In addition, I would like to tell the Court that I would like to stress my disappointment with the external extension work of Five Guys creating less space to access the property and for the general public to safely pass by.
  10. The statements above are true and are made from my own knowledge.
  11. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed

[REDACTED]

Paul Stephenson  
17/11/2020

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE ADMINISTRATIVE COURT**  
**PLANNING COURT**

Mr James Strachan QC (sitting as a Deputy Judge)  
Refusal of Permission for Judicial Review  
CO/65/2020  
17 July 2020

**BETWEEN:**

<b>THE QUEEN</b>	
<b>(on the application of</b>	
<b>(A1) NELSON RICHARDSON</b>	Former Owner, 
<b>(A2) PAUL STEPHENSON</b>	Owner,
<b>(A3) STEFANIA BOIANO</b>	Owner,
<b>(A4) HEIDI BANNISTER</b>	Owner,
<b>(A5) STANLEY CHIN</b>	Owner,
<b>(A6) HELLEN DALTON</b>	Owner,
<b>(A7) NICOLA SQUICCIMARRO)</b>	Owner,
	<b>Appellants</b>

-and-

<b>(R1) LAMBETH BOROUGH COUNCIL</b>	Local Authority
<b>(R2) PLACID HOLDINGS INC</b>	Freeholder
<b>(R3) FIVE GUYS JV LTD</b>	Leaseholder
<b>(R4) THE LONDON COCKTAIL CLUB LTD</b>	Sub-Tenant
	<b>Respondents</b>

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**WITNESS STATEMENT**  
**OF**  
**(A3) STEFANIA BOIANO**  
**OWNER, **

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- 
1. I, Stefania Boiano, say as follows:-
  2. I am the legal owner of [REDACTED] Clapham High Street.
  3. I was never informed of, nor consulted with respect to, Five Guys' 2019 Premises Licence Transfer Application.
  4. I was never informed of, nor consulted with respect to, Five Guys' 2019 Planning Application.
  5. I was never informed of, nor consulted with respect to, Five Guys' 2020 Planning Application.
  6. Since it opened for business in 2017, Five Guys' business operation has caused myself and my tenants unreasonable nuisance due to the number of Deliveroo scooter drivers constantly coming and going and the smell of frying fat coming from extractors to the roof of the building outside the windows of my flat create an intoxicating smell that is overpowering and unbearable, you cannot open the window to ventilate the flat, which is a big problem especially during the summer months, making the living really unpleasant.
  7. I have also noticed that Five Guys' restaurant always seems to be empty and used just as a take away.
  8. Since it opened for business in 2019, the LCC's business operation has caused me and my tenants unreasonable nuisance due to intoxicated customers entering and leaving the premises, until as late as 3am, via the door immediately beside the entrance to our flats. Customers lean against the entrance door to 182a obstructing entry to the building and against the key fob reader and buzzer for guests. It is intimidating to enter the building in this scenario, with people aggressive or ignoring you completely when you ask them to move so you can enter your home. It is unacceptable. The customers congregate outside the entrance to smoke, which stagnates into [REDACTED] so there is a permanent, nauseous smell of stale cigarette smoke in the entrance hall of the building. There is also noise pollution due to the loud music coming out through the ventilation on the roof after midnight which disturbs attempts to sleep as the window of my flat is directly on the roof.
  9. In addition, I would like to tell the Court that the extension work to the front of the Five Guys has reduced the space on the pathway, thus making the entrance to [REDACTED] less open, which added to the impact of LCC has made entering the building feel unsafe and unsecure.
  10. The statements above are true and are made from my own knowledge.
  11. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed

[REDACTED]

Stefania Boiano

Date

17/11/2020

**IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM THE ADMINISTRATIVE COURT  
PLANNING COURT**

Mr James Strachan QC (sitting as a Deputy Judge)  
Refusal of Permission for Judicial Review  
CO/65/2020  
17 July 2020

**BETWEEN:**

**THE QUEEN  
(on the application of  
(A1) NELSON RICHARDSON  
(A2) PAUL STEPHENSON  
(A3) STEFANIA BOIANO  
(A4) HEIDI BANNISTER  
(A5) STANLEY CHIN  
(A6) HELLEN DALTON  
(A7) NICOLA SQUICCIMARRO)**

Former Owner,  
Owner,  
Owner,  
Owner,  
Owner,  
Owner,  
Owner,

Appellants

-and-

**(R1) LAMBETH BOROUGH COUNCIL  
(R2) PLACID HOLDINGS INC  
(R3) FIVE GUYS JV LTD  
(R4) THE LONDON COCKTAIL CLUB LTD**

Local Authority  
Freeholder  
Leaseholder  
Sub-Tenant

Respondents

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**WITNESS STATEMENT  
OF  
(A4) HEIDI BANNISTER,  
OWNER, [REDACTED]**

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We, Neil and Heidi Bannister, say as follows:-

1. I am the legal owner of [REDACTED] Clapham High Street, London, SW4 7UG.
2. I was never informed of, nor consulted with respect to, Five Guys' 2019 Premises Licence Transfer Application.
3. I was never informed of, nor consulted with respect to, Five Guys' 2019 Planning Application.
4. I was never informed of, nor consulted with respect to, Five Guys' 2020 Planning Application.
5. Since it opened for business in 2017, Five Guys' business operation has caused my tenants unreasonable nuisance due to the number of Deliveroo scooter drivers constantly coming and going, the noise from the scooters and the drivers is very distracting and also the smell coming up through the drains is very unpleasant.
6. I have also noticed that Five Guys' restaurant always seems to be empty, it really is just a take away business.
7. Since it opened for business in 2019, the LCC's business operation has caused my tenants unreasonable nuisance due to intoxicated customers entering and leaving the premises, until as late as 3am, via the door immediately beside the entrance to our flats, they block my access to my building, often appear aggressive and scare me and also smoke right outside my door.
8. In addition, I would like to tell the Court that I feel the 5 guys operation would be far better suited to an industrial area, where people living and working at home would not be disturbed all day and night.
9. The statements above are true and are made from my own knowledge.
10. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed

[REDACTED]

Neil Bannister

Date

16/11/20

[REDACTED]

Heidi Bannister

Date

16/11/20

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE ADMINISTRATIVE COURT**  
**PLANNING COURT**

Mr James Strachan QC (sitting as a Deputy Judge)  
Refusal of Permission for Judicial Review  
CO/65/2020  
17 July 2020

**BETWEEN:**

**THE QUEEN**  
**(on the application of**  
**(A1) NELSON RICHARDSON**  
**(A2) PAUL STEPHENSON**  
**(A3) STEFANIA BOIANO**  
**(A4) HEIDI BANNISTER**  
**(A5) STANLEY CHIN**  
**(A6) HELLEN DALTON**  
**(A7) NICOLA SQUICCIMARRO)**

Former Owner, [REDACTED]  
Owner, [REDACTED]  
Owner, [REDACTED]  
Owner, [REDACTED]  
Owner, [REDACTED]  
Owner, [REDACTED]  
Owner, [REDACTED]

Appellants

-and-

**(R1) LAMBETH BOROUGH COUNCIL**  
**(R2) PLACID HOLDINGS INC**  
**(R3) FIVE GUYS JV LTD**  
**(R4) THE LONDON COCKTAIL CLUB LTD**

Local Authority  
Freeholder  
Leaseholder  
Sub-Tenant

Respondents

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**WITNESS STATEMENT**  
**OF**  
**(A5) STANLEY CHIN**  
**OWNER, [REDACTED]**

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- 
1. I, Stanley Chin say as follows:-
  2. I am the legal owner of [REDACTED] Clapham High Street.
  3. I was never informed of, nor consulted with respect to, Five Guys' 2019 Premises Licence Transfer Application.
  4. I was never informed of, nor consulted with respect to, Five Guys' 2019 Planning Application.
  5. I was never informed of, nor consulted with respect to, Five Guys' 2020 Planning Application.
  6. Since it opened for business in 2017, Five Guys' business operation has caused my tenants unreasonable nuisance due to the number of Deliveroo scooter drivers constantly coming and going and also because of The 5 Guys customers hanging around outside the premises till the early hours of the morning sometimes upto 3am.
  7. I have also noticed that Five Guys' restaurant always seems to be empty.
  8. Since it opened for business in 2019, the LCC's business operation has caused my tenants unreasonable nuisance due to intoxicated customers entering and leaving the premises, until as late as 3am, via the door immediately beside the entrance to our flats and creating an unwanted atmosphere and concerns for one's safety when entering or leaving our premises.
  9. The statements above are true and are made from my own knowledge.
  10. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed

[REDACTED]

Stanley Chin

17<sup>th</sup> November 2020

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE ADMINISTRATIVE COURT**  
**PLANNING COURT**

Mr James Strachan QC (sitting as a Deputy Judge)  
Refusal of Permission for Judicial Review  
CO/65/2020  
17 July 2020

**BETWEEN:**

<b>THE QUEEN</b>	
<b>(on the application of</b>	
<b>(A1) NELSON RICHARDSON</b>	Former Owner, 
<b>(A2) PAUL STEPHENSON</b>	Owner, 
<b>(A3) STEFANIA BOIANO</b>	Owner, 
<b>(A4) HEIDI BANNISTER</b>	Owner, 
<b>(A5) STANLEY CHIN</b>	Owner, 
<b>(A6) HELLEN DALTON</b>	Owner, 
<b>(A7) NICOLA SQUICCIMARRO)</b>	Owner, 
	<b>Appellants</b>
<b>-and-</b>	
<b>(R1) LAMBETH BOROUGH COUNCIL</b>	Local Authority
<b>(R2) PLACID HOLDINGS INC</b>	Freeholder
<b>(R3) FIVE GUYS JV LTD</b>	Leaseholder
<b>(R4) THE LONDON COCKTAIL CLUB LTD</b>	Sub-Tenant
	<b>Respondents</b>

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**WITNESS STATEMENT**  
**OF**  
**(A6) HELLEN DALTON**  
**OWNER, **

---

1. I, Hellen Dalton, would like to make the following points:
2. I am the legal owner of [REDACTED] Clapham High Street.
3. I was never informed of, nor consulted with respect to, Five Guys' 2019 Premises Licence Transfer Application.
4. I was never informed of, nor consulted with respect to, Five Guys' 2019 Planning Application.
5. I was never informed of, nor consulted with respect to, Five Guys' 2020 Planning Application.
6. Since it opened for business in 2017, Five Guys' business operation has caused my tenants unreasonable nuisance due to the number of delivery scooter drivers constantly coming and going. Their bikes are parked haphazardly causing difficulty for my tenants to manoeuvre round the drivers on the pavement. There has been a sharp increase in the number of drivers during both lockdowns, which has caused unnecessary stress for my tenants.
7. Since it opened for business in 2019, the LCC's business operation has caused my tenants unreasonable nuisance due to intoxicated customers entering and leaving the premises, until as late as 3am, via the door immediately beside the entrance to our flats. They also queue up outside the door making it difficult to enter and leave the premises. **This is especially intimidating for my female tenant who is reluctant to use the front door at night.**
8. The statements above are true and are made from my own knowledge.
9. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed

[REDACTED]

17/11/2020

**IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM THE ADMINISTRATIVE COURT  
PLANNING COURT**

Mr James Strachan QC (sitting as a Deputy Judge)  
Refusal of Permission for Judicial Review  
CO/65/2020  
17 July 2020

**BETWEEN:**

**THE QUEEN  
(on the application of  
(A1) NELSON RICHARDSON  
(A2) PAUL STEPHENSON  
(A3) STEFANIA BOIANO  
(A4) HEIDI BANNISTER  
(A5) STANLEY CHIN  
(A6) HELLEN DALTON  
(A7) NICOLA SQUICCIMARRO)**

Former Owner  
Owner  
Owner  
Owner  
Owner  
Owner  
Owner

Appellants

-and-

**(R1) LAMBETH BOROUGH COUNCIL  
(R2) PLACID HOLDINGS INC  
(R3) FIVE GUYS JV LTD  
(R4) THE LONDON COCKTAIL CLUB LTD**

Local Authority  
Freeholder  
Leaseholder  
Sub-Tenant

Respondents

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**WITNESS STATEMENT  
OF  
(A7) NICOLA SQUICCIMARRO  
OWNER, [REDACTED]**

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- 
1. I, Nicola Squicciarro say as follows:
  2. I am the legal owner of [REDACTED] Clapham High Street.
  3. I was never informed of, nor consulted with respect to, Five Guys' 2019 Premises Licence Transfer Application.
  4. I was never informed of, nor consulted with respect to, Five Guys' 2019 Planning Application.
  5. I was never informed of, nor consulted with respect to, Five Guys' 2020 Planning Application.
  6. Since it opened for business in 2017, Five Guys' business operation has caused me unreasonable nuisance due to the number of Deliveroo scooter drivers constantly coming and going, congregating near the entrance of the building. During lockdown I am forced to change the usual way home as no social distancing is observed or possible due to the number of scooters and people waiting outside my home. During summer the smell of burned oil is terrifying and even during the hottest days I have to have my windows closed! This prevents aeration and a pleasant living. I have also noticed, never before they opened, black particles coming inside the flat. It looks like tar, it stains. I can no longer open the windows!
  7. Five Guys' restaurant is always empty showing how this is clearly a Take away not a restaurant!
  8. Since it opened for business in 2019, the LCC's business operation has caused me distress and anxiety due to intoxicated customers entering and leaving the premises, until as late as 3am, via the door immediately beside the entrance to our flats. I have been insulted while entering the building as I invited to stop playing with the intercom. Coming back home is no longer a happy and pleasant journey, I feel uncomfortable and unsafe. It is a walk to the uncertain, hoping that none is blocking the entrance, that they are not drunk, aggressive or carrying knives. They often smoke just next to the entrance the smoke comes inside the entrance corridor, leaving an unpleasant smell lasting until the late morning, when I leave the building for a run or simply to buy food!
  9. In addition, I would like to tell the Court that I felt I have been deprived of my right of living in a sane environment away from nuisances of any form as it was when 5Guys and LCC were not there.
  10. The statements above are true and are made from my own knowledge.
  11. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed

Nicola Squicciarro

16<sup>th</sup> November 2020