

# APPENDIX M

Case Reference No: 2400086933

IN CROYDON MAGISTRATES' COURT BETWEEN:

SPACE INVESTMENTS LIMITED

Appellant

-and-

(1) LONDON BOROUGH OF SOUTHWARK

(2) UNIQUE CRISPENS FOOD LIMITED

Respondents

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ORDER OF DJ(MC) BENJAMIN

10 JUNE 2024

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**UPON** the Appellant having made an appeal under section 181 of the Licensing Act 2003 (“the Act”);

**AND UPON** having heard from Counsel for the Appellant (Michael Feeney), Counsel for the First Respondent (Michael Rhimes) and Counsel for the Second Respondent (David Dadds)

**IT IS ORDERED THAT**

- (1) The above appeal is remitted for re-hearing by the Licensing Sub-Committee of the First Respondent in accordance with the following direction of the Court under section 181(2)(c) the Act:

To determine the review afresh at a rehearing, as soon as practicable, and – in particular – to obtain the views of the LET and the EPT on this matter, and to decide, with reasons, whether the hours should be reduced and what if any further conditions should be imposed.

- (2) No order as for costs

DJ Benjamin

***Space Investments Limited***

10.06.24

LBS LBC made a decision to impose conditions on Wazobia on 09.11.23. Did so on the basis of the material before it. LET suggested [*reads out the relevant passage*] and EHT suggested [*reads out the relevant passage*]. LBS submits that the hours issue, as I shall call it, was not an important principal issue on which it was required to give reasons. I have a great deal of sympathy for that position.

Space Investments, who had sought the review as the owner of five flats above. The appellant provided further evidence (Complaints) and expert evidence. It has also put forward the hours issue front and centre of the appeal process.

On considering the further evidence, LBS adopts a position of neutrality. It maintains its decision of November 2023 was correct on the material before it, but it neither stands in the way of or supports the reduction of licensing hours. The LA has supplied no evidence to the Court from its LET as to *why* that is so and *why* the new evidence affects its own position as regards its own SLP. There is no witness for either party to cross-examine on that point.

Section 181(2) reads [X]

I raised the prospect of remitting the matter to the LSC. *Hammersmith*, [2008] EWHC [37]. While much of the judgment is fact-specific, §29 reads

“In principle, it would not seem to me objectionable in a particular case for the magistrate to decide that having regard to all the circumstances of the case it is appropriate that factual disputes that have not been resolved should be resolved in the first instance by the primary finder of fact under the system, namely the local authority and, in this case, the sub-committee. That, after all, is the structure of the system that findings of fact are made in the first instance by the sub-committee or the authority.”

Before me today I have the extremely unusual position of neutrality by the body charged with the responsibility for the licensing system. I do not know what their position is in respect of the principal important controversial issue. I do not accept that which has been urged on me which is that lack of reasons may give rise to an appeal.

Citizens of Southwark are entitled to have this decision made by the locally elected councillors, where the central issue is squarely in dispute.

I am minded to remit this matter for a re-hearing, to determine it “*as soon as practicable*”, and to obtain LET and EPT on this matter, and to decide, with reasons,

whether the hours should be reduced and what if any further conditions should be imposed.

No order as to costs.