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Our ref AW/AU/CIT006-7-5/5981

Your ref

27 April 2023

Dear Ramesh

Kings Cross Reel Time - Unauthorised Hours of Operation

I write further to my email of 20 April 2023 and our telephone conversation of the same day with regard to your email of 18 April 2023 in connection with the above premises.

The background to this matter as you will know is that the premises at 1 and 1a Euston Road have been approved for planning use as an amusement arcade for many years. On 28 May 1998, Camden Council approved the “continued use of the ground and basement floors as an amusement arcade for a further limited period” and on 18 February 2000 the condition removing the temporary nature of the use was approved with “the effect that the continued use of the site as an amusement arcade is granted permanently.”

The premises have at all relevant times also been granted the appropriate licence under the relevant gaming legislation to operate as an amusement arcade/Adult Gaming Centre. The current licensing legislation is the Gambling Act 2005 and the premises have a premises licence to operate as an amusement arcade/Adult Gaming Centre.

Your email of 18 April 2023 refers to a “complaint alleging unauthorised hours of operation”. It would be very helpful if you could provide more details in respect of this “complaint” as my clients are unaware of any issues relating to these premises.

It is fair to say that your email of 18 April 2023 suggesting unauthorised use in terms of operational hours came as a major shock to my clients. These premises have been operated for many years by Family Leisure

Limited and as far as I am aware Family Leisure Limited has operated these premises for well in excess of 20 years.

In 2019 Family Leisure Limited was bought out by the current management team who in taking over Family Leisure Limited were informed that all 5 amusement arcade/adult gaming centre premises operated by Family Leisure Limited (including the premises 1-1a Euston Road) could operate 24/7. The current management team were informed that whilst the premises at 1-1a Euston Road has planning permission to open, the previous management team had agreed with the local police that the premises would close at 02:00. My clients' understanding of the position when my clients bought Family Leisure Limited was that the premises had planning permission and a licence for 24/7 but were only operating until 02:00.

Having received your email of 18 April 2023, my clients, as I mentioned on the telephone asked me to look into this matter on their behalf.

I have interviewed so far 2 people who have been employed by the company for many years.

Sonia Muhoi is an area manager for the company and has been employed by the company since 22 October 2005, initially as a customer service assistance but then latterly as a manager and area manager. Sonia has no doubt whatsoever that at all times during her time with the company the premises 1-1a Euston Road have always operated until at least 02:00. Sonia has provided some paperwork to support her recollection, but she is in absolutely no doubt that the premises have traded until 02:00 from 2005.

Tomas Patriubavicius has been employed by my clients since 3 May 2011 and he is currently a manager of The Victoria Adult Gaming Centre. Tomas started work as a customer service assistant before becoming an assistant manager and manager and has worked in several of my clients amusement arcades. Tomas has in particular worked at 1-1a Euston Road until 02:00 on several occasions and is also in doubt that these premises have operated until 02:00, certainly since he joined the company in 2011 and before.

A lot of paperwork, as you would imagine, no longer exists following the move online and the acquisition of the company by my clients in 2019, but I have been provided with the following documents:

1. The hourly "floor check" for 1-1a Euston Road dated 6 July 2017 which shows the floor checks were undertaken by staff until 02:00.
2. A further floor check dated 30 April 2017 which shows that checks of the premises were undertaken by staff until 02:00.

3. A manager's rota for 2017 lists the operating times and staff shifts of the London venues and Kings Cross is shown as having staff on duty from 08:30 to 02:30.
4. A Family Leisure managers rota for October 2015 which shows managers on duty until 02:30.

The above all support the evidence of Sonia and Tomas.

Sonia Muhoi has no doubt that these premises have operated continuously until 02:00 for all of the time that she has worked at the premises and this is supported by the above documents. I have only been able to look through 1 or 2 old boxes at the venue and came across these documents. I am not sure that there will be anymore paperwork in existence given the time that has elapsed since the paperwork was generated.

As you will be aware a breach of any planning condition is not enforceable if:

- The occupier/user is continuously in breach for a period of 10 or more years
- The breach was not on the balance of probabilities deliberately concealed
- There has been no relevant enforcement notice/action.

The test under the Town and Country Planning Act 1990 has been considered in a number of High Court cases.

These premises operate an extremely prominent position on Euston Road opposite Kings Cross Station. These are not premises which are in a back street or hidden in any way and the footfall in front of these premises is significant. It cannot be suggested that there has been any attempt to conceal the operating hours at these premises given its prominent location and the length of time that the premises have been open until 02:00.

My clients are not aware that there has been any relevant enforcement notice or action taken in the past 4 years, and in fact are not aware of any issues with these premises whatsoever. There is certainly no nuisance caused by these premises, nor by any customers.

Whilst my clients believe and were informed that the premises close at 02:00 due to an agreement with the police, I have not been able to find any evidence of this agreement, nor do I have any evidence that the premises have traded continuously for a 10 year period 24/7. There is, it seems to me, no doubt given the evidence in particular of Sonia Muhoi and also Tomas Patriubavicius that these premises have been trading until 02:00 for a continuous period of time well in excess of 10 years and as far as Sonia is concerned in the region of at least 15 years.

My clients do of course want to work with Camden in resolving this matter and accept that there is no evidence of continuous trading 24/7. My clients would have no issue in the circumstances applying for a certificate of lawful use for the premises to operate until 02:00.

I hope the above assists and look forward to hearing from you.

Yours sincerely

Andrew Woods

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