

LICENSING SUB-COMMITTEE No.3

Thursday 1st May 2014

Membership: Councillor Michael Brahams (Chairman), Andrew Havery and Councillor Ahmed Abdel-Hamid

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

Relevant Representations: Environmental Health, local resident, The Soho Society and 6 residential representations.

Present: Mr Robert Sutherland (Solicitor, representing the Applicant), Mr Jonathan Downey (Applicant), Ms Jackie Enright (proposed DPS), Mr Anil Drayan (Environmental Health) and Mr Don Watson (local resident).

Milk & Honey, 61 Poland Street, W1 14/01787/LIPN	
1.	Regulated Entertainment: Indoors
	Films Live Music Performance of dance Anything of a similar description to live/recorded music or performance of dance Monday to Saturday 09:00 to 03:00 Sunday 09:00 to 02:00 Recorded Music Monday to Sunday 00:00 to 00:00 (Unrestricted) Private Entertainment Private entertainment consisting of dancing, music or other entertainment of a like for consideration and with a view to profit: Unrestricted.
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): In paragraph 2.4.5 of the Council's Statement of Licensing Policy 2011 it is stated that 'applications for new licences to replace licences which have lapsed because of the failure to submit an interim authority notice in due time in the event of the death or insolvency of a licence holder will be considered by the

licensing authority as possible exceptions’.

The Sub-Committee noted that Milk & Honey is located in the West End Stress Area and that Mr Downey was the director of a company that had held a premises licence at 8-12 Broadwick Street since 2002 with the same hours and licensable activities as those being proposed for the new licence until it had lapsed following the liquidation of the licence holder in November 2013. There were therefore grounds for the application to be granted as an exception to policy, provided that the application promoted the licensing objectives.

The Sub-Committee considered that the Applicant had taken the required steps in terms of the proposed conditions to promote the licensing objectives. Local residents had particularly raised concerns regarding public nuisance. However, proposed conditions included that a noise limiter must be fitted to the musical amplification system set at a level which was satisfaction of Environmental Health and also that save for the windows on the stair lobby all windows and external doors would be kept closed after 23:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons. No noise would be permitted to emanate from the premises nor vibration be transmitted through the structure of the premises which would give rise to a nuisance. The Sub-Committee added a condition to the licence which stipulated that a direct telephone number for the manager at the premises would be made publicly available at all times the premises is open. The telephone number is to be made available to residents and businesses in the vicinity. Therefore should any conditions on the licence be breached, including those relating to public nuisance, local residents would have a line of communication to the manager of the premises. Potentially in the event of persistent public nuisance issues, local residents had the option to review the premises licence.

The Sub-Committee gave careful consideration to the written representations of local residents and the comments of Mr Watson at the hearing in respect of the roof terrace on the fourth floor. Mr Watson had specific concerns that residents could hear clearly what was being said during club members’ conversations on the roof terrace and this was particularly bad during the warmer weather in the summer. He was looking for a restriction to 8pm for the use of the terrace and for there to be no drinking in this area. Members took into account, however, that there had been no restriction on the use of the roof terrace before and the Council’s Noise Team had received few complaints about the use of the area. The Applicant in discussions with Environmental Health about the current application had committed to not using the terrace after 23:00 hours when residents’ sleep was more likely to be adversely affected. Mr Watson had made the point that music could be heard emanating from the premises when the roof terrace was being used. This was denied by Mr Downey who stated that the music could not emanate via the stairwell. Mr Sutherland, representing the Applicant had also asserted during the hearing that the Applicant did not play loud music as Milk and Honey had a relaxed approach with customers sitting down and either eating or drinking cocktails. It was a members’ club only after 23:00 hours. The Applicant appreciated that in the event that music did emanate from the premises via the terrace area and was a nuisance, the

Applicant would be in breach of the licence conditions. This included the requirement that the relevant windows and doors being closed when regulated entertainment was being played. The Sub-Committee noted that Mr Downey had offered a condition following Mr Watson addressing Members that notices would be prominently displayed stating that no mobile phones would be used on the roof terrace.

As referred to by Mr Sutherland, the Police had not made a representation objecting to the application. Mr Drayan for Environmental Health advised that conditions had been updated in line with the Council's model conditions and there was a condition to prevent the use of the terrace after 23:00 hours. He added that he accepted the Applicant's case that the lapsed licence was an exception to policy and informed Members that there had been no issues with the premises in more recent times. Mr Drayan and Mr Sutherland had come to an agreement regarding a proposed condition that no rubbish, including bottles, would be moved, removed or placed in outside areas between 23:00 hours and 07:00 hours due to the requirements of the Applicant's contractor. Mr Drayan suggested that all waste should be placed out for collection no earlier than 30 minutes before the scheduled collection times. The Sub-Committee noted however that the Applicant had made the case that there had never been an issue with rubbish being put out on the private forecourt at 03:00 or 04:00 hours and Mr Drayan accepted that there not been any previous issues over more than a decade. The Sub-Committee therefore did not attach this condition.

Mr Sutherland had had concerns in his discussions with Mr Drayan about the wording of the Council's model conditions 45 and 46 (conditions 24 and 25 below) relating to touting. The Sub-Committee decided that the original wording of the model conditions would stand. It was noted that Mr Sutherland's concerns were addressed somewhat on condition 24 following Mr Wroe's comment that it was unlikely the Council would prosecute in the event that the advertising was lawful.

The Sub-Committee decided that in keeping with the proposed hours for regulated entertainment, there would be a terminal hour of 03:00 Monday to Saturday and 02:00 on Sunday for recorded music and private entertainment. These had been unrestricted on the lapsed licence. Mr Sutherland had previously commented that the option was open to the Sub-Committee to reduce the proposed hours for recorded music and private entertainment.

2. Late night refreshment: Indoors & Outdoors

Monday to Saturday 23:00 to 03:30
 Sunday 23:00 to 02:00.

Amendments to application advised at hearing:

None.

	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below (see reasons for decision in Section 1).</p>
3.	Sale of Alcohol: On and Off sales
	<p>Monday to Saturday 10:00 to 03:00 Sunday 12:00 to 00:30.</p>
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below (see reasons for decision in Section 1).</p>
4.	Non Standard Timings:
	<ul style="list-style-type: none"> • For all permitted activities: From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day. • For all permitted activities: On the morning on which British summer time begins, the permitted hours shall extend until 04:00 hours and opening hours until 04:30. • For all permitted activities: On Sundays before bank holidays (excluding Easter Sunday) the permitted hours shall extend to 03:00; Late night refreshment & Opening hours to 03:30.
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below (see reasons for decision in Section 1).</p>
5.	Opening Hours:
	<p>Monday to Saturday 09:00 to 03:30 Sunday 09:00 to 02:00.</p>
	<p>Amendments to application advised at hearing:</p>

	None.
	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below (see reasons for decision in Section 1).</p>

Conditions attached to the Licence	
<u>Mandatory Conditions</u>	
1.	No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2.	No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3.	Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4.	<p>(1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.</p> <p>(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children;</p> <p>(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to ;</p> <p>(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or</p> <p>(ii) drink as much alcohol as possible (whether within a time limit or otherwise);</p>

- (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;
 - (d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on ;
 - (i) the outcome of a race, competition or other event or process, or
 - (ii) the likelihood of anything occurring or not occurring;
 - (e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.
5. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
6. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.
7. (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
- (2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.
8. The responsible person shall ensure that,
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml; and

- (b) customers are made aware of the availability of these measures.

NOTE:

A responsible person in relation to a licensed premises means the holder of the premise licence in respect of the premises, the designated premises supervisor (if any) or any individual aged 18 or over who is authorised by either the licence holder or designated premises supervisor. For premises with a club premises certificate, any member or officer of the club present on the premises in a capacity that which enables him to prevent the supply of alcohol.

9. Admission of children to the premises must be restricted in accordance with the film classification recommended by the British Board of Film Classification or recommended by this licensing authority as appropriate.

Additional conditions

10. Substantial food and suitable beverages other than alcohol (including drinking water) shall be available during the whole of the permitted hours in all parts of the premises where alcohol is sold or supplied.
11. The sale of alcohol must be ancillary to the use of the premises for music and dancing and substantial refreshment
12. After 23:00 hours the sale of alcohol is only permitted on any evening where the premises or part of the premises are open for music, dance or entertainment and to:
- (a) Persons who have paid a minimum annual membership fee of at least £150 payable in advance for music, dancing or entertainment (not to be credited against consumables), a list of all persons who have paid an annual membership fee will be held at reception for inspection by the relevant authority;
 - (b) Persons who have a pre-booked table meal, list to be held at reception
 - (c) bona fide guests of members whilst accompanied by a member (no member to be permitted more than 4 guests at a time)
 - (d) bona fide guests of the proprietor (not exceeding 10% of the total capacity) a list of whom shall be kept at reception
 - (e) Artistes and persons employed on the premises
 - (f) Corporate memberships (the cost no less than £160 per card). No more than 5 guests per membership. All card holders to sign in with name and position in company – such information to be held at reception.
13. Subject to the following paragraphs, the permitted hours for the sale or supply

of alcohol on Monday to Saturday shall commence at 10:00 and extend until 03:00 the following morning except that:

- (i) the permitted hours shall end at midnight on any day on which music and dancing is not provided after midnight; and
- (ii) on any day that music and dancing end between midnight and 03:00 the following morning, the permitted hours shall end when the music and dancing end.

14. The permitted hours for the sale or supply of alcohol on Sunday (except immediately before bank holidays) shall commence at 12.00 and extend until 00:30 the following morning except that:

- (i) the permitted hours shall end at midnight on any Sunday on which music and dancing is not provided after midnight; and
- (ii) where music and dancing end between midnight on any Sunday and 00:30 on the following morning the permitted hours shall end when the music and dancing end.

15. The permitted hours for the sale or supply of alcohol on Sunday immediately before bank holidays shall commence at 12.00 and extend until 03:00 except that:

- (i) the permitted hours shall end at midnight on any such Sunday on which music and dancing is not provided after midnight; and
- (ii) where music and dancing end between midnight on any such Sunday and 03:00 on the following morning the permitted hours shall end when the music and dancing end.

16. The provision of films shall be ancillary to other licensable activities and there shall be no cinema style showing of films.

17. A noise limiter must be fitted to the musical amplification system set at a level determined by and to the satisfaction of an authorised officer of the Environmental Health Service, Premises Management so as to ensure that no noise nuisance is caused to local residents or businesses. The operational panel of the noise limiter shall then be secured by key or password to the satisfaction of officers from the Environmental Health Service and access shall only be by persons authorised by the Premises Licence holder. The limiter shall not be altered without prior agreement with the Environmental Health Service. No alteration or modification to any existing sound system(s) should be effected without prior knowledge of an authorised Officer of the Environmental Health Service. No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.

18. Save for the windows on the stair lobby all windows and external doors shall be kept closed after 23:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.

19. The external terraced area on the 4th floor shall ceased to be used by patrons and staff after 23:00 hours.
20. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
21. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly. Notices shall also be prominently displayed on the roof terrace stating that no mobile phones shall be used on that roof terrace.
22. Patrons temporarily leaving the premises such as for the purposes of smoking shall not take any drinks with them and after 23:00 hours shall be limited to a maximum of 15 persons at any one time.
23. The number of persons accommodated (excluding staff) at any one time shall not exceed:
 - Basement : 50
 - Ground Floor: 65
 - First Floor: 25
 - Second Floor: 20
24. No advertisements of any kind (including placard, poster, sticker, flyer, picture, letter, sign or other mark) that advertises or promotes the establishment, its premises, or any of its events, facilities, goods or services shall be inscribed or affixed upon the surface of the highway, or upon any building, structure, works, street furniture, tree, or any other property, or be distributed to the public. This does not prohibit the distribution of leaflets to persons within the premises.
25. There shall be no payment made by or on behalf of the licence holder to any person for bringing customers to the premises.
26. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorized officer throughout the preceding 31 day period.
27. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open. This staff member must be able to provide a Police or authorized council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
28. An incident log shall be kept at the premises, and made available on request to

an authorized officer of the City Council or the Police, which will record the following:

- (a) all crimes reported to the venue
- (b) all ejections of patrons
- (c) any complaints received
- (d) any incidents of disorder
- (e) all seizures of drugs or offensive weapons
- (f) any faults in the CCTV system or searching equipment or scanning equipment
- (g) any refusal of the sale of alcohol
- (h) any visit by a relevant authority or emergency service.

29. No deliveries or collections shall be made to or from the premises between 23:00 and 08:00 hours.
30. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
31. No rubbish, including bottles, shall be moved, removed or placed in outside areas between 2300 hours and 0700 hours.
32. During the hours of operation ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that the aforementioned area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.
33. A Challenge 21 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
34. The edge of the treads of steps and stairways shall be maintained so as to be conspicuous.
35. All exit doors shall be available at all material times without the use of a key, code, card or similar means. Any fastenings or electrically controlled locks shall be approved by the Council.
36. Only hangings, curtains, upholstery and temporary decorations, complying with the relevant British (or where appropriate European) Standard shall be used. Where necessary these shall be periodically tested for flame resistance and re-treated as necessary.
37. The approved arrangements at the premises, including means of escape provisions, emergency warning equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.

38. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.
39. All emergency doors shall be maintained effectively self closing and not held open other than by an approved device.
40. All fabrics, curtains, drapes and similar features including materials used in finishing and furnishing should be either non-combustible or be durably or inherently flame-retarded fabric. Any fabrics used in escape routes, other than foyers, entertainment areas or function rooms, should be non-combustible.
41. Curtains and hangings shall be arranged so as not to obstruct emergency signs.
42. No person shall give at the premises any exhibition, demonstration or performance of hypnotism, mesmerism or any similar act or process which produces or is intended to produce in any other person any form of induced sleep or trance in which susceptibility of the mind of that person to suggestion or direction is increased or intended to be increased.

NOTE: (1) This rule does not apply to exhibitions given under the provisions of Section 2(1A) and 5 of the Hypnotism Act 1952.

43. There shall be no striptease or nudity, and all persons shall be decently attired at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue licence.
44. Any special effects or mechanical installations shall be arranged and stored so as to minimise any risk to the safety of those using the premises. The following special effects will only be used on 7 days prior notice being given to Westminster City Council Consultation Team where consent has not previously been given:
 - a. dry ice and cryogenic fog;
 - b. smoke machines and fog generators;
 - c. pyrotechnics including fireworks;
 - d. firearms;
 - e. lasers;
 - f. explosives and highly flammable substances;
 - g. real flame;
 - h. strobe lighting.
45. The certificates listed below, together with, if necessary, satisfactory details of remediation works identified, shall be submitted to the Environmental Health Consultation Team upon written request:
 - a. Any emergency lighting battery or system
 - b. Any electrical installation
 - c. Any fire alarm system.

46. SIA licences worn by door staff shall be clearly displayed and visible at all times.
47. The premises may remain open for the sale of alcohol and the provision of late night refreshment from the terminal hour for those activities on New Year's Eve through to the commencement time for those activities on New Year's Day.
48. On the morning that Greenwich Mean Time changes to British Summer Time one hour will be added to the terminal hour of any activities and to the closing time for the premises where the existing terminal hour for the activities and/or closing hour for the premises ends after 02.00.
49. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.