



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (2)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (2)** Committee held on **Thursday 27th April, 2017**, Rooms 5, 6 & 7 - 17th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6 QP.

Members Present: Councillors Tim Mitchell (Chairman), Louise Hyams and Aziz Toki

1 MEMBERSHIP

There were no changes to the membership.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

1 85 PICCADILLY, W1

LICENSING SUB-COMMITTEE No. 2

Thursday 27th April 2017

Membership: Councillor Tim Mitchell (Chairman), Councillor Louise Hyams and Councillor Aziz Toki

Legal Adviser: Barry Panto
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon
Presenting Officer: Heidi Lawrance

Relevant Representations: Environmental Health and 22 x local residents.

Present: Mr Stephen Walsh QC (Representing the Applicant), Mr Alun Thomas (Solicitor, on behalf of the Applicant), Ms Tatiana Fokina (Director and Chief Executive Officer, Applicant Company), Mr Lee Starling (Project Manager), Mr Ollie Dabbous (Head Chef), Mr Oskar Kinberg (Premises Manager) and Mr Adrian Studd (Licensing Consultant), Mr Dave Nevitt (Environmental Health), Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project, representing 16 residents), Mr Andrew Jones (representing himself as local resident, residents of 85 Piccadilly/47

Clarges Street, 89 Piccadilly and 17 Clarges Street), Ms Laura Hodgson, Mr Thomas Jones and Mr Huw Jones (local residents).

85 Piccadilly, W1 17/01572/LIPN	
1.	Late Night Refreshment (Indoors)
	Monday to Saturday: 23:00 to 01:00 Sunday: 23:00 to 23:30
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): The Sub-Committee heard from Mr Walsh, representing the Applicant. He explained that the information relating to the planning application had been submitted as part of the report because many of the objections from residents were of a planning nature. The report included sound attenuation information. The view on behalf of the Applicant was that the granting of planning permission in 2013 was material to the current application. The planning permission was for the use of the basement, ground and mezzanine floors as a restaurant and included the location of the main entrance. The planning application permitted a capacity of 330 and a closing time of 01:00. Mr Walsh advised that the Applicant was seeking a capacity of 250 and closure at 01:00. The sale of alcohol was sought until 00:40. Mr Walsh referred to the premises history, including that the building had been constructed in 1970. Permission for restaurant use had been granted at ground and mezzanine floor level and nightclub use had been granted at basement level. These premises had traded on this basis until 2011 when the nightclub licence was revoked. However, the planning status for the basement remained as a nightclub until the 2013 planning application. There was a car park level which separated residents from the restaurants and nightclub. Mr Walsh advised the Sub-Committee that the Applicant Company, Hedonism Drinks Limited, is a fine wine merchant with a wine shop in Davies Street, Mayfair. Following the granting of planning permission, £10m had been invested already in the premises with £5m being spent on acquisition and £5m on internal and external improvements, including triple glazing and sound attenuation measures. A further £9m to £10m was due to be spent on the operation. Mr Walsh stated that assurances had been made to the Council that the premises would operate as a fine dining restaurant. The Applicant had waited to make an application until they had a chef and management team in place. Ollie

Dabbous, the head chef whose Dabbous Restaurant had earned a Michelin Star, had been identified. He had given up his restaurant to take on the new venture. The aim was to gain one Michelin Star for the ground floor restaurant and cellar area and two Michelin Stars for the Mezzanine floor.

Mr Walsh informed the Sub-Committee that the Applicant had opted for a capacity of 250 because of the fine dining operation. Space and quiet was needed for the operation as was a longer dwell time. The intention behind the 01:00 closure was in order to accommodate two sittings during the evening.

Clarification was provided to the Sub-Committee that it was proposed that the basement, which had been the site of the Vendome nightclub, would be the Cellarage where customers would be seated and able to have a drink prior to being shown to their table upstairs. In this area hatched black on the plans as set out in the proposed conditions, alcohol could only be served by waiter or waitress to seated customers before, during or after a meal consumed at the premises. There would be private dining areas and a kitchen in the basement.

Mr Walsh addressed the Sub-Committee on other proposed conditions. These included that there would be no off-sales after 23:00. No noise would be permitted to emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance. Mr Walsh made the point that there had been issues with noise emanating from Vendome. However, there would now be no regulated entertainment or nightclub at the premises. Another proposed condition was that if the application was granted, the Applicant's licences for the ground and first floors would be surrendered. Mr Walsh requested that a condition proposing a designated smoking area was removed. It was the Applicant's view that the level of smoking would be limited at this premises and that if a customer smoked outside it was likely to have a limited impact on residents who were on the third floor of the premises.

Mr Walsh referred to a table in the report submitted by the Applicant which set out the existing permitted uses for 85 Piccadilly and the proposed uses. He said that if the basement was left out of the equation (the premises licence had been revoked in 2011), the current combined capacities on the ground and first floors were 229. This was 29 more than the Applicant was seeking for these floors in the application. If the proposed capacity of 50 was added for the basement there was a total capacity of 250 which was 21 more than the current total capacity on the ground and first floors. Mr Walsh added that he did not believe this to be a substantial increase. He drew Members' attention to the fact that there had been a capacity of 260 for the nightclub, Vendome. He expressed the view that a single restaurant with a capacity of 250 on three floors rather than what had been present before with two restaurants and a nightclub was a significant improvement in terms of enforcement and also for residential amenity.

Mr Walsh drew the Sub-Committee's attention to the Applicant's summary of the representations made in relation to the application which was included as part of the report. It was the Applicant's view that almost all of the residential concerns related to residential amenity and all these matters were considered at the planning stage in 2013. He wished to put on record that there had been a consultation process which had taken place for the licensing application. There

had been correspondence with a West End Ward councillor between December 2016 and January 2017. On 16 January 2017, letters had been sent on behalf of the Applicant to 85 residential and business addresses close to the site and also to all West End councillors and the residents' associations. Mr Walsh also placed emphasis on a significant consultation process taking place at the time of the planning application. He made the point that the Residents' Society of Mayfair and St James's had supported the proposals in the planning application.

Additional points made by Mr Walsh included that the nightclub had operated until later hours than the 00:40 sought for alcohol and 01:00 closing time. Mr Studd, the Licensing Consultant, had advised that the terminal hour for 01:00 would not result in a large percentage of customers leaving at the same time as they would from a nightclub. Customers would leave a fine dining restaurant in smaller numbers and in a quieter, more relaxed way. He quoted the Council's planning department that there was likely to be a more gradual dispersal from a restaurant with fewer customers remaining at the terminal hour. It was also the view of planners that customers were less likely to congregate outside the premises than at a nightclub. Mr Studd had set out in his report that there were high quality restaurants which operated until the early hours which were well managed and food led such as Hakasan in Bruton Street and The Wolseley in Piccadilly.

Mr Walsh stated that the Applicant was very aware of residential amenity within 85 Piccadilly. This was why a detailed management plan had been submitted and very substantial acoustic works had been carried out. The exterior of the premises had been triple glazed. The acoustic integrity was as important to the restaurant as it was to the residents. It was disputed that the restaurant was an over intensification of the licensing use because of the history of the building.

In respect of potential smokers, Mr Walsh referred to Mr Studd's comments that smoking was rarely a problem in well run premises. There was not a culture of patrons going out at the same time and coming back into the premises as was the case in a nightclub or pub.

In respect of the location of the entrance changing from Clarges Street to Piccadilly, Mr Walsh made the point that the concerns of residents that there were residential units above the entrance had been carefully considered in relation to the planning application. The report of DKN Acoustics commissioned by the Applicant had found that the internal noise transmission would be adequately controlled to ensure that residential amenity was not affected. It had also found that the noise of underground trains which was a concern of some local residents was barely audible. Mr Walsh emphasised that there was no regulated entertainment applied for, triple glazing had been installed for the restaurant and there is a car park floor located between the residents and the restaurant. In the event that there was a public nuisance, the Applicant Company would not be complying with the proposed condition that they had agreed that 'no noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance'. Mr Walsh added that there were continuing acoustic works taking place.

The Sub-Committee requested clarification as to the nature of the off-sales

sought. Mr Thomas replied that it was acceptable to the Applicant Company for customers to be recommended to go to Hedonism's shop in Mayfair should they require off sales. Customers would be able to take home part consumed bottles of wine in keeping with the Council's model restaurant condition, MC66. It was agreed that the Council did not regard this as an off-sale of alcohol. Mr Walsh confirmed to the Sub-Committee that the bar and bar seating would not exceed 10% of the total floor area as required under the planning permission. Any bar use would be ancillary to food. Mr Dabbous advised the Sub-Committee that there would be no delivery service.

The Sub-Committee heard from Mr Nevitt on behalf of Environmental Health. He stated that he had considerable experience of the issues raised by Vendome and he had visited one or two of the residential flats when there had been nuisance caused to residents. He informed the Sub-Committee that there had been helpful pre-application meetings between Environmental Health and representatives of the Applicant, including meeting with contractors and designers to look at all the aspects that might affect local residents now. One of Environmental Health's concerns was future occupiers of flats in a new residential development.

Mr Nevitt said that the front entrance had been a matter which was considered by the Council's planning committee. Mr Nevitt had been consulted and there had been an acoustic report submitted. It had been found that Clarges Street was a source of disturbance for local residents. It was felt that there would be less potential for nuisance if the entrance was in Piccadilly.

Mr Nevitt advised that the advantages of the application included that it reduced the number of licences for the site which was likely to lead to better regulation. It was proposed that two premises licences would be surrendered. Also, potentially 300 plus people could be accommodated on the three floors. The Applicant was seeking 250. There was the removal of high risk activities, notably regulated entertainment. The nightclub use was being replaced with restaurant use with up to date model conditions.

The Sub-Committee heard from Mr Nevitt that he had considered the acoustic integrity of the building structure. He was satisfied that the restaurant would contain any noise from activities there. The planning process had dealt with the potential for noise from plant and ventilation systems and Mr Nevitt was content that there were arrangements in place in relation to them. In terms of noise transmission which had existed when there had been a nightclub in the basement, Mr Nevitt did not have concerns as there was no regulated entertainment. He had been in discussions with the Applicant and works were continuing. Environmental Health would be able to assess the situation as the works continued.

Mr Nevitt said that potential risks included the lateness of the terminal hour being beyond Core Hours. This was to be judged on its merits and was one of the reasons why Environmental Health had maintained its representation. Also there was a risk from customers outside, including people arriving, leaving and smoking. There was a management plan in place. There needed to be good management procedures and also conditions attached to the premises licence.

There were no tables and chairs outside. Mr Nevitt took the view that 10-12 smokers were still quite a lot.

Mr Brown addressed the Sub-Committee. He clarified that Mr Andrew Jones had made representations on behalf of himself and 29 individuals from 85 Piccadilly and 47 Clarges Street. In total there were 19 individual representations. He commented that Mr Jones had put in a laudable amount of work, putting the representation together, co-ordinating the residents, researching information and engaging with the freeholder. He had been committed to putting in this workload since at least 2010 when Vendome had been a major issue.

Mr Brown wished to put on record that the objectors were not requesting that the application be refused. Residents supported the principle of a fine dining restaurant at 85 Piccadilly. It was the scale and scope of the restaurant which was the concern. The residents' main concerns were capacity, the proposed hours, the location of the entrance and exit, internal noise transmission and smokers. These should not be seen in isolation.

Mr Brown stated that his interpretation of the significance of the planning process was significantly different from Mr Walsh's. He did not believe that as much weight should be given to the planning permission. He made the point that Vendome had not operated since 2011 and was not licensed. There were two existing restaurants, one with Core Hours and one with the old supper hours. Mr Brown expressed the view that planning had determined the application in 2013 on the lawful use. In this case the fact that there was no existing licence for the basement was relevant.

Mr Brown explained that as far as residents were concerned if the main entrance was on the corner of Clarges Street and Piccadilly the application would be less of an issue to them. The Applicant had insisted that it should be below the residents' flats because of the planning permission. However, Mr Brown took the view that this had been due to the problems with Vendome and the nightclub did not exist anymore.

The Sub-Committee asked Mr Brown about his interpretation of Mr Nevitt's earlier comments and that there was a likelihood that future residents of the new block of flats were more likely to be affected if the entrance was on the corner of Clarges Street and Piccadilly. Mr Brown replied that the previous entrance was on Piccadilly as well although nearer to the corner. This was nearer living rooms of the residents of 85 Piccadilly not bedrooms. He accepted that the fact there would be future residents in a new block of flats was clearly a relevant matter in the Sub-Committee's decision making.

Mr Brown stated that the capacity being proposed was greater than the two existing restaurant licences. The terminal hour was exacerbated by the large capacity and the location of the entrance. Residents were concerned there would be noise from people dispersing, smoking and waiting for taxis or hire cars beneath approximately 20 residential bedrooms. Mr Brown advised that residents were of the view that internal noise transmission was being heard because of internal works that had taken place at the building. Noise was being

heard from underground trains which had not been heard before. There was the concern that this would happen with the restaurant. Residents were aware that there would be further attenuation works.

Residents, Mr Brown said, accepted that the restaurant would have a top chef and management team. However, it was noted that Mr Dabbous' previous premises had been much smaller. The average size of a Michelin starred restaurant was considerably less than was being proposed in this case. Hakasan was on a largely non-residential street.

In respect of the Council's policy, Mr Brown wished to point out that 01:00 was mentioned as a possible terminal hour for restaurants because crime and disorder became more of a factor after that time. It was not setting out that 01:00 was an acceptable terminal hour. The application needed to be considered on its own merits.

Mr Brown requested that if the application was granted, there should be a condition which required the operation to be ancillary to fine dining. Another option was that the premises could only be operated by the Applicant Company although this he believed would have to be proposed by the Applicant. He recommended that there was a no entry or re-entry time up to an hour prior to the closing time due to the fact that the Applicant was saying that there would be a significant dwell time for the sittings. Customers would not be able to start their meal a matter of minutes before the closing time. In terms of smokers outside, Mr Brown commented that there was no ideal solution or location. It was imperative that staff oversee the smokers in order to prevent noise nuisance to residents.

The Sub-Committee heard from Mr Andrew Jones. He said that he and other residents were generally in favour of the proposal. They recognised the quality of Hedonism's shop and the Dabbous restaurant. However, the application required careful fine tuning so that people living in the flats above were not disturbed. It was residents' experience that there were two types of noise. One was a consistent noise such as traffic. However, there was intermittent noise such as a voice or a car door being slammed which inconvenienced residents.

Mr Jones made the point that residents did not originally have a problem because the door where the main entrance was now proposed to be was closed. The restaurant door was on the corner of Piccadilly and Clarges Street so there was equal access from both directions. The bedrooms were not above the entrance. He believed that even if there were occasional sounds from the restaurant, this was sufficient to adversely affect residents. Gradual dispersal of residents had the potential to result in a constant trickle of noise.

Mr Jones expressed the view that moving the restaurant door and having a later terminal hour causes problems which had nothing to do with restaurant management or how it was operated, it was a design flaw. He believed there should be a trade-off between the hours and the numbers. There were concerns that the capacity of the restaurant would be significantly bigger than other Michelin starred restaurants in Mayfair. Hakasan, for instance, did not have residents above. In terms of smokers, Mr Jones recommended that if they used

the traffic light controlled crossing and smoked on the other side of the road this would prevent residents being inconvenienced by noise. He also was of the view that waiting cars should be across the road.

Mr Jones recommended that the licence should only be able to be operated by the Applicant Company. He was of the view that noise would reach the residents' flats and whether the restaurants had triple glazing was irrelevant. He believed that an atrium had been created as a result of the internal works to the building which meant that the underground trains could be heard.

Mr Huw Jones asked that the restaurant was granted Core Hours given that residents live at 85 Piccadilly. He was concerned by the terminal hour of 01:00 and that customers would potentially leave at the same time at the end of the two sittings, including from the bar on the ground floor. He was also concerned at the impact of customers waiting for taxis and the impact on parking.

Ms Hodgson addressed the Sub-Committee on internal noise transmission. She also took the view that works inside the building meant that sound travelled more than it had before. She was concerned about noise transmission from the restaurant.

Mr Walsh was given the opportunity to respond on behalf of the Applicant. He stated that it was absurd if the expert reports, submitted when the planning application was considered in 2013 were ignored. Planning matters were material and were able to carry great weight. He disputed that a mega restaurant was proposed. The Applicant was seeking to replace two restaurants with existing premises licences that have a capacity of 229 which could trade again. The capacity was being reduced for these by 29. The building had been constructed specifically for two restaurants and a nightclub. The Applicant was then looking for a minor usage with an extra capacity of 50 in the basement. Mr Walsh re-iterated that if there was noise disturbance to the residents, there would be a breach of condition 10. There had been significant sound attenuation works carried out as described by Mr Nevitt.

Mr Walsh and Mr Dabbous wished to make the point that it was not the case that Mr Dabbous' only experience was at Dabbous restaurant. He had been a senior chef at Le Manoir aux Quat saisons with a similar operation to that proposed for 85 Piccadilly (120 covers in the main restaurant and 60 in the private dining room). Mr Dabbous also disputed that customers at the second sitting would leave at the same time. He informed those present that they would eat at different speeds. A larger number of people would eat more slowly than a lesser number.

Mr Walsh wished to respond on the Council's policy. The application was outside the cumulative impact areas so there was no presumption to refuse. The hours of the restaurant depended on whether the licensing objectives would be promoted. He believed it was appropriate to look at whether this form of operation is better not only for the licensing authority in terms of enforcement but also because it is one quality operator providing a fine dining operation. This was rather than a bar operation which happens to do food on the first floor which was what could be operated there under an existing licence. It would have less

impact than the former use.

Mr Walsh said that it was accepted that the operation of the premises should not cause disturbance to residents above and that was what the planning and licensing applications had focussed on. This could be more easily enforced as there would only be one premises licence.

The Sub-Committee asked a number of questions. These included whether another location had been considered for the main entrance door. Mr Thomas and Mr Nevitt both replied that they believed that there had been two separate acoustic reports relating to the door at the planning committee. Mr Nevitt added that there had been an emergency escape door from Vendome in the basement to the entrance's current location. There had also been discussion during the planning stage about the use of a canopy or awning to screen presence of people from the entrance door. Mr Nevitt had expressed the view that this could improve the situation.

Mr Walsh was asked about Mr Jones' proposal for smokers and waiting cars to be located across the street. Mr Walsh replied that it was an arterial road. There would be limited numbers of smokers and they were likely to spend limited time outside. There would be a SIA registered member of staff to monitor them. The Applicant now recognised that outside the carpet shop was not an appropriate location. Mr Walsh advised that in relation to waiting cars, as set out in Applicant's Management Plan, on Thursdays, Fridays and Saturdays, in addition to the SIA registered member of staff the Applicant would be employing a vehicle marshall from 21:30 onwards.

Mr Wroe asked whether the Applicant was willing to accept a last admission or re-admission time and also whether the Applicant was willing to be conditioned on the basis of the premises being a fine dining restaurant. Mr Walsh replied, having consulted his client, that the Applicant was content for the premises to be conditioned as a fine dining restaurant and that given the dwell time, there would be no new entry to the premises after midnight.

Mr Brown made the point that Mr Jones had asked him to explore with the Sub-Committee whether if Members were minded to grant the application they were willing to consider not granting the Applicant's proposed terminal hour for all three floors. The basement had historically had a later hour. Mr Walsh said that different hours for different floors would give the Applicant difficulties as there were also private dining areas in the basement.

The Sub-Committee considered that the premises had been problematic in the past. There had been a number of reviews of the basement premises, Vendome, which had led to the revocation of the premises licence. It was appreciated what the residents had had to put up with and they were quite naturally concerned that any replacement licensable activities could potentially give rise to public nuisance and even crime and disorder. The Chairman thanked Mr Andrew Jones for a very thorough representation which was very helpful to the Sub-Committee in highlighting the areas of concern.

The Sub-Committee, in carefully considering the application, noted that what

was being proposed at 85 Piccadilly was a restaurant. The restaurant would be outside the West End Cumulative Impact Area. There was no policy presumption to refuse the application. It was being considered on its merits. Members of the Sub-Committee were satisfied that subject to appropriate conditions, the 01:00 closing time sought was appropriate in these circumstances.

The Sub-Committee decided that the appropriate conditions on the licence should include Mr Brown's suggested condition that the premises shall only operate as a fine dining restaurant. The Sub-Committee did not have any concerns about the operators of the premises but wished to ensure on behalf of residents that another occupier did not obtain the premises licence in the future and undermine the licensing objectives. The Sub-Committee also attached the condition proposed by Mr Brown and agreed on behalf of the Applicant that 'there shall be no new entry to the premises after midnight'.

There was also a condition attached which had been agreed by the Applicant that 'no noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance'. This was a key condition which would mean that if there was a public nuisance caused as a result of noise from the restaurant then residents would have the ability to make complaints to the Council's Noise Team and could potentially bring a review of the premises licence if there were persistent issues. The Sub-Committee noted Mr Nevitt's representation that he had considered the acoustic integrity of the building structure and was satisfied that the restaurant would contain any noise from activities there. The planning process had dealt with the potential for noise from plant and ventilation systems and Mr Nevitt was content that there were arrangements in place in relation to them. The Sub-Committee noted that sound attenuation works would continue and Environmental Health would be able to assess these. The onus was on the operator to ensure that once the restaurant was operating local residents were not adversely affected by noise.

The Sub-Committee did not attach a specific condition but did take note that the Applicant would seek to employ a traffic marshall on Thursday, Friday and Saturday evenings. The Applicant would need to ensure that the impact from waiting cars was minimised. The Sub-Committee also noted that the Applicant would employ a member of staff to oversee the outside area, including managing smokers.

The Sub-Committee did not consider it appropriate to licence off-sales at a fine dining restaurant. The Applicant had agreed to withdraw off-sales. Customers would be able to take home partly consumed bottles of wine, in keeping with the Council's model restaurant condition.

In keeping with the Applicant's commitment to conclude on-sales twenty minutes prior to the closing time Monday to Saturday, Members decided that it was appropriate to conclude on-sales twenty minutes prior to the closing time on Sundays. The terminal hour for on-sales would therefore be 23:10.

2.	Sale by retail of alcohol (On and Off)
	Monday to Saturday: 10:00 to 01:00 Sunday: 12:00 to 23:30
	Amendments to application advised at hearing: It was confirmed at the hearing that the Applicant had amended the terminal hour Monday to Saturday to 00:40.
	Decision (including reasons if different from those set out in report): The Sub-Committee granted the amended terminal hour for on sales Monday to Saturday of 00:40. The Sub-Committee granted a terminal hour for on sales on Sundays of 23:10. Off-sales were not permitted. The Applicant had offered to withdraw off sales. See reasons for decision in Section 1.
3.	Hours premises are open to the public
	Monday to Saturday: 07:30 to 01:00 Sunday: 08:00 to 23:30
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): Granted, subject to conditions as set out below.
4.	Seasonal variations / Non-standard timings
	<u>Late Night Refreshment (Indoors), Sale by retail of alcohol (On and Off) and Hours premises are open to the public</u> These hours to be extended from the end of permitted hours on New Year's Eve until the start of permitted hours on New Year's Day.
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): Granted, subject to conditions as set out below. Off-sales were not permitted.

The Applicant had offered to withdraw off sales. See reasons for decision in Section 1.

Conditions attached to the Licence

Mandatory Conditions

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.
 - (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
 - (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—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;
 - (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
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (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 in a manner which carries a significant risk of undermining a licensing objective;
 - (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 in a manner which carries a significant risk of undermining a licensing objective;

(d) 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;

(e) dispensing alcohol 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).

5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) 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 either—

(a) a holographic mark, or

(b) an ultraviolet feature.

7. The responsible person must 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;

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

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.

8(i) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

8(ii) For the purposes of the condition set out in paragraph 8(i) above -

(a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;

(b) "permitted price" is the price found by applying the formula -

$$P = D + (D \times V)$$

Where -

- (i) P is the permitted price,
- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
- (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -

- (i) the holder of the premises licence,
- (ii) the designated premises supervisor (if any) in respect of such a licence, or
- (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

8(iii). Where the permitted price given by Paragraph 8(ii)(b) above would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

- 8(iv). (1) Sub-paragraph 8(iv)(2) below applies where the permitted price given by Paragraph 8(ii)(b) above on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Additional Conditions

9. The premises shall only operate as a fine dining restaurant where save for the basement area hatched black on the deposited plans:
- i) Customers are shown to their table
 - ii) The supply of alcohol is by waiter or waitress service only,
 - iii) Food is provided in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery,
 - iv) There is no provision of any take away service of food or drink for immediate consumption,
 - v) There is no provision of any take away service of food or drink after 23:00, and
 - vi) Where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking a substantial table meal there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.

10. In the basement area hatched black, alcohol can only be served by waiter/waitress service to persons seated before, during or after a substantial table meal consumed at the premises.
11. Substantial food and non-intoxicating beverages, including drinking water shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
12. The venue will install and maintain a comprehensive CCTV system as per the minimum requirements of a Metropolitan Police Crime Prevention Officer. All entry points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the venue is open for licensable activities for a period of 31 days with date and time stamping. Recordings shall be made available, immediately upon the request of Police or authorised officer throughout the preceding 31 days.
13. 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 is open.

The staff member must be able to provide a police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.

14. A Challenge 21 or Challenge 25 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.
15. An incident log shall be kept at the premises, and made available on request to an authorised 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
 - g. any refusal of the sale of alcohol
 - h. any visit by a relevant authority or emergency service.
16. There shall be no off sales of alcohol.
17. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
18. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
19. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
20. During the hours of operation of the premises, the licence holder shall 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 this 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.
21. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23:00 and 07:00 hours on the following day.
22. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23:00 and 07:00 on the following day.
23. No deliveries to the premises shall take place between 23:00 and 07:00 on the following day.

24. During the hours of operation of the premises, the licence holder shall 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 this area shall be swept and or washed and litter and sweeping collected and stored in accordance with the approved refuse storage arrangements by close of business.
25. 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.
26. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke shall not be permitted to take drinks or glass containers with them.
27. No licensable activities shall take place at the premises until the works as shown on the approved plans have been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.
28. No licensable activities shall take place at the premises until premises licence 13/09636/LIPT and 13/09638/LIPT (or such other numbers subsequently issued for the premises) has been surrendered and are incapable of resurrection.
29. The premises licence holder shall ensure that any patrons smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.
30. The licence holder shall ensure that no queue forms outside the premises.
31. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed (250) persons, being:
 - Basement: 50
 - Ground 90
 - Mezzanine 110.
32. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
33. There shall be no new entry to the premises after midnight.
34. The licence holder shall enter into an agreement with a hackney carriage and/or private carriage firm to provide transport for customers, with contact numbers made readily available to customers who will be encouraged to use such services.
35. 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.

2 CROCKER'S FOLLY, 24 ABERDEEN PLACE, NW8

LICENSING SUB-COMMITTEE No. 2

Thursday 27th April 2017

Membership: Councillor Tim Mitchell (Chairman), Councillor Louise Hyams and Councillor Aziz Toki

Legal Adviser: Barry Panto
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon
Presenting Officer: Heidi Lawrance

Relevant Representations: Environmental Health, 2 Ward Councillors and 15 local residents.

Present: Mr John Lisle (Solicitor, representing the Applicant), Mr Anil Drayan (Environmental Health), Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project, representing 4 residents – Dr Alan Roth, Mrs Stefanie Roth, Mrs Anna Sinclair and Ms Jendy Whitten Ziben) and Dr Alan Roth, Mrs Stefanie Roth and Mr Jon Peters (local residents).

Crocker's Folly, 24 Aberdeen Place, NW8 17/00767/LIPV									
1.	Conditions being varied, added or removed								
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	<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>Mr Lisle, representing the Applicant, explained that the purpose of the application was to extend the hours for the use of the external area to the right of the entrance door. It was currently permitted until 21:00 hours and the Applicant was seeking a terminal hour of 23:00. Mr Lisle informed Members that the Applicant had been running the premises for two years and it was not a profitable enterprise. Crocker's Folly did not open on Mondays. The additional two hours would make a difference.</p> <p>Mr Lisle stated that his client accepted that the use of the external area to the left of the entrance door should not be extended beyond 19:00 hours because of the location of the local residents. However, the Applicant was of the view that the noise experienced by residents to the left of the premises or across the road would be minimal if there were 25-30 people outside to the right of the entrance door until 23:00. He provided photographs in order to attempt to demonstrate this point. In order to prevent noise nuisance, the Applicant proposed to employ door security staff on Friday and Saturday evenings when Crocker's Folly was at its busiest. There would also be signs and notices placed on the outside tables to request that customers do not cause a nuisance. Mr Lisle added that he was not aware of any complaints to the Council's Noise Team during the two years the Applicant had been operating the premises.</p> <p>The Sub-Committee asked Mr Lisle what the position was on Lord's match days. He replied that there was an existing condition on the premises licence that a minimum of one SIA licensed door supervisors would be on duty at the entrance of the premises during the hours of licensable activity on Lord's match days. The Applicant was also required under the conditions on the existing licence to prevent obstruction of the public highway.</p> <p>The Sub-Committee heard from Mr Drayan, on behalf of Environmental Health. He confirmed that the Council's Noise Team had not received any complaints. He advised that the maximum number that was likely to be able to be located in the area proposed for the 23:00 terminal hour was 40. Mr Drayan referred to the street outside being residential. Those who could potentially be affected by noise nuisance would be residents in Aberdeen Place or the Elmhurst block of</p>	

flats. It was not proposed that the hours on the left hand side of the premises would be increased. However, Mr Drayan made the point that although there was unlikely to be direct noise nuisance from the right hand side, noise does travel and reverberate (not always in direct lines) and there was the potential for noise to adversely affect residents until the later hour. A key aspect was whether the Applicant was able to manage the behaviour of those outside the premises so that nuisance was not caused to neighbours. Mr Drayan referred to there being an electrical sub-station opposite and made the point that residents in the Lilestone Estate were quite far away. The Lilestone Estate residents were only likely to be affected in the event of anti-social behaviour.

Mr Brown, representing local residents, addressed the Sub-Committee. He stated that there was a significant body of objection to the application and residents had been consistent in expressing similar concerns to the applications for the extension of the terminal hour for the use of tables and chairs outside in 2014, 2016 and 2017. He also made the point that the Sub-Committee had been consistent in acknowledging the likely effect of nuisance resulting from extended hours outside the premises.

Mr Brown drew Members' attention to Mr Drayan having recommended the terminal hour of 19:00 for the external area to the left of the entrance door at the hearing in 2014. The Applicant had at the time requested 21:00. He also raised the point that the 21:00 terminal hour was of significance because that was the time when smokers were limited outside. The Applicant was now proposing that this was extended to 23:00. It was also being proposed that waste or recyclable materials, including bottles, would be moved, removed or placed in outside areas until 23:00 hours. Currently it was permitted until 21:00.

Mr Brown commented that in April 2016 the Applicant had proposed to extend the proposed hours for the external area to the right of the entrance door until 22:00. This application had been refused by the Sub-Committee. A copy of the decision was included in the Licensing Sub-Committee report at pages 402 to 405. The Applicant was now proposing to extend this until 23:00. Mr Brown said that in 2016 the representations from residents had been similar to those for the current application. The message from residents was that there had been some issues but that in general the balance was correct. The likely effect of increasing the proposed hours for the external area was to cause a nuisance.

Mr Brown addressed the Sub-Committee on some of the individual representations. He referred to Mr Peters living next door and his representation describing how the sounds of its patrons reverberated to the living areas. It was, according to Mr Peters, manageable up to 21:00. It would affect him and his young family after 21:00. Mr Brown also referred to Dr Boyle's representation where she had written that her bedrooms face onto the street and during the summer she was very aware of people being noisy in the street.

Mr Brown stated that the area is very residential and that there are no other commercial uses on the street until much closer to Edgware Road. There was also very little vehicular traffic later at night. Residents had tolerated the situation in relation to the current hours which he believed was the likely reason for the apparent lack of noise complaints. He made the point that it was not the

case that there had been no noise complaints. Mrs Ziben had made a noise complaint in the summer of 2016 which was not specifically about the external area. There had also been some enforcement action taken by the Council.

Mr Brown emphasised that the extension of hours would cause disturbance as there would be people outside until later. The ambient noise would be less at a later hour. Residents would wish to relax and sleep. Patrons' inhibitions would be lowered as they were consuming alcohol. At the moment they were required to go inside the premises at 21:00. Residents were keen that the character of the premises did not change and that more people would not be attracted to the premises. Such a scenario would result in more noise from patrons outside and on dispersing from the premises. There would also be more smokers outside. Mr Brown referred to Ms Ziben's representation that residents have to put up with noise currently from patrons dispersing at 23:00. However, he believed this had been accepted because of the balance in relation to the external area. Residents did not want to have to phone up and make complaints because of the extension of the hours outside the premises. Mr Brown made the point on Ms Ziben's behalf that there were young children in a significant number of the premises along Cunningham Place. There were also young families in Aberdeen Place.

Mr Brown took the view that nothing had been offered by the Applicant to mitigate what was being proposed by the Applicant. The intention of notices was good but their impact was, he believed, questionable.

The Sub-Committee also heard from local residents objecting to the application. Mr Peters stated that he has a 3 year old daughter who needs to sleep. The situation was manageable now and he did not object to the pub being there. Parking was a problem in the evenings. Whilst the owners were saying that they needed to make more profit, Mr Peters did not believe that the solution was to extend the hours outside.

Dr Roth expressed the view that the extension of hours outside would undermine the licensing objectives. There would be additional noise from the patio and this would take place until later. There were working people with young families in the vicinity of the premises who should not have to deal with additional noise. He added that the number of young children had increased over recent years. His one year old daughter's bedroom faced the terrace of the premises. His two daughters both needed to sleep from 19:30.

Dr Roth believed the application would add to anti-social behaviour, including during the six months of the cricket season when fans, if the application was granted, would be able to stand outside until 23:00 and drink. He recommended to the Applicant that if more business needed to be generated, there should be a focus on the inside area.

Mr Lisle was given the opportunity to respond to the comments of the objectors. He said that in relation to any noise from dispersal, Crocker's Folly was only busy on Friday and Saturday evenings. Some nights there were only a few people inside the premises so he did not believe this was an issue. He wished to provide clarification on the work of the enforcement officers at the premises.

He believed it was due to the completion of building works. Mr Drayan informed those present that before Crocker's Folly fully opened in January 2015 Environmental Health had agreed with the Applicant that it could open partially. There were works relating to the kitchen. This had been dealt with in 2015. There had been unannounced visits by Licensing Inspectors since then and there had been no issues raised.

The Sub-Committee in reaching a decision took into account that the pub is located in a very residential area. In terms of the premises and the proximity of residents, the Sub-Committee considered based on written and oral representations that a terminal hour of 21:00 for use of the external area to the right of the entrance door was appropriate. It had been clear from the evidence received from local residents that they had tolerated the current situation. Members took the view that the Sub-Committees in 2014 and 2016 had managed to get the balance right between the needs of the residents and the interests of the business. The Sub-Committee also agreed with Mr Brown that the Applicant had not offered proposals to mitigate the effect of the proposal to increase the terminal hour for the outside area by two hours to 23:00. The application was therefore refused.

The Sub-Committee noted in respect of the business that the internal area of the pub is considerably larger than the external area. There was an opportunity for the Applicant to look at how to promote the greater use by the public of the inside area and reduce the reliance on the extended use of the external area.

3 FOXLOW, 8-10 LOWER JAMES STREET, W1

LICENSING SUB-COMMITTEE No. 2

Thursday 27th April 2017

Membership: Councillor Tim Mitchell (Chairman), Councillor Louise Hyams and Councillor Aziz Toki

Legal Adviser: Barry Panto
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon
Presenting Officer: Heidi Lawrance

Relevant Representations: Environmental Health, the Licensing Authority, the Soho Society and 2 local residents.

Present: Mr Thomas O'Maoileoin (Solicitor, representing the Applicant), Ms Ayesha Bolton (Environmental Health) and Mr Steve Rowe (Licensing Authority)

**Foxlow, 8-10 Lower James Street, W1
17/02305/LIPV**

1.	Late Night Refreshment (Indoors)

	<u>From</u>	<u>To</u>
	Monday to Thursday 23:00 to 23:30 Friday and Saturday 23:00 to 00:00	Monday to Thursday 23:00 to 23:30 Friday and Saturday 23:00 to 01:00
	<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>The Sub-Committee heard from Mr O'Maoileoin, representing the Applicant. He informed the Sub-Committee that Foxlow at 8-10 Lower James Street was due to open shortly (8 May 2017). He referred to the fact that an application for the premises had been granted Core Hours by the Sub-Committee in June 2016 and the conditions attached to the premises licence had included the Council's model restaurant condition, MC66.</p> <p>Mr O'Maoileoin stated that Foxlow is part of the Hawksmoor group and he described it as a neighbourhood premises with a slightly cheaper menu than the Hawksmoor restaurants. He drew Members' attention to there being Foxlow restaurants in Balham, Chiswick and Clerkenwell. There were also a number of Hawksmoor premises across London. In relation to Westminster there are two Hawksmoor restaurants at Langley Street (Seven Dials) and Air Street. Mr O'Maoileoin commented that the two Westminster restaurants at Langley Street and Air Street were permitted to open until the proposed terminal hour sought for 8-10 Lower James Street and had limited bar use.</p> <p>Mr O'Maoileoin emphasised that a number of the Hawksmoor/Foxlow premises are located in residential areas and that management have a good relationship with residents. He stated that an example of a good relationship with residents is with Covent Garden Community Association in respect of the Seven Dials premises. Mr O'Maoileoin advised the Sub-Committee that Liz Callingham who often expresses concerns about applications for new licensed premises in the West End Cumulative Impact Area had discussed this particular application at 8-10 Lower James Street with Foxlow representatives and her concerns in relation to this application had been addressed. She had not maintained her representation. Mr O'Maoileoin explained that Mrs Callingham's concerns for the current application had been in relation to customer dispersal potentially causing a nuisance and that the establishment did not become a bar. The application had been amended following discussions with her. A condition had been offered that on Fridays and Saturdays the area immediately outside the restaurant would be monitored by staff so as to ensure that customers leave quietly. He believed that it was significant that Mrs Callingham was likely to be the nearest resident to 8-10 Lower James Street and she had withdrawn her representation.</p>	

Mr O'Maoileoin addressed the Sub-Committee on the objections to the application. He stated that he agreed that Golden Square has a larger concentration of residents than other parts of Soho. However, he made the point that Mrs Callingham who spoke for other residents in her locality lives there and her concerns had been addressed. The Soho Society had had concerns about the application 'in its present form' and Mr O'Maoileoin believed that there had been significant amendments to the application. In respect of Ms Tempia's representation, Mr O'Maoileoin said that there was no evidence that an extension of the proposed hours for the Foxlow restaurant located in Lower James Street would add to the issues she raised in respect of anti-social behaviour at Bridle Lane such as the use of drugs. The Police had not made a representation objecting to the application. He added that staff outside would be directing customers away from residential amenity. There was no logical reason as to why customers would disperse via Bridal Lane when they could go to Regent Street or Piccadilly tube station.

Mr O'Maoileoin appreciated that it was necessary for the Applicant to demonstrate that the application would not add to cumulative impact in the West End Cumulative Impact Area. He made the point that Foxlow is a restaurant and there was therefore no policy presumption against the application. He also said that if the Sub-Committee was minded to grant the application, it would mean that customers already in the restaurant would be given slightly longer to finish their meals. The Applicant was offering a condition that on Fridays and Saturdays there would be no new entries after midnight. Mr O'Maoileoin stated there would be a more gradual dispersal as a result of the later terminal hour on Fridays and Saturdays. There would also be the opportunity for the Applicant to introduce a second sitting in the evening which would accommodate customers post-theatre. He added that 8-10 Lower James Street is not a large premises and there would be small groups there. Mr O'Maoileoin informed the Sub-Committee that the earlier start time for on-sales on every day of the week was proposed in order to give customers the option of a drink such as champagne with their breakfast. He was confident that the conditions already on the licence in addition to those being proposed would promote the licensing objectives and would prevent the application adding to cumulative impact.

Ms Bolton, on behalf of Environmental Health, emphasised that the premises had not operated yet and was still under construction. There was therefore no record of any noise complaints. There were conditions on the existing premises licence which Environmental Health would normally seek in relation to public nuisance and public safety. She had maintained her representation as the proposed hours were beyond Core Hours in the West End Cumulative Impact Area. She did not have any specific concerns about the application. In response to a question from the Sub-Committee Ms Bolton confirmed that a condition on the existing premises licence meant that once the premises opened, a capacity for the premises would need to be determined.

The Sub-Committee raised the point that the Applicant was seeking a capacity of 125 in the West End Cumulative Impact Area (it was a figure which had been approved by the Council's planning committee). Mr O'Maoileoin replied that there would not be 125 customers in the premises and in reality the premises would not be filled to capacity later in the evening. He also confirmed that there

was no separate bar area. Mr O'Maoileoin was also asked what percentage of the premises was likely to be pre-booked. The Sub-Committee was informed that the majority of Foxlow premises were 70% to 80% pre-reserved.

The Sub-Committee heard from Mr Rowe on behalf of the Licensing Authority. He stated that the application was beyond Core Hours on Fridays and Saturdays and that whilst the establishment is a restaurant, the Applicant needed to demonstrate that the application would not add to cumulative impact.

The Sub-Committee in reaching a decision noted that there is no policy presumption against restaurants in the West End Cumulative Impact Area. There was some comfort for Members in that in addition to the premises being a restaurant, there was no separate bar. The Applicant had also offered conditions which promoted the licensing objectives, including that on Fridays and Saturdays there would be no new entries after midnight and that on Fridays and Saturdays the area immediately outside the restaurant would be monitored by staff so as to ensure that customers leave quietly.

However, the Sub-Committee noted that the premises had not traded yet and there was no track record to assess how 8-10 Lower James Street was being operated. The Sub-Committee decided that in keeping with the Applicant's amendment that on-sales would cease at 00:30 on Fridays and Saturdays, this would also be the time when the premises would be required to close. The Sub-Committee also considered it appropriate that the commencement hour on Sundays in terms of the opening hours would be 10:00 rather than 08:00 in order to provide some peace and quiet to residents at the quieter end of Piccadilly.

2. Sale by retail of alcohol (On sales)

From

To

Monday to Thursday 10:00 to 23:30
 Friday and Saturday 10:00 to 00:00
 Sunday 12:00 to 22:30

Monday to Thursday 08:00 to 23:30
 Friday and Saturday 08:00 to 01:00
 Sunday 08:00 to 22:30

Amendments to application advised at hearing:

Mr O'Maoileoin confirmed at the hearing that the proposed terminal hour for on-sales on Friday and Saturday was being amended to 00:30.

Decision (including reasons if different from those set out in report):

The Sub-Committee granted the following hours for on-sales (see reasons for decision in Section 1):

Monday to Thursday 08:00 to 23:30
 Friday and Saturday 08:00 to 00:30

	Sunday 10:00 to 22:30								
3.	Hours premises are open to the public								
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Sunday 12:00 to 22:30	Sunday 08:00 to 22:30								
	<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>The Sub-Committee granted the following opening hours to the public (see reasons for decision in Section 1):</p> <p>Monday to Thursday 08:00 to 23:30 Friday and Saturday 08:00 to 00:30 Sunday 10:00 to 22:30.</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 must 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</p>

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—

- (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;
 - (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
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
- (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 in a manner which carries a significant risk of undermining a licensing objective;
- (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 in a manner which carries a significant risk of undermining a licensing objective;
- (d) 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;
- (e) dispensing alcohol 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).

5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) 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 either—

- (a) a holographic mark, or
- (b) an ultraviolet feature.

7. The responsible person must 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;
- (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
- (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

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.

8(i) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

8(ii) For the purposes of the condition set out in paragraph 8(i) above -

- (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
- (b) "permitted price" is the price found by applying the formula -

$$P = D + (D \times V)$$

Where -

- (i) P is the permitted price,
- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
- (iii) V is the rate of value added tax chargeable in relation to the

alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

- (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -
- (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

8(iii). Where the permitted price given by Paragraph 8(ii)(b) above would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

- 8(iv). (1) Sub-paragraph 8(iv)(2) below applies where the permitted price given by Paragraph 8(ii)(b) above on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Additional Conditions

9. 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 authorised officer throughout the entire 31 day period.
10. 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 is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.

11. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
12. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
13. 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.
14. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
15. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 08.00 hours on the following day.
16. No licensable activities shall take place at the premises until the capacity of the premises has been determined by the Environmental Health Consultation Team and the licensing authority has replaced this condition on the licence with a condition detailing the capacity so determined. The capacity shall not exceed 125 persons excluding staff.
17. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 08.00 on the following day.
18. A Challenge 21 or Challenge 25 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.
19. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police. It must be completed within 24 hours of the incident and will record the following:
 - a) all crimes reported to the venue
 - b) all ejections of patrons
 - c) any complaints received concerning crime and disorder
 - d) any incidents of disorder
 - e) all seizures of drugs or offensive weapons
 - f) any faults in the CCTV system
 - g) any refusal of the sale of alcohol
 - h) any visit by a relevant authority or emergency service.
20. No deliveries to the premises shall take place between 20.00 and 08.00 on the following day.
21. The premises shall only operate as a restaurant:
 - a) in which customers are shown to their table,
 - b) where the supply of alcohol is by waiter or waitress service only,
 - c) which provide food in the form of substantial table meals that are prepared

on the premises and are served and consumed at the table using non disposable crockery,

- d) which do not provide any take away service of food or drink for immediate consumption,
- e) which do not provide any take away service of food or drink after 23.00, and
- f) where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.

- 22. 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.
- 23. No licensable activities shall take place at the premises until the licensing authority are satisfied that the premises is constructed or altered in accordance with the reasonable requirements of Westminster Environmental Health Consultation Team, at which time this condition shall be removed from the licence by the licensing authority.
- 24. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall not be permitted to take drinks or glass containers with them.
- 25. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall be limited to 5 persons at any one time.
- 26. 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.
- 27. On Fridays and Saturdays there shall be no new entries after midnight.
- 28. On Fridays and Saturdays the area immediately outside the restaurant shall be monitored by staff so as to ensure that customers leave quietly.

**4 LEON, ASTORIA HOUSE, 62 SHAFTESBURY AVENUE, W1 -
APPLICATION NOW ADJOURNED TO A FUTURE MEETING**

LICENSING SUB-COMMITTEE No. 2

Thursday 27th April 2017

Membership: Councillor Tim Mitchell (Chairman), Councillor Louise Hyams
and Councillor Aziz Toki

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon

Leon, Astoria House, 62 Shaftesbury Avenue, W1 17/01088/LIPN
Application adjourned to a future meeting date.

CHAIRMAN: _____

DATE _____