

# Licensing Sub-Committee Report

Item No:	
Date:	19 April 2018
Licensing Ref No:	18/00655/LIPN - New Premises Licence
Title of Report:	Assembly Hotel Basement And Ground Floor Part Alhambra House 27-31 Charing Cross Road WC2H 0AU
Report of:	Director of Public Protection and Licensing
Wards involved:	St James's
Policy context:	City of Westminster Statement of Licensing Policy
Financial summary:	None
Report Author:	Miss Yolanda Wade Senior Licensing Officer
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# 1. Application

1-A Applicant and premises			
<b>Application Type:</b>	New Premises Licence, Licensing Act 2003		
<b>Application received date:</b>	19 January 2018		
<b>Applicant:</b>	Alhambra House (London) Hotel Limited		
<b>Premises:</b>	Assembly Hotel		
<b>Premises address:</b>	Basement And Ground Floor Part Alhambra House 27-31 Charing Cross Road London WC2H 0AU	<b>Ward:</b>	St James's
		<b>Cumulative Impact Area:</b>	West End
<b>Premises description:</b>	<p>According to the application the premises will operate as a hotel with 121 bedrooms over 9 floors.</p> <p>The hotel rooms will be located on floors 1 to 9 with minibar facilities in each room.</p> <p>The 10<sup>th</sup> floor will include a restaurant and bar with an external terrace.</p>		
<b>Premises licence history:</b>	This is a new premises licence application therefore no licence history exists.		
<b>Applicant submissions:</b>	There is no additional applicant submissions.		
<b>Plans</b>	Plans are available to view upon request to the Licensing Authority and they will be made available at Licensing Committee.		

1-B Proposed licensable activities and hours							
<b>Regulated Entertainment: Recorded Music</b>				<b>Indoors, outdoors or both</b>			Indoors
<b>Day:</b>	<b>Mon</b>	<b>Tues</b>	<b>Wed</b>	<b>Thur</b>	<b>Fri</b>	<b>Sat</b>	<b>Sun</b>
<b>Start:</b>	10:00	10:00	10:00	10:00	10:00	10:00	10:00
<b>End:</b>	00:00	00:00	00:00	00:00	01:00	01:00	22:30
<b>Further detail</b>		Recorded music may be provided from time to time in the 10 <sup>th</sup> floor bar and restaurant. The music will be amplified. There shall be no music played in the 10 <sup>th</sup> floor external terrace.					

<b>Late Night Refreshment:</b>				<b>Indoors, outdoors or both</b>			Indoors
<b>Day:</b>	<b>Mon</b>	<b>Tues</b>	<b>Wed</b>	<b>Thur</b>	<b>Fri</b>	<b>Sat</b>	<b>Sun</b>
<b>Start:</b>	23:00	23:00	23:00	23:00	23:00	23:00	N/A
<b>End:</b>	00:00	00:00	00:00	02:00	01:00	01:00	N?A

<b>Sale by retail of alcohol</b>				<b>On or off sales or both:</b>			On
<b>Day:</b>	<b>Mon</b>	<b>Tues</b>	<b>Wed</b>	<b>Thur</b>	<b>Fri</b>	<b>Sat</b>	<b>Sun</b>
<b>Start:</b>	10:00	10:00	10:00	10:00	10:00	10:00	10:00
<b>End:</b>	00:00	00:00	00:00	00:00	01:00	01:00	22:30
<b>Non-standard timings:</b>			For residents and bona fide guests (maximum of 4) the supply of alcohol will not be restricted and shall be permissible 24 hours a day.				

<b>Hours premises are open to the public</b>							
<b>Day:</b>	<b>Mon</b>	<b>Tues</b>	<b>Wed</b>	<b>Thur</b>	<b>Fri</b>	<b>Sat</b>	<b>Sun</b>
<b>Start:</b>	10:00	10:00	10:00	10:00	10:00	10:00	10:00
<b>End:</b>	00:00	00:00	00:00	00:00	01:00	01:00	22:30

## 2. Representations

2-A Responsible Authorities	
<b>Responsible Authority:</b>	Licensing Authority
<b>Representative:</b>	Ms Shannon Pring
<b>Received:</b>	9 February 2018

I write in relation to the application submitted for a New Premises Licence for the following premises –

As a responsible authority under section 13 (4) of the Licensing Act 2003 as amended under the Police and Social Responsibility Act 2011 the Licensing Authority have considered your application in full. The Licensing Authority has concerns in relation to this application and how the premises would promote the Licensing Objectives:

- Public Nuisance
- Prevention of Crime & Disorder
- Public Safety

The premises is located within the West End Cumulative Impact Area and as such a number of policy points must be considered.

The premises currently falls within policy HOT1 and as members of the public will have access to the restaurant and bar, policy PB2 also applies. PB2 specifically applies to 'premises being used exclusively or primarily for the supply of alcohol for consumption on those premises' and 'it is the Licensing Authority's policy to refuse applications in the Cumulative Impact Areas'. Additionally policy point 2.5.23 states that the 'grant of new licences for pubs or bars in the Cumulative Impact Area should be limited to exceptional circumstances'. The list of examples of what may be considered an exceptional circumstance can be found at paragraphs 2.4.2 – 2.4.13 of the Council's Statement of Licensing Policy.

Based on all of the above the applicant must demonstrate how the additional members of the public (not hotel residents and their bona fide guests) will not add to cumulative impact in the cumulative impact area. No additional information has been received which addresses these policy concerns and we ask that further information is provided highlighting how the operator intends to manage this if the licence were granted?

Furthermore, the hours for sale of alcohol (for members of the public, not hotel residents and their bona fide guests), as applied for, fall outside of the council's core hours and as such we would also ask that you consider amending the proposed hours in line with core hours:

Core hours when customers are permitted to be on the premises  
(see Policy HRS1)

- For premises for the supply of alcohol for consumption on the premises:  
Friday and Saturday: 10:00 to midnight  
Sundays immediately prior to Bank Holidays: Midday to midnight  
Other Sundays: Midday to 22:30  
Monday to Thursday: 10:00 to 23:30
- For premises for the supply of alcohol for consumption off the premises:  
Monday to Saturday: 08:00 to 23:00  
Sundays: 10:00 to 22:30
- For premises for the provision of other licensable activities:  
Friday and Saturday: 09:00 to midnight  
Sundays immediately prior to Bank Holidays: 09:00 to midnight  
Other Sundays: 09:00 to 22:30  
Monday to Thursday: 09:00 to 23.30

Finally, we would ask that the applicant consider adding the council's model condition 66 to the restaurant area on the 9th floor which would result in the application being more compliant with the policy RNT2 as opposed to PB2. The condition is as follows:

The premises shall only operate as a restaurant

- (i) in which customers are shown to their table,
- (ii) where the supply of alcohol is by waiter or waitress service only,
- (iii) 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,
- (iv) which do not provide any take away service of food or drink for immediate consumption,
- (v) which do not provide 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 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.

Please accept this as a formal objection and we look forward to receiving further information as soon as possible.

<b>Responsible Authority:</b>	Environmental Health Service
<b>Representative:</b>	Mr Ian Watson
<b>Received:</b>	12 February 2018

I refer to the application for a New Premises Licence.

**The premises are located within the West End Cumulative Impact area.**

The applicant has submitted floor plans of the ground to tenth floor.

This representation is based on the plans and operating schedule submitted.

The applicant is seeking the following

1. To provide for the Supply of Alcohol 'On' the premises Monday to Sunday between 10.00 and 02.00 hours. 24 hours for residents and their guests.
2. To provide Late Night Refreshment 'Indoors' Monday to Sunday between 23.00 to 02.00 hours.
3. To provide regulated entertainment 'indoors' comprising
  - Recorded MusicMonday to Sunday between 10.00 to 02.00 hours.

I wish to make the following representation

1. The hours requested for the Supply of Alcohol will have the likely effect of causing an increase in Public Nuisance within the West End CI Area.
2. The hours requested to permit the provision of late night refreshment will have the likely effect of causing an increase in Public Nuisance and impact on Public Safety within the West End CI Area.
3. The hours requested to permit the provision of regulated entertainment will have the likely effect of causing an increase in Public Nuisance within the West End CI Area.

The applicant has provided additional information with the application that are being considered.

Should you wish to discuss the matter further please do not hesitate to contact me.

<b>Responsible Authority:</b>	Metropolitan Police Service
<b>Representative:</b>	PC Reaz Guerra
<b>Received:</b>	13 February 2018
<p>With reference to the above application I am writing to inform you that the Police, as a Responsible Authority, object to your application for a New Premises Licence as it is our belief that if granted the application would undermine the Crime Prevention Objective.</p> <p>The venue is situated in the West End Cumulative Impact Area, a locality where there is traditionally high crime and disorder. We have concerns that this application will cause further policing problems in an already demanding area.</p> <p>There is insufficient detail in the operating schedule to address the Crime Prevention Objective.</p> <p>It is for these reasons that we are objecting to the application.</p> <p><b>PC Sandy Russell has submitted a report detailing the Police's representation. A copy of this report can be found at Appendix 5 of the report.</b></p>	

<b>2-B Other Persons</b>	
<b>Received:</b>	6 February 2018
<p>We object to the application 18/00655/LIPN for a new premises licence for basement and ground floors at the Alhambra House (London) Hotel, 27-31 Charing Cross Road, London WC2H 0AU We are confused as the reference number seems to relate to the proposed 10th floor restaurant, yet the notification shows basement and ground floor part.</p> <p>Alhambra House is directly opposite the Charing Cross Road entrance to Burleigh Mansions. There are, of course, other residential blocks: Falkland House and Garrick Mansions are next door to us and the entrance to Charing Cross Mansions in Charing Cross Road is just across Cecil Court. Flats in Burleigh Mansions and Charing Cross Mansions run both sides of Cecil Court.</p> <p>We are worried that the proposed use would breach the council's "core hours" policy on late licences for clubs and restaurants in the central stress area. We would be happy if the hours restricted to the usual "core hours" policy. We think there should be a restriction so that non-hotel guests would not be allowed into this proposed bar.</p> <p>The Hub Hotel in St. Martin's Lane has similar restrictions to restrict drinking and dining facilities to hotel guests only. The Library Club in St. Martin's Lane (a well-run member's club for the theatrical profession) had its application for a late licence refused on appeal. Some years ago St. Martin's Lane hotel closed a basement late-</p>	

night club after pressure from the council following complaints from local residents. An all-night café next to Barclays Bank has been refused a late licence.

Local residents enjoy living in the vibrant West End but we already have our sleep disturbed by bottle collections, rubbish collections, early morning deliveries and boisterous behaviour from people leaving the existing late licensed clubs (Hippodrome Casino, Stringfellows; the club on the corner of Newport Street and Upper St. Martin's Lane and the club at Jubilee Hall) on their way to buses and late tubes. The "core hours" policy has made a great difference to us and we do not want additional late licences to be granted which would create a precedent and which would make the situation worse.

The Council, the police and local residents want people to enjoy themselves and then go home - not to hang about in the street making a noisy nuisance.

We hope to be represented by the Westminster Licensing Advice Service at the CAB.

<b>Received:</b>	16 February 2018
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Preliminary

I have resided at Garrick Mansions for over 30 years and have represented its tenants, with regard to planning applications and related matters, for the last sixteen of these years. And it is in this capacity that I write to oppose the present Application.

Substance of Objection

The hotel is situated in a comparatively narrow, and intensely congested, section of the southernmost part of Charing Cross Road, slap opposite a number of residential blocks of flats, including our own of Garrick Mansions. Despite the claim in the original application for the hotel building that the addition of a further (tenth) floor - the floor containing the restaurant here in question - would (by some miracle of construction) not add to its effective height, it has in fact done so, and has further impinged on the amenity of the residences it confronts. It has darkened the aspect by day and at the same time has, at night, frequently added, through its many illuminated windows, to the light pollution that is already a significant vexation in this immediate neighbourhood. And now the Applicant seeks to extend the hours of operation of the restaurant way beyond the 'core hours' normally approved by the Council (i.e., until 11:30pm) up to (if I have understood the Application aright) 2am; and - most critically - to do so, in respect of both food and alcohol, for non-residents of the hotel. They intend also, it seems, to entertain these visitors to the restaurant with amplified music.

This part of Charing Cross Road is, as of the present, calculated to sustain the highest night-time footfall of any part of any city in Britain, and the congestion and concomitant tumult is further exacerbated with respect to the hotel by its immediate vicinity to an extremely busy 24 hour bus stop.

The number of frequently well-oiled 'revellers' who congregate at, and in the neighbourhood of, this hotspot is now likely to be swelled by the prospective casual



clientele entering, and - more disturbingly- merrily leaving, the late-night hotel restaurant.

The present Application, if granted, would seem also to run counter to the principles the Council has applied in the case of other such establishments. The fast-food premises across the road from these flats at 21 Charing Cross Road, for example, has been limited to the normal core hours; similarly, the Library Club in St Martin's Lane, where I have myself visited; while a case closely analogous to that of Alhambra House is furnished by the Council's determination in respect of the similar facility of the St Martin's Hotel Restaurant in St Martin's Lane, where the terminal hour for service has been set at midnight, and for hotel residents only. With regard to visitors to the Alhambra House Restaurant, we therefore submit that the standard 'core hours' policy should obtain, and the terminal hour be set at 11:30pm.

We have one further critical concern. And this relates to the Planning Department's previous dealings in this matter. While the decision on the original Application, for the construction of the hotel, was supposedly still pending, the Applicant had already started on massive works on the building and was forging ahead as if the matter were already a done deal. And in fact the Planning Committee first invited comment in support of, or opposition to, the Application after it had seemingly already given its consent. We need hardly say that we found such dubious proceeding gravely disturbing; and our written request for an explanation went unanswered. We therefore venture to hope that this present Objection may be responded to in a way that is more transparent, and more open-minded.

<b>Received:</b>	27 January 2018
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7:21 PM on 27 Jan 2018 I am raising an objection to the use of the 10th floor terrace and also the street level entrance to the hotel as being an entrance to a entertainment area. My concerns are that the noise from the entrance and the terrace will disturb neighbours in this highly residential part of Charing Cross Rd. I have read the outline of the limitations of these developments (terrace closes at 11 etc). No amplified music on terrace. However it is my experience that these guidelines are regularly transgressed or adhered to in a haphazard manner. If the doors of the restaurant are open to the terrace then the noise of the recorded music inside will be a nuisance to neighbours. The issue of smoking is highly problematic also. Customers will no doubt be gathered on the streets by the entrance or on the terrace to smoke cigarettes. We had an issue with a premises on CXRd now closed, where every time a customer or security staff member opened the door, a wave of loud dance music came out. Noisy drunk people leaving at 2am is also a concern.

<b>Received:</b>	12 February 2018
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This representation is being made by the Covent Garden Community Association (CGCA). The CGCA is recognised by both Camden and Westminster as the Amenity Society for the Covent Garden area (defined as the area bounded by High Holborn, New Oxford Street, Charing Cross Road, St. Martin's Place, Northumberland Avenue, Victoria Embankment, Lancaster Place, Aldwych and Kingsway) and so represents the interests of those who live and work in this area. The CGCA's Licensing Subcommittee is authorised by the Association to make Representations on any Licensing Applications which the Subcommittee believes may have an effect on local residents or other members of the community through likely impact on one or more of

the Licensing Objectives. This authorisation was last renewed at a meeting of the Executive Committee of the CGCA on 5th December 2017.

The Representation is being made against the grant of a licence for the Assembly Hotel situated at 27-31 Charing Cross Road in a building formerly used as offices. Although these premises are on the West side of Charing Cross Road and so are outside the CGCA's area they face significant numbers of residential properties and so the operation of the premises can have an impact on our residents and members. For the avoidance of doubt the CGCA has no objection to those parts of the licence which apply to the hotel rooms. Our concern is regarding the 10th floor bar/restaurant area and associated terrace.

The conditions currently offered on the licence would allow the bar restaurant to operate as a vertical drinking bar. There are no conditions requiring alcohol to be ancillary to food and no requirement that customers are seated. Whilst we understand that full restaurant conditions (MC66) might inhibit a normal hotel bar style use we believe that this would be an appropriate condition to ensure that the operation of the premises is unlikely to give rise to Public Nuisance.

We are also concerned about the hours of operation. The sale of alcohol and LNR is proposed until 02:00 with a 30 minute drinking up time. With a capacity of 168 this could result in a substantial number of people dispersing from the premises during the early morning. Whilst we do not have an objection to later hours for residents and their guests we believe that allowing the premises to remain open until this time to members of the public will harm the Licensing Objectives.

We are aware that the applicant is proposing to relinquish existing licenses for other premises in order to support his attempt to overcome the presumption to refuse the application as it is presented here. Our view is that whilst the removal of these licences is welcome it does not outweigh the potential harm to the Licensing Objectives caused by a late licence here. The licenses being given up are for premises facing onto Leicester Square and not Charing Cross Road. Leicester Square is much less residential and so the removal of late licenses there does not, in itself, compensate for the addition of a late licence on Charing Cross Road.

The CGCA's position is therefore that the grant of a Licence on the terms proposed should be refused in order to support the Licensing Objective of the Prevention of Public Nuisance. If granted the licence should require the restaurant conditions as set out in MC66 and restrict the hours of operation to Westminster's Core Hours.

<b>Received:</b>	13 February 2018
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**1-Introduction:**

1.1 I object based on the likely adverse impact granting 18/00655/LIPN will have on licensing objectives, particularly 'prevention of public nuisance' and also where it is contrary to the Licensing Policy, 2016.

1.2 . This section of the Charing Cross Rd has a large local residential population, with four apartment buildings fronting the street directly opposite the license premises as well as directly north of the license premises. The residential population far outnumber business population in this vicinity. Further, the license site itself consists of over 100 hotel rooms with the majority street fronting. All residential blocks and the

license site are located in the cumulative impact area – CIA and the number of late night or drink-led premises in the area has a disproportionate adverse impact.

## **2 - Link-in with two other separate license applications / venues.**

2.1 This application appears to be one of three linked license applications which have been submitted at the same time by, apparently by the same applicant. Though the name of the applicant is different for each, the registered addresses are the same.

See:

- i. Trocadero Hotel (18/00656/LIPN)
- ii. Hotel Indigo (18/45845/LIPN)

This application proposes surrendering these two separate premises licences on the condition this application is granted in full.

2.2 It is vital that these 3 applications are assessed *on their own merits*, and allow any conditions suitable to impose on each site to reflect the level of protection required for each associated local amenity. Further, it is clear the local amenity characteristics of 18/00656 and 18/45845 differ significantly from this license venue in that they lack the presence of a predominantly residential population.

**2.3 Condition 1** There are a number of key issues I ask the Licensing Authority to assess:

- i. Are the premises licence of 18/00656 and 18/45845 fully operational and is the applicant surrendering anything which is of practical value?
- ii. Is the applicant entitled to surrender the licences for the two linked applications
- iii. To what extent is the surrender condition of type in this application enforceable in law
- iv. Are 18/00656 and 18/45845 licences located in areas which impact on any local residents so that each local amenity requires separate consideration ?

## **3 – Public consultation notification error:**

3.1 There was a significant notification error when inviting local public to consult. Incorrect indication stated that the application relates only to the ground floor and basement. This has caused widespread misunderstanding of the actual parts of the site the application seeks permissions for and underplays the impact it will have on the local amenity.

## **4 - Food and drink and hours of access on the 10th floor:**

4.1 There is also no indication of a proposed operator or style of operation.

4.2 There are no conditions which restrict any or all of the 10th floor to operating as a restaurant in accordance with policy RNT2. As such, the application falls into consideration within policies PB2 and MD2, even though it is recognised that licences which are conditioned in line with RNT2 are less likely to impact licensing objectives. This application should not result in a licence which permits the 10th floor to operate as a vertical drinking bar, or drink-led premises, or nightclub/events space. A similar license premises in near-by St Martin's Lane saw its license revoked because due to its unsuitability to this vicinity.

4.3 Proposed hours of use by the public and impact of another late night alcohol licence in this vicinity. The proposed terminal hour is well outside the Council's core hours policy HRS1. In fact, the terminal hour is actually 2.30am due to the provision of 30 minutes 'drinking up time' in condition 8.

4.4 It is not clear if planning consent exists for the use of the 10th floor by either members of the public, or operation by an independent operator. Planning consent did not permit such use. A further planning application submitted in late 2017 ref: 17/03318/FULL sought to permit such use, indicating a terminal hour of 1am for members of the public. It is therefore not clear why this licence application has extended the terminal hour to 2am with no specific time indicated for members of the public to vacate the premises?

4.5 This vicinity has at least 25 street fronting residential units directly facing the license premises, including bedrooms for families with small children. The hotel itself has the majority of its 100+ rooms also street fronting. Further, the hotel also faces a pedestrian throughway, Cecil Court which has up to 60 street fronting residential units.

4.6 The accumulative impact area CIA has particularly acute stress indicators within this vicinity. Late night turning-out and disturbances on the streets by people worse the wear for drink is known to harm the licensing objectives, particularly if the premises is operated as a drink-led premises.

4.7 My strong preference is for sale of alcohol and provision of other licensable activities to members of the public to be limited to 'core hours' in line with the Council's Policy HRS1 and in relation to the serving of food.

4.8 **Condition 7** requires provision of a minimum number of seats:

- i. It is not clear if there is fixed seating marked on the plans.
- ii. No indication of the minimum seating requirement is indicated or how that relates to the overall capacity. This needs to be established and made known to local stakeholders.
- iii. It should also be noted that provision of seats does not mean that customers are required to be seated.

4.9 **Condition 8** – although a 'drinking up time' is specified, there is no specific time indicated for customers to be off the premises.

4.10 **Condition 9** – I ask that the words 'on timings' are added after the words 'without restriction'.

4.11 **Condition 19** – I ask the terrace access hours be clarified by indicating that they apply 'regardless of any active license state' and to 'guests, bona fide guests and members of the public'.

4.12 **The application** refers to a **maximum of 4 bona fide guests** of hotel residents.

- i. This stipulation is not actually included in the proposed conditions.
- ii. A maximum of 4 *bona fide* guests per hotel resident may potentially result in a large number of guests leaving the premises at any time of night.

## **5 - Music and noise disturbance:**

5.1 I am concerned about noise outbreak where outcomes currently depend on a style of operation which has still not clarified if the 10th floor is to operate largely as a restaurant with ancillary or 'holding' bar. Music played at a background level, coupled

with the noise of conversation, is likely to cause noise disturbance that requires conditional measures to preserve local amenity.

5.2 The applicant seeks a recorded music license, suggesting volume levels will be significant and that the 10th floor may operate as a drink-led bar. Conditional measures to preserve local amenity will also be required if this outcome prevails too.

5.3 Should permission for recorded music be granted, the following conditions will be required:

- i. A condition should be imposed requiring a noise limiter.
- ii. Speakers should be placed away from the terrace doors and east facing windows.
- iii. Windows and doors should be kept closed after 9pm, except for access/egress.
- iv. There should be no recorded music on the external terrace itself.

For background music, it is very likely that conditions ii., iii and iv will should also be in place.

5.4 Unregulated noise disturbance not only disturbs numerous residents in the vicinity, but also increases the risk of customers behaving inappropriately when they leave the premises. Further, in a pedestrian through-way with the highest foot-fall in Western Europe and also located opposite a popular public house, (The Garrick Arms) as well as numerous groups of drinkers passing through, noise emanation is highly likely to attract or cause to loiter, inebriated pedestrians passing through the vicinity.

This causal link is recognised by para 2.2.11 of Licensing Policy, which states that: *'Playing of music can cause nuisance both through noise breakout transmission through the structure of the building and also by its effect on patrons, who become accustomed to high sound levels and to shouting to make themselves heard, which can lead to them being noisier when leaving premises. The later that music is played, the greater the potential for nuisance.'*

## **6 – Other issues relating to statement of Licensing Policy 2016 (“the Policy”)**

6.1 The application engages a number of sections of the Policy but is contrary to policies HRS1, RNT2, MD2 and PB2.

6.2 I would also like in particular to refer to policy PN1, regarding public nuisance. The criteria for policy PN1 is stated to be: *'The potential for nuisance associated with the style, characteristics and activities of the business to be carried on at the premises and the potential steps which could be taken to reduce the risk of nuisance occurring. This will particularly apply in areas of residential accommodation and where there is residential accommodation in the proximity of the premises.'*

6.3 Para 2.2.12 of the Policy states that: *'Residents are often subjected to nuisance from the noise of people on their way to and from premises, and loitering in the streets after they have left premises. This can affect residents even at some distance from the premises themselves, especially along routes to transport facilities, and to car parks and parking areas and on routes between late night premises of various types. The nuisance from noise depends on its nature and whether it is during the day, the evening or at night. Late night noise is often unsettling; particularly shouting and screaming. Some of this is associated with aggression and assaults but most of it is “high spirits”. It is impossible to distinguish between the reasons for these noises and in any case, it is very disturbing late at night. The degree of nuisance caused by*

*noise increases with the lateness of the hour; especially if it disturbs or prevents sleep.'*

6.4 I have no reason to doubt that the premises in general and the 10th floor in particular will be operated otherwise than in a responsible manner. However, at present, we simply do not know enough to be convinced that the operation of the premises will not harm the licensing objectives, and that without doubt it constitutes an exception to policy or will not add to cumulative impact.

### **7-Conclusion**

7.1 When determining licence applications, the focus should be on evaluating what is 'reasonably acceptable' in a particular location (*R (on the application of Hope & Glory Public House Ltd) v (1) City of Westminster Magistrates' Court & Ors* [2011] EWCA Civ 31). The scope of the licence and conditions should be looked at in a local context (*Matthew Taylor v (1) Manchester City Council (2) TCG Bars Ltd* [2012] EWHC 3467 (Admin)).

7.2 For this reason, I would ask that the Licensing Authority give appropriate weight to the views of the local residents who live in the vicinity of Alhambra House, and are mindful of this when considering all three identified linked license applications.

7.3 For the reasons given, we would ask that the application as presented is refused.

7.4 I am aware that applications may be tweaked as part of the on-going application process. I would ask to be kept updated of any changes. I would be open to being contacted by the applicant or their solicitors if they wish to discuss any aspect of my representation and/or if they have any additional proposals. I would ask that they copy in Richard Brown of Citizens Advice Westminster if they do so, [licensing@westminstercab.org.uk](mailto:licensing@westminstercab.org.uk), who has assisted me in making this representation.

7.5 I would like to be considered for attendance of the license application hearing

## **3. Policy & Guidance**

The following policies within the City Of Westminster Statement of Licensing Policy apply:

Policy HRS1 applies	(i) Applications for hours within the core hours set out below in this policy will generally be granted, subject to not being contrary to other policies in the Statement of Licensing Policy.  (ii) Applications for hours outside the core hours set out below in this policy will be considered on their merits, subject to other relevant policies.
Policy CIP1 applies	(i) It is the Licensing Authority's policy to refuse applications in the Cumulative Impact Areas for: pubs and bars, fast food premises, and premises offering facilities for music and

	<p>dancing; other than applications to vary hours within the Core Hours under Policy HRS1.</p> <p>(ii) Applications for other licensable activities in the Cumulative Impact Areas will be subject to other policies, and must demonstrate that they will not add to cumulative impact in the Cumulative Impact Areas.</p>
Policy HOT1 applies	<p>Subject to the effect on the promotion of the licensing objectives and other relevant policies in this Statement, premises licences for hotels will generally be granted so that:</p> <p>(a) Alcohol is permitted to be sold at any time to people staying in hotel rooms for consumption on the premises.</p> <p>(b) The hours of serving alcohol to the general public will be subject to conditions limiting the sale of alcohol after a specified time to those attending pre-booked events held at the hotel.</p> <p>(c) The exhibition of film, in the form of recordings or nonbroadcast television programmes to be viewed in hotel bedrooms, will generally be permitted.</p>
Policy PB2 applies	<p>It is the Licensing Authority's policy to refuse applications in the Cumulative Impact Areas other than applications to vary hours within the Core Hours under Policy HRS1.</p>

#### 4. Equality Implications

The Council in its capacity as Licensing Authority has a duty to have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary, section 149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

## 5. Appendices

<b>Appendix 1</b>	Applicant supporting documents
<b>Appendix 2</b>	Premises history
<b>Appendix 3</b>	Pre-Application Report
<b>Appendix 4</b>	Police Licensing Representation Report
<b>Appendix 5</b>	Proposed conditions
<b>Appendix 6</b>	Residential map and list of premises in the vicinity

<b>Report author:</b>	Miss Yolanda Wade Senior Licensing Officer
<b>Contact:</b>	Telephone: 020 7641 1884 Email: ywade@westminster.gov.uk

**If you have any queries about this report or wish to inspect one of the background papers please contact the report author.**

### **Background Documents – Local Government (Access to Information) Act 1972**

<b>1</b>	Licensing Act 2003	N/A
<b>2</b>	City of Westminster Statement of Licensing Policy	7 <sup>th</sup> January 2016
<b>3</b>	Amended Guidance issued under section 182 of the Licensing Act 2003	March 2015
<b>4</b>	Licensing Authority	09 February 2018
<b>5</b>	Environmental Health Service	12 February 2018
<b>6</b>	Metropolitan Police Service	13 February 2018
<b>7</b>	Representation	06 February 2018
<b>8</b>	Representation	16 February 2018
<b>9</b>	Representation	27 January 2-18
<b>10</b>	Representation	12 February 2-018
<b>11</b>	Representation	13 February 2018



The applicant has supplied the following additional documents:

- Supporting submission
- Visuals of the premises
- Novus Leisure Decision – paragraphs 24 & 25
- Hope & Glory Decision – paragraph 42

Copies of the above documents are enclosed.

## **Submission in Support of Licence Applications**

Hotel Indigo, 1-4 Leicester Square, London WC2H 7NA. Application Ref: 18/00654/LIPN

Assembly Hotel, Alhambra House, Charing Cross Road, WC2H 0AU. Application Ref: 18/00655/LIPN

Trocadero, Coventry Street, W1D 6DG. Application Ref: 18/00656/LIPN

### **Proposed Redevelopment**

One Leicester Square currently has the benefit of two premises licences which formerly traded as two nightclubs.

The owner of the premises, Criterion Capital, no longer wanted to allow the premises to operate as nightclubs. This is part of the owner's view towards investing within the portfolio towards regenerating the local area in Leicester Square and Piccadilly Circus and introducing quality hotels, restaurants and retail outlets. They therefore entered into discussions with a number of hotel operators with a view to changing the use of the building. They further wanted to redevelop two buildings which they owned within the West End, namely, Alhambra House and the Trocadero. All three premises are to operate as hotels, with associated bars and restaurants on the upper floors.

The investment in the three hotels is in the region of £511million and it is envisaged that 500 staff will be employed across the three hotels.

The 12<sup>th</sup> and 13<sup>th</sup> floor of the Trocadero will incorporate an external garden with an investment alone in the region of £30million. The intention is to create an exceptional and world class open air roof top garden bar and restaurant within Westminster. It is hoped that the bar restaurant will receive international recognition.

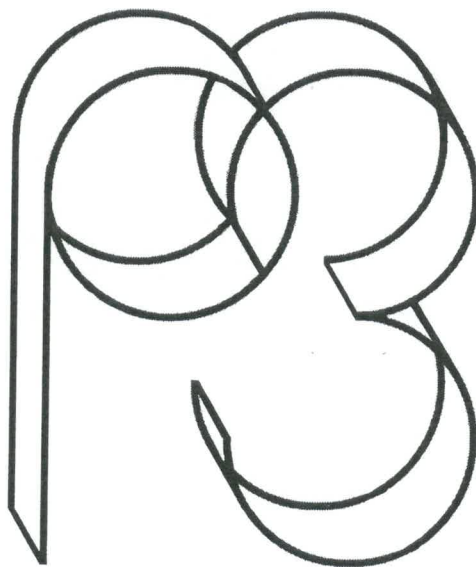
The proposal to redevelop the buildings to operate as hotels is supportive of Westminster's City Plan (adopted on 9 November 2016), namely Policy S23 "Hotel's and Conference Facilities" with its aim that *"The aim that Westminster continues to make a significant contribution to London's visitor accommodation and in supporting Westminster's role in global business. The policy recognises that hotels are important to support the visitor and business economy, and have strong links with other activities in central London, such as shopping, theatre and other cultural and entertainment activities"*. The redevelopment and the inclusion of bar / restaurants on the upper floors further supports Policy 7 "West End Special Retail Policy Area", as does the aim of Criterion Capital during the redevelopment of the Trocadero to improve the retail offer on the ground floor level.

### **Licences to be Surrendered**

Copies of the two licences are attached. These licences permit alcohol and regulated entertainment until 3am, 7 days a week (except Sunday until 00:30 on one of the licences). The licences were granted to nightclub premises with a total capacity of 1,700.

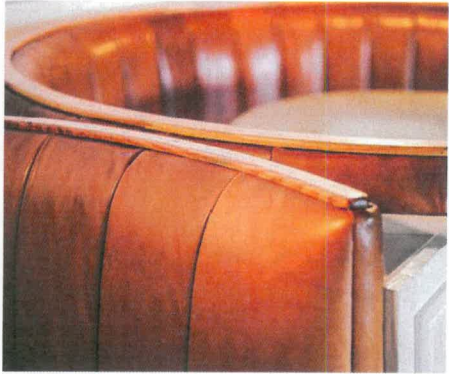
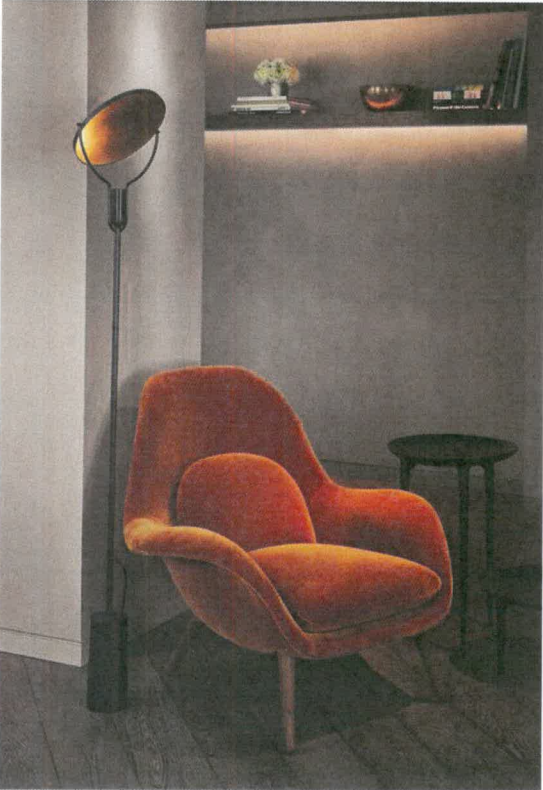
The licences proposed are for a totally different style of premises, the hours proposed are less and the capacity over the three premises sees a reduction of 475 people in stress until 3am.

# ASSEMBLY HOTEL



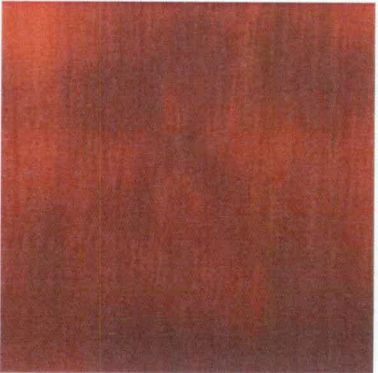
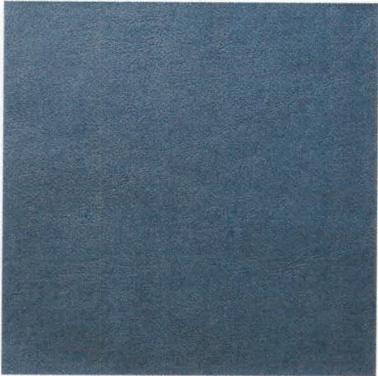
BAR + RESTAURANT

RESTAURANT LOOK + FEEL



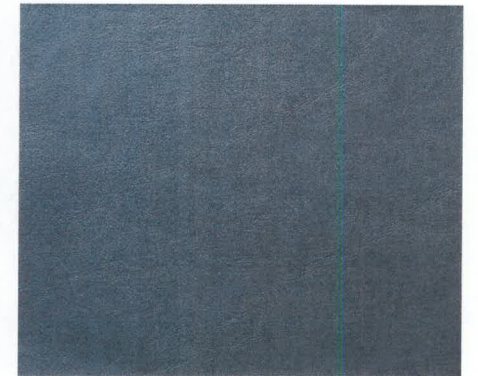
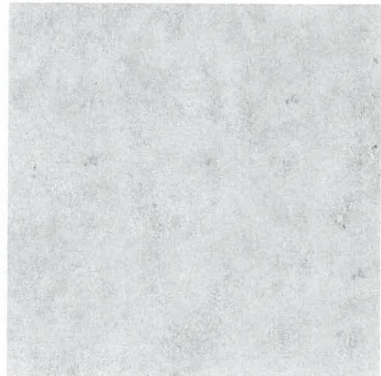
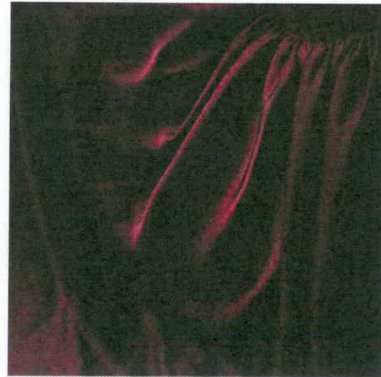
RUST. PANELLING. ECLECTIC. AGED LEATHER. PRINTED TILES.

RESTAURANT LOOK + FEEL



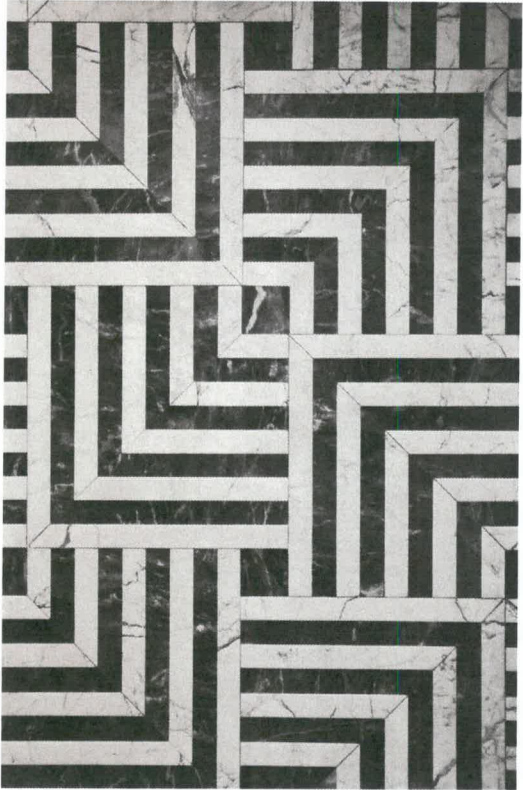
WARMTH. RICH FABRICS. CABINET OF CURIOSITY.

RESTAURANT LOOK + FEEL



DEEP REDS. PANELLING. WALL LIGHTS. AGED LEATHER. PETROL BLUE.

BATHROOM LOOK + FEEL



DARK. DECADENT. PLAYFUL.



Judgments

**QBD, ADMINISTRATIVE COURT**

CO/1975/2010

Neutral Citation Number: [2011] EWHC 1045 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

THE ADMINISTRATIVE COURT

Royal Courts of Justice

Strand

London WC2A 2LL

Monday, 11 April 2011

**B e f o r e:**

**MR JUSTICE CRANSTON**

**Between:**

**THE QUEEN ON THE APPLICATION OF A3D2 LIMITED (t/a NOVUS LEISURE)**

**Claimant**

**v**

**(1) WESTMINSTER MAGISTRATES' COURT**

**(2) WESTMINSTER CITY COUNCIL**

**Defendants**

Computer- Aided Transcript of the Stenograph Notes of

WordWave International Limited

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Tel No: 020 7404 1400 Fax No: 0207 404 1424

(Official Shorthand Writers to the Court)

**Mr G Gouriet QC and Mr A Booth** (instructed by Walker Morris) appeared on behalf of the **Claimant**

**Mr David Matthias QC** (instructed by Westminster City Council, Legal Department) appeared on behalf of the **2nd Defendant**

**J U D G M E N T**

(As Approved by the Court)

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MR JUSTICE CRANSTON:

Introduction

1. This is a judicial review of a decision of District Judge Roscoe sitting at the Westminster Magistrates' Court in December 2009. The judge dismissed an appeal by the claimant against the refusal by Westminster City Council ("the Council") to grant an application for a premises licence under the Licensing Act 2003 in respect of premises situated at 4- 6 Glasshouse Street, London.

2. The case raises a general issue about when courts should answer questions posed to them by the parties. There is also the specific issue about the value to be attached to a premises licence under the Li-

ensing Act 2003 covering premises which are closed and about to be demolished when that licence is surrendered as part of an application for a new premises licence elsewhere.

#### The licence application and its refusal

3. The claimant is A3D2 Limited, trading as Novus Leisure ("Novus"). It has two premises licences at 4 - 6 Glasshouse Street, which runs between Regent Street and Piccadilly in central London. These licences are for two nightclubs called Jewel Piccadilly ("Jewel") and the Velvet Rooms ("Velvet"). The licences permit the sale of alcohol until 1am Monday to Saturday and 12.30am on Sunday; regulated entertainment, including music and dancing until 1am Monday to Saturday, 12.30 on Sunday; and the provision of late night refreshment until between 1am and 1.30am, varying across the week.

4. In April 2008 Novus also acquired premises at a different nearby location, 72 Regent Street, for the Cheers Bar and Grill ("Cheers"). That address in Regent Street is within the site of the famous Cafe Royal. The premises licence for Cheers permitted licensable activities until 3am. Cheers closed permanently on 1 January 2009 and the Cafe Royal building was demolished in mid- 2009. Since the closure of Cheers, Novus has continued to pay a fee of some £350 per annum for the continuation of the licence.

5. On 6 January 2009 Novus applied for a premises licence under the Licensing Act 2003 to use 4- 6 Glasshouse Street, from the basement to the fifth floor, as a single nightclub to be known as Jewel Piccadilly. In the relevant form, Novus proposed to surrender the three existing licences, including that for Cheers, if granted a new premises licence for the Glasshouse Street premises. The application was for longer hours than permitted under the licences for Jewel and Velvet, including permission to sell alcohol until 3am seven days a week, for regulated entertainment, including the provision of facilities for music and dancing, until 3am seven days a week, and to provide late night refreshment until 3.30am seven days a week. At this point the demolition of the Cafe Royal building had not yet occurred.

6. The Novus application provoked a number of representations from the Metropolitan Police, Westminster's Environmental Health Department, and two local residents' associations, all opposed to its grant. Consequently, Westminster's Licensing Sub- Committee considered the application on 21 May 2009. The sub- committee was chaired by Councillor Bradley, with Councillor Evans and Councillor Marshall as the other members. For Novus it was said that the surrender of the three licences, if the application was granted on the terms sought, would reduce the overall capacity of licensed premises significantly; the number of people in the area would fall; and the total length of time licensable activities were permitted would also be substantially cut, since the Cheers licence would end. The application did not seek to remove the 600 person 3am capacity of the Cheers licence somewhere else, but merely to utilise the extra two hours that Cheers had in Glasshouse Street. The new licences would effectively reduce licensable activities in a "Stress Area".

7. The Sub- Committee considered the matter in the ordinary way, and at the end of the hearing Councillor Bradley announced that the application would be refused. First, he said, the Committee rejected the argument that there was a finite and ideal level of cumulative activity in the area so that a reduction in one part should be made good in another. It was possible to argue that stress in this area was such that any reduction ought to be accepted. Secondly, explained Councillor Bradley, Cheers was a hole in the ground, the Cafe Royal building being demolished, to be replaced by a six star hotel, which would no doubt have licensed premises as part of its activities. So it was not necessarily the case that Cheers would be replaced elsewhere, and not on its own site. Finally, said councillor Bradley, the impact on nuisance and local residents was greater at Glasshouse Street. Having a 3am licence there was different from having the one which existed at the Cafe Royal address.

8. Novus appealed. In anticipation of the appeal, various materials were prepared, including two statements by Inspector Neil Acheson, of the Metropolitan Police. In these statements, the Inspector said that Cheers had been a problematic venue for his unit. That was due to the high number of thefts and violent incidents associated with the premises. By contrast, he said, on a visit to Velvet there were no signs of drunkenness, unruly behaviour or underage drinking. On the whole, the clientele were good natured, in their mid 20s to late 30s and wearing smart casual attire. From his observations at Jewel, he was satisfied that it was a comparatively well-run establishment, and at that time catered for a customer base who used it as a "destination venue". However, Inspector Acheson was fearful that should the premises be granted later hours until 3am, the type of clientele would change, since it would then have the potential to become a premises where people would visit after previously attending other bars and clubs in the locality. In his experience this type of venue generated problems since many of the customers would have consumed alcohol before entering, and were consequently more likely to become involved in crime and disorder.

#### The judge's decision

9. Novus's appeal was listed before District Judge Roscoe at the City of Westminster Magistrates' Court for four days between 14 and 16 December 2009. By that date, although the Cheers licence was extant, the club was closed and the premises demolished. At the hearing Novus was represented by Mr Andrew Woods, a solicitor; Westminster by Mr Matthias QC. At the very outset of the hearing, the judge said that she had read the papers and skeleton arguments, and wanted to raise an issue about her decision in the Billionaire case, referred to in those papers. That was a case where an applicant said that it would surrender a premises licence for a club called Paper, if granted a new premises licence for a club called Billionaire. In the Billionaire case, Westminster accepted that planning permission had been granted for the new premises, but submitted that the surrender of the licence for Paper held little weight, since the building was due to be re-developed and Paper was due to close down in the foreseeable future.

10. The judge said that, in the Billionaire case, there had already been many days of hearing and she was not prepared for it to be delayed further. Her responsibility was to deal with the position at the time of the appeal, and at that time Paper was still operational:

"In my view, a court should consider such a case at the time of the hearing. That does not mean that the court cannot consider future matters. There can be exceptions to anything, for example if they guarantee that there will not be a new premises licence on that site and give it whatever weight appropriate. But in this case the premises licence for Cheers Bar and Grill is offered for surrender, but that licence has no effect because there is no premises for it to operate."

11. The judge then continued that, in her view, the surrender of the Cheers licence would have no effect under the Licensing Act 2003 or on cumulative impact. Therefore, in considering the hearing, that would be the basis on which she would view the licence. It would be considering any effect in the increase in permitted hours at Glasshouse Street. That was her preliminary view at that stage, having read the papers.

12. Mr Woods replied that that was not very helpful, but it was kind of the judge to raise the matter at that stage. It would have been unlikely that his clients would have made an application to Westminster without the Cheers licence. It seemed a bit pointless to go through with the hearing if that was the judge's view. He did not know whether it would be appropriate for him to make submissions.

13. The judge responded that the Billionaire case had been raised by Mr Woods in support of his client's application before the Licensing Sub-Committee, and in the papers she had received for the current hearing. She had hoped that her comments at that stage would be helpful. She then asked Mr Woods whether he wanted to take instructions. Mr Woods agreed that he did, and after a short adjournment, he addressed the judge on the value of the Cheers licence. In particular, he said that there was Westminster's contention

that where premises are re- developed or change their use, the intention of the policy was to reduce the number of the premises within the Stress Area through natural wastage.

14. The judge then said that all she was saying was that one looked at the premises as they existed at the time. She was not saying that in every single case there was no value to such a surrendered licence:

"There can be an effect on the picture as a whole by the non- operation of one premises that can affect the view of the situation as a whole. What I am saying is that I have some difficulties in seeing that by surrendering this licence there will be 600 people less coming into the West End Stress Area and therefore there has been a reduction because of the fact of those 600 people not coming into the West End to go to Cheers."

15. Mr Woods responded that the practical effect of the judge's view was that each licence was lost. He took the judge to the Guidance. The dialogue between Mr Woods and the judge continued. At one point the judge said that she did not think there was any reason why Mr Woods could not argue the circumstances of a particular case. The judge was not saying that he would not succeed or that he would be unsuccessful. It was a matter of fact and degree. It can be better to have premises moving, but if it was moving out of a residential area and into a quiet area, one was entitled to raise that fact.

16. Mr Woods then outlined two issues he wanted the judge to address: the general issue of cumulative impact zones and whether natural wastage meant that a licence was lost to the operation; and what was the effect of a non- operating licence. The judge said that she could understand the questions he had raised. It was whether a licence in these circumstances had any value. She thought that this may well be of interest and importance, but she would like some agreement between the parties as to the questions she was being asked to answer.

17. She then adjourned for the questions to be drafted by the parties. The hearing resumed. Before answering the questions, the judge asked what would happen when she answered them. Did she then hear evidence and proceed to the end of the hearing? Mr Woods replied that he would be happy to be guided by the judge and by Mr Matthias QC. Mr Woods' initial view was that if the judge was against Novus on that point, there did not seem to be much point in continuing with the appeal. It may be that the judge would then be asked to state a case.

18. The judge asked what Mr Woods was saying: that if her answers to those questions were not what Novus wanted to hear, the appeal would be abandoned? Mr Woods said that he was not sure whether the judge would dismiss the appeal or whether Mr Woods would withdraw it.

19. The judge handed down written answers to the two questions on the afternoon of the first day of the hearing. There then followed discussions as to the meaning of question 2, as a result of which the judge adjourned the appeal to the following morning. On the following morning, the judge varied her answer to question 2. Mr Woods then said that, having considered the points which had been canvassed the previous day, and the judge now having answered those two questions, he almost needed to ask one further question which was specific to the case of those instructing him "and I therefore need to ask you for a ruling on a third question on this particular case".

20. He handed a copy of the question to the clerk. The judge said that it was difficult because that was the answer to the hearing as a whole "which I have not had and I would want because I know this can go further, and I would want a little time to make sure the answer I give is in the appropriate terms". Mr Woods confirmed that in all probability the matter would be appealed. Mr Matthias QC then suggested a slight change of wording to question 3.

21. Mr Woods said that the principle of the appeal was the surrender of the Cheers hours. The judge asked whether Mr Woods was content for her to answer question 3. He replied that if she maintained her approach, in his view that was dismissing the appeal because she could not find exceptional circumstances. The judge then enquired again whether both parties were content for her to answer question 3. Mr Woods replied that he could see no alternative. After an adjournment, the judge answered question 3. After doing so, the judge asked whether she had answered the question. She added that she was not sure that she could answer it in global terms. Here, in the particular application, it was not capable of being an exceptional circumstance because it was a non- operating licence. She had to rule on what was before her in that case. In her view a single fact was unlikely to be an exceptional circumstance. It was very different for a court to say that it could never be an exceptional circumstance, but Cheers was a non- operating licence, and in the circumstances she could only say what she had said without hearing the evidence, "I am quite happy to say this non- operational licence cannot amount to exceptional circumstances".

22. Subsequent to the hearing, the judge incorporated her answers to the three questions in a formal decision. Question 1 was as follows:

"Is it lawful for a Cumulative Impact Policy to operate so as to reduce the number of premises licences when premises licences become unable to continue to operate because of redevelopment, loss of property interest or any other similar matter?"

The judge answered "yes". She said that a premises licence was indefinite in duration unless otherwise stated, thus it could be surrendered as part of an application for different premises, and the licensing authority would have to take the surrender into account. However, section 17(3) of the Licensing Act 2003 provided that an application for a premises licence had to be accompanied by a plan of the premises to which the application related. That being the case, it would be difficult for a holder of a premises licence to show that premises are operating in accordance with the premises licence if there had been re- development which substantially changed the premises.

23. That did not terminate the licence itself, she added, and the operator could apply to vary it, or argue that the surrender of the licence was an exceptional circumstance. A licensing authority could, as a result, allow an exception to their policy, as Westminster had provided for in section 2.4.5 of the Statement of Licensing Policy. Given the way in which the statute was drafted, the judge said that she had no doubt that a premises licence was not transferable between premises. A surrender of one licence was a circumstance to be considered by a licensing authority when deciding whether or not to grant a new premises licence.

24. Question 2 was in the following terms:

"If a premises licence has been issued by a Local Authority under the Licensing Act 2003 and the Premises Licence Holder becomes unable to operate the licence at those premises are the benefits of that licence (occupancy levels and licensable activities) lost?"

The judge answered "yes". However, she explained that did not prevent the loss of those occupancy levels or indeed licensable activities being raised in any application for a new premises licence or application to vary an existing premises licence. It could be part or all of an exceptional circumstance as a result of what a licensing authority should grant on such an application.

25. Then there was question 3:

"The application for a new licence at Jewel, Glasshouse Street (which in practice would extend the terminal hour from 1.00am Monday to Saturday to 3.00am Monday to Saturday) which is made on the basis that the

premises licence dated 27 April 2009 at Cheers, 72 Regent Street (which includes an occupancy level of 600 at 114.5 licensable hours) will be surrendered is not capable of itself of being exceptional circumstances under 2.4.5 Westminster City Council Licensing Policy because the Cheers licence can no longer operate at 72 Regent Street due to redevelopment and the premises are no longer operating."

In her view, and regardless of any Statement of Licensing Policy, the judge said that a simple surrender of a premises licence could not be an exception to any Statement of Licensing Policy unless it promoted the licensing objectives set out in the legislation. Accordingly, any tribunal had to consider any application in the round, and the question it had to answer was: did the application promote the licensing objectives? Single factors were unlikely ever to comply with that requirement. A Statement of Licensing Policy was only ever a guide. A simple surrender of a licensing premises was not of itself a guarantee that exceptional circumstances existed which would entitle a deviation from a licensing authority Statement of Licensing Policy.

26. In paragraphs 2 and 3 of her answer to question 3, the judge said this:

"In this case, the Licensing Authority argue that despite the de facto closure of licensed premises on the Cafe Royal site, the area is still subject to cumulative stress, and the Council's policy relating to cumulative stress is still valid and necessary. The licence offered in surrender here is for the premises that used to operate under the name of Cheers which closed on 1 January 2009. The building which it operated is demolished. There are witness statements relating to other objections to the application made by the appellant.

In these particular circumstances, the surrender of the premises licence at Cheers is not capable of itself of being an exceptional circumstance under paragraph 2.4.5 of the Respondent's Statement of Licensing Policy sufficient to require this application to be granted."

She therefore dismissed the appeal:

#### Legal framework and policy

27. Licensable activities are set out in section 1 of the Licensing Act 2003. These are the sale by retail of alcohol, the supply of alcohol in a club, the provision of regulated entertainment and the provision of late night refreshments (section 1(1)). Section 4 of the Act provides that a licensing authority must carry out its licensing functions with a view to promoting the licensing objectives. Those objectives are listed in section 4(2) as the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

28. Under section 11, "premises licence" is defined as a licence granted in respect of any premises which authorised the premises to be used for one or more licensable activities. Section 17 deals with applications for a premises licence. Under section 17(3)(b), an application for a premises licence must be accompanied by a plan of the premises to which the application relates in the prescribed form. An application made in accordance with the requirements of section 17, and advertised in accordance with that section, must be considered by the licensing authority in accordance with section 18. As far as is relevant, that section provides as follows:

"(2) Subject to subsection (3), the authority must grant the licence in accordance with the application subject only to--

(a) such conditions as are consistent with the operating schedule accompanying the application, and

(b) any conditions which must under section 19, 20 or 21 be included in the licence.

(3) Where relevant representations are made, the authority must--

(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and

(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

(4) The steps are--

(a) to grant the licence subject to--

(i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and

(ii) any condition which must under section 19, 20 or 21 be included in the licence;

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application.

(5) For the purposes of subsection (4)(a)(i) the conditions mentioned in subsection (2)(a) are modified if any of them is altered or omitted or any new condition is added.

29. Under section 24(1), a premises licence has to be in the prescribed form. Regulations under that sub-section must, in particular, provide for the licence to include a plan of the premises to which the licence relates. Section 26 provides that the duration of a premises licence is until it is revoked or, if granted for a limited period, that period expires. Licences can be surrendered pursuant to section 28 of the Act. Within 28 days of a licence lapsing through surrender, section 50 enables persons to apply for its transfer to them so that, in effect, it is reinstated.

30. Sections 34 to 36 of the Act concern applications to vary premises licences. Section 36(6)(b) provides that a licence may not be varied under section 35 so as to vary substantially the premises to which it relates.

31. The Act provides for policy and guidance to assist its application. Section 5(1) demands that each licensing authority must, in respect of each three-year period, determine its policy with respect to the exercise of its licensing functions and publish a statement of that policy. Section 182 provides for the Secretary of State to issue guidance to the licensing authorities on the discharge of their functions under the Act. In carrying out its licensing functions, section 4(3) obliges a licensing authority to have regard to its licensing statement under section 5 and any guidance issued by the Secretary of State under section 182. On appeal, a Magistrates' Court must have regard to the licensing authority's published statement: R(Westminster City Council) v Middlesex Crown Court and Chorion Plc [2002] EWHC 1104 (Admin).



32. As to the machinery of the Act, section 3 constitutes Councils as licensing authorities, and section 6 obliges each licensing authority to establish a licensing committee of at least ten members. The licensing committee may arrange for the discharge of its functions of determining an application for a premises licence by a sub-committee (section 10(4)). Appeals against decisions of licensing authorities are to the Magistrates' Court on questions of both law and fact (section 181 and Schedule 5).

33. In R(Hope and Glory Public House Limited) v City of Westminster [2011] EWCA Civ 31; [2011] 175 JPL 77, the Court of Appeal held that a Magistrates' Court should only allow an appeal if persuaded that the licensing authority is wrong. In delivering the judgment of the court, Toulson LJ said that it made good sense that a licensee bore the burden on appeal of persuading the Magistrates' Court that the licensing committee should have exercised its discretion differently, rather than the court being required to exercise that discretion afresh (paragraphs 47- 49).

#### Guidance and policy

34. The Secretary of State has issued guidance under section 182 of the Licensing Act 2003. Chapter 13 of the Guidance requires that there should be an evidential basis for the decision to include a special policy within a licensing authority's Statement of Licensing Policy. For example, a local authority may be satisfied as to the cumulative impact of crime or anti-social behaviour, or as to the concentration of noise disturbance. Paragraph 13.29 of the Guidance provides that the effect of adopting a special policy is to create a rebuttable presumption. Applications for a new premises licence, or club premises certificates or variations which are likely to add to the existing cumulative impact will normally be refused following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

35. The Guidance states in paragraph 13.34 that a special policy should never be absolute. Statements of Licensing Policy should always allow for the circumstances of each application to be considered properly, and for licences and certificates that are unlikely to add to the cumulative impact on the licensing objectives to be granted. If a licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one of the licensing objectives, and that necessary conditions would be ineffective in preventing the problems involved.

36. Pursuant to section 5 of the Act, Westminster has adopted a Statement of Licensing Policy. The 2008 version of the statement was current when the application in this case came before its Licensing Sub-Committee and went on appeal to the judge. Paragraph 2.3.2 of the statement states that it is the intention generally to grant licences or variations to licences where the hours proposed are within the core hours. The core hours are 10am to 11.30am Mondays to Thursdays inclusive; 10am to midnight on Fridays and Saturdays; and midday to 10.30pm on Sundays. Paragraph 2.3.2 continues that it is not the policy to refuse applications for hours longer than the core hours. Where a proposal is made to operate outside those core hours, each application will be considered on its merits against the criteria set out.

37. The statement also contains the so-called "Stress Policy". It identifies three Stress Areas, including the West End Stress Area, which includes the premises at issue in this case. The policy explains that the Stress Areas amount to less than 6 per cent of the total area of the City of Westminster, although they contain 36 per cent of the licensed premises, including 64 per cent of the nightclubs, 35 per cent of the pubs and pub restaurants, and 49 per cent of the restaurants:

"2.4.1 These areas have been identified as under stress because the cumulative effect of the concentration of late night and drink led entertainment premises and/or night cafés has led to serious problems of disorder and/or public nuisance affecting residents, visitors and other businesses."

38. The reference to cumulative impact in this passage echoes the Guidance issued by the Secretary of State, in which the cumulative impact of licensed premises on the promotion of the licensing objectives is stated to be a proper matter for a licensing authority to consider (paragraph 13.24).

39. Paragraph 2.4.2 of the Statement of Licensing Policy then sets out the Stress Area Policy: that within the Stress Areas, licensing applications should be refused in respect of pubs and bars, takeaway hot food and drink establishments, and establishments providing facilities for music and dancing, other than applications to vary the hours of such premises within the core hours. The rationale is because the problems in the Stress Areas are generally later at night than during the core hours.

40. The statement then continues that the Stress Area Policy will not be applied inflexibly and that the individual circumstances of each application will always be considered. However, it is "intended to be strict, and will only be overridden in genuinely exceptional circumstances" (paragraph 2.4.2).

41. At paragraph 2.4.3 the statement says that it is not possible to give a full list of examples of when Westminster will treat an application as an exception. However, in considering whether a particular case is exceptional, it will consider the reasons underlying the Stress Area Special Policy on Cumulative Impact.

42. The statement explains at paragraph 2.4.5 that the Stress Areas Policy is directed at the global and cumulative effects of licences on the areas as a whole, and that a case is most unlikely to be considered exceptional unless it is directed at the underlying reason for having the policy. Examples of the type of proposal which might constitute an exception are set out in that paragraph, although it is stated that any list of such examples cannot be definitive. One example given is of a proposal to transfer an operation from one premises to another, where the size and location of the second premises is likely to cause less detrimental impact and will promote the licensing objectives.

43. Paragraph 2.4.12 and Appendix 14 set out the reasons for the Stress Area Policy. Reference is made to Westminster considering it necessary to propose special policies on cumulative impact "which aim to limit growth of licensed premises in certain areas".

#### Issue 1. Posing questions to a court

44. In attractive and cogent submissions on behalf of Novus, Mr Gouriet QC contended, first, that the judge should not have answered the three questions posed to her before hearing evidence. The matter was unsuitable for determination in the abstract, apart from the substantial body of evidence in the case. No rational decision could be made otherwise than on the evidence as a whole, which the judge did not consider. The decision to dismiss the appeal was predicated on the rulings on a preliminary issue, adverse to Novus, which should not and could not rationally have been made at that stage in the proceedings. The decision to dismiss the appeal was therefore unlawful.

45. To the obvious retort that Novus's solicitor, Mr Woods, agreed, even instigated the judge's approach, Mr Gouriet QC submitted that Mr Woods was on the back foot from the outset, fighting for the life of his client's case. The judge should never have permitted what happened. Following her preliminary view, a momentum built up which meant that the central issue of whether rejection of the application was necessary to the licensing objectives were never addressed. Only after all the evidence was considered, including what had happened with other licensed premises in the period between the Cheers closure and the hearing, could it be said that Westminster's Statement of Licensing Policy applied at all. But the judge made a preliminary ruling that the non-operational licence, since Cheers had closed, could not amount to exceptional circumstances within the framework of the policy. The judge should not have placed Mr Woods in a position where she answered questions in the abstract without the evidence being explored. These were not questions which the judge should have contemplated answering. It was a matter of overall impression, said Mr

Gouriet, but it was preposterous to suggest that Mr Woods had initiated the procedure, as a result of which his client's case was dismissed before being properly considered.

46. In my view, this aspect of Novus's case is without any factual or legal foundation. At the outset of the hearing, having pre-read the papers and the skeleton arguments of the parties, the judge gave a reasoned explanation of what she called a preliminary view regarding one aspect of Novus's case, namely, the significance of its offer to surrender the premises licence for the Cheers premises, which by that time had been demolished. She distinguished what she had held in the Billionaire case from the situation in the appeal before her. By no stretch of the imagination could it be suggested that it was wrong for the judge to do this. It is not uncommon for judges to share with the parties a preliminary view of the case, having read the papers. That form of openness promotes the Overriding Objective of the Civil Procedure Rules of dealing with cases justly, in particular by saving expense, dealing with cases proportionately, and allotting to them the appropriate share of the court's resources. So long as a judge has not closed his or her mind to a matter, it is also consistent with dealing with a case fairly, for it enables the parties to present their cases to the best effect.

47. As outlined earlier in the judgment, the dialogue between Mr Woods and the judge continued, with the judge underlining that it was a preliminary view. Mr Woods opined that his client was unlikely to have brought the case if the Cheers licence had no significance. The judge did not invite argument from the parties on the point, but Mr Woods asked the question whether it would be appropriate for him to make submissions. The judge did not answer that question, but gave Mr Woods the opportunity to take instructions, which he did, and he then asked whether he could address the judge on the value of the Cheers licence. Mr Woods then made submissions, and having done so, it was Mr Woods who inquired of the judge whether she would rule on what became questions 1 and 2.

48. As I read the detailed note of the hearing, in no sense did the judge invite Mr Woods to ask for the rulings on these questions. Certainly Westminster took no initiative in that regard. As described earlier, the judge specifically asked about the consequences of her answering the questions adversely to Novus's interests. Would Novus abandon the appeal? Mr Woods replied that he was not sure whether the appeal should be withdrawn or dismissed. The first two questions were answered.

49. On the second day Mr Woods almost immediately said that he needed to ask for a ruling on a third question on the particular case. The judge's response on seeing the question was to say that it was difficult because it was an answer to the hearing as a whole, which she had not had. Mr Woods made it clear to the judge that the principle of the case was the surrender of the Cheers hours. If she adhered to her preliminary view regarding the significance of the surrender of the premises licence of Cheers, he effectively had no case. Having confirmed that Mr Woods was content for her to answer the third question, she did so.

50. This brief reiteration of what happened at the hearing makes clear that it was at the instigation of Novus, not the judge, that the questions were posed and answered. In no way can it be suggested that Novus was forced into the course which the judge adopted. The judge had expressed a preliminary view on one aspect of the case, but that in no sense precluded Mr Woods from advancing Novus's appeal, although it might have identified features which would not be considered strong points.

51. It cannot be said to be an error of law for a judge to agree to rule on a question where a party, particularly a legally represented party, asks the judge to do so. That is subject to this caveat: the common law method is intensely empirical. It proceeds by the accretion of cases decided in particular factual contexts. It eschews addressing issues in the abstract, or rendering advisory opinions. It avoids pronouncing on matters where there is no dispute to be resolved. That is no doubt because common law courts see their role as primarily resolvers of disputes, rather than as law-making bodies. There are also concerns about the difficulties which might arise should they answer abstract questions. One side of the coin is whether the

parties will have the incentive fully to explore the issues; the other is whether the court itself can do the issues full justice, without having some idea how they might play out in the real world.

52. In this case the judge was not answering questions in the abstract. Novus obviously considered that if the judge was against it regarding the significance of its offer to surrender the Cheers licence, its appeal was bound to fail. Mr Woods, acting on behalf of Novus, seemed plainly of the view that there were no other features of the appeal which offered any prospect of it succeeding. That was the derivation of the three questions posed to the judge, and why he suggested that the judge might dismiss his client's appeal if she decided the Cheers' point against him.

#### Issue 2: The judge's answers

53. Novus's pleaded objection is to the answer the judge gave to question 3. Although in the course of his oral submissions Mr Gouriet QC expressed disquiet about the questions as a whole being asked, no particular passage was identified in the answers to question 1 and 2 as being defective. Nor, in my view, could they be.

54. As to the answer to question 3, the focus of Mr Gouriet QC's attack was on the second and third paragraphs. There the judge concluded that, in the particular circumstances, the surrender of the premises licence at Cheers was not capable of itself of being an exceptional circumstance under Westminster's Statement of Licensing Policy to require the application to be granted. The particular circumstances the judge identified were that the area was suffering from cumulative stress, Westminster's Stress Area Policies were applicable, the Cheers licence offered in surrender was in respect of premises that had been closed for a year, the building in which Cheers operated had been demolished, and the statements of witnesses objecting to the application were in the court's papers.

55. In Mr Gouriet QC's submission, that catalogue of particular circumstances amounted to little, if anything, more than a closure of the premises for a year and their demolition. In fact he contended there was an error of fact in that the Cheers premises had not been demolished at the time of the application in February, the demolition occurring later in the year. In his submission, the judge's selection of particular circumstances fell far short of the matters which axiomatically it was necessary to consider to make a rational determination as to the weight to be given to the proposed surrender of the Cheers licence. There were two bundles of evidence and documents lodged on behalf of Novus consisting of some 300 pages.

56. Nowhere in the answer to question 3, Mr Gouriet QC contended, was there any mention of a matter informing the judge's finding that surrender of the Cheers licence, of itself, could not amount to exceptional circumstances within Westminster's policy. In Mr Gouriet QC's submission the judge lost sight of the statutory test set out in section 18 of the Act, namely, whether it was necessary to reject the application for a new licence in order to promote the licensing objectives. The weight to be given to the proposed surrender of the Cheers licence and its impact on the proposed licensing objectives could only rationally be assessed in the context of a host of other material considerations. Novus's proposal involved a reduction in the number of licences. Whether or not that reduction had been counterbalanced by other grounds, or was otherwise of no assistance because of what had occurred, and the lapse of time since the Cheers licence had traded, was dependent on the evidence as a whole.

57. In my judgment, there is no reviewable flaw in the judge's analysis of the issues presented to her in question 3. Under sections 18(3) and (4) of the Licensing Act 2003, the test in considering whether to grant or refuse an application for a premises licence is whether it is necessary in order to promote the licensing objectives. Westminster's licensing policy is the background under section 4(3) against which individual licensing decisions should be made, applying that statutory test. Westminster has adopted a policy of refusing applications for new public houses and bars in the so-called Stress Areas - where it is considered

there is already a saturation of such establishments, the cumulative impact of which has led to problems of crime, disorder and public nuisance - other than for a variation of hours within the prescribed core hours. The policy recognises exceptional cases, although it makes clear that a case is most unlikely to be considered exceptional unless it is directed at the underlying reasons for having the policy.

58. In this case, Novus's application for a new premises licence at 4- 6 Glasshouse Street clearly fell foul of the Stress Areas Policy because the later hours sought were outside core hours and related to the sale of alcohol and the provision of facilities for music and dancing. Since the application attracted relevant representations from the Metropolitan Police, Westminster's Environmental Health Department and two local Residents' Associations, a hearing had to be convened to consider the application. It fell to Novus to seek to persuade the licensing sub- committee that its application should be granted as an exception to the Stress Areas Policy. It sought to do this, *inter alia*, by adducing the Cheers's licence and arguing that its surrender, along with that of the two existing premises licence at 4- 6 Glasshouse Street, constituted an exception for the reasons already outlined. The Licensing Sub- Committee rejected the application. Before me, no objection was taken to the manner in which it approached the application. It is difficult to see how there could be.

59. There was then the appeal to the judge. She was posed question 3 in the form described. It was framed in terms of Westminster's statement of licensing policy, with reference to the facts of the case. The question was whether the surrender of the premises licence for Cheers was capable of itself of being an exceptional circumstance, under paragraph 2.4.5 of Westminster's policy, in relation to the application in respect of the Glasshouse Street premises. Far from being wrong, the judge's answer is, in my view, self-evidently correct. The application for the Glasshouse Street premises was to extend the hours during which alcohol could be sold and music and dancing provided to 3am, seven days a week. Since the premises were located in the West End Stress Area, the policy indicated that the application be refused unless the case could be considered exceptional.

The Cheers licence was extant, but the application was for premises elsewhere. Crucially the Cheers premises were closed and, at the time of the application, earmarked for demolition. The judge sensibly concluded that the surrender of a redundant premises licence relating to such premises, premises which by the time of the hearing were demolished as planned, could not of itself be capable of rendering the application with respect to the Glasshouse Street premises exceptional in policy terms.

60. None of this is inconsistent with the legislation. The Licensing Act 2003 establishes a clear link between a premises licence and the particular premises to which it relates. When premises close because they are to be demolished, the premises licence is effectively a dead letter. The licence may be extant because the holder continues to pay the fee, but the licence is of no practical use because the premises to which it relates cannot be used.

In my view, the surrender of a premises licence in these circumstances cannot, under the Act, promote the licensing objectives with regard to an application for a new premises licence in respect of other premises situated elsewhere. In my judgment, the judge's answer to question 3 was faultless.

61. I dismiss the claim.

62. MR MATTHIAS: My Lord, we are obliged. There is an application for costs. I would ask you to undertake a summary assessment, if you would be prepared to do so. Can I pass up - -

63. MR JUSTICE CRANSTON: Has Mr Booth seen that?

64. MR MATTHIAS: Yes, my Lord, schedules of costs were exchanged on Friday.

65. MR JUSTICE CRANSTON: Mr Booth, what do you say about it?

66. MR BOOTH: My Lord, obviously I cannot resist the principle of costs on this. My learned friend did exchange with my solicitors on Friday this schedule, or a schedule that looked very like this one. I took instructions this morning that we were happy with the quantum on the schedule as provided. However, there are two additions, I am instructed, on this new schedule which you have before you. The first of those is the final entry above counsel's fees, attendance at hearing 11 April. I do not see how I can resist that. That does not seem unreasonable. As regards my learned friend's fees, and I do hesitate to take any point on this, but, in my submission, with the greatest of respect to my learned friend, it was not necessary for Queen's Counsel to attend this hearing.

67. MR JUSTICE CRANSTON: That takes out £1,000. I think I said that there was no need for you to attend.

68. MR MATTHIAS: My Lord, you did.

69. MR JUSTICE CRANSTON: I can appreciate why you might, but I think we might take that out.

70. MR MATTHIAS: There would have been a fee for anyone who did attend, of course.

71. MR JUSTICE CRANSTON: I was assuming your solicitor might attend. She appears to be very competent.

72. MR MATTHIAS: She is.

73. MR JUSTICE CRANSTON: What would the fee be if someone did attend?

74. MR MATTHIAS: If it were a junior, I apprehend it would be half of that.

75. MR JUSTICE CRANSTON: £500. Anything else?

76. MR MATTHIAS: Is that the entirety of the sum bar £500?

77. MR JUSTICE CRANSTON: Yes.

78. MR MATTHIAS: We are very obliged.

79. MR JUSTICE CRANSTON: Mr Booth?

80. MR BOOTH: My Lord, there is an application for permission to appeal your decision. The first basis on which I would seek leave from your Lordship to appeal is that, on the defendant's own case, the District Judge determined the matter having regard to what we would say is an irrelevant consideration, or alternatively she determined it on an erroneous factual premise, namely that at the relevant date the premises had been demolished, whereas the evidence, such as it was before the court, was not only that the premises had not been demolished at the date of the application, but they had not in fact been demolished at the date

of the licensing sub- committee hearing, the evidence being that demolition took place in July, whereas that hearing took place in May 2009.

81. MR JUSTICE CRANSTON: Did you tell me July? You certainly told me that they had not been demolished in February.

82. MR BOOTH: My Lord, it was July. My learned friend and leading counsel, Mr Gouriet -

83. MR JUSTICE CRANSTON: I must say I took a note, I know. So that is the first point, yes.

84. MR BOOTH: That is the first point. Secondly, my Lord, we would point to what we say is the unequivocal statement by the District Judge in the transcript to the effect that this non- operational licence cannot amount to exceptional circumstances. We would say that that finding simply was not open to the District Judge given that she had not heard the evidence in the case. I appreciate that is going to the substance of your Lordship's judgment. But, in my submission, with respect that finding was not open to the District Judge.

85. MR JUSTICE CRANSTON: Yes, thank you for those submissions, but I think you will have to go elsewhere.

86. MR BOOTH: I am grateful.

87. MR JUSTICE CRANSTON: Thank you very much.

88. MR MATTHIAS: Just for the avoidance of doubt, the figure for the summary assessment is £24,909.30.

89. MR JUSTICE CRANSTON: Yes. Thank you.

90. MR MATTHIAS: We are very grateful.

Judgments

**CA, CIVIL DIVISION**

*Entertainment; Public entertainments; Licensing; Licensing sub-committee imposing conditions on public house; Public house appealing to magistrates; Principles to be applied by magistrates' court when hearing appeals;*



Case No: C1/2009/1736

**Neutral Citation Number: [2011] EWCA Civ 31**

**COURT OF APPEAL (CIVIL DIVISION)**

**ON APPEAL FROM THE QUEEN'S BENCH DIVISION**

**(ADMINISTRATIVE COURT)**

**Mr Justice Burton**

**CO/5324/2009**

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: Wednesday 26<sup>th</sup> January 2011

**Before:**

**THE PRESIDENT OF THE FAMILY DIVISION**



**LORD JUSTICE LAWS**

and

**LORD JUSTICE TOULSON**

-----

**Between:**

**THE QUEEN ON THE APPLICATION OF HOPE AND GLORY PUBLIC  
HOUSE LIMITED**

**Claimant/  
Appellant**

- and -

**CITY OF WESTMINSTER MAGISTRATES COURT**

**Defendant**

-and-

**THE LORD MAYOR AND THE CITIZENS OF THE CITY OF WEST-  
MINSTER**

**Interested  
Party/  
Respondent**

(Transcript of the Handed Down Judgment of

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Official Shorthand Writers to the Court)

**Mr Ian Glen QC and Mr Gordon Bishop** (instructed by **Jeffrey Green Russell**) for the **Claimant/Appellant**

**Mr David Matthias QC and Ms Emma Dring** (instructed by **Westminster City Council**) for the **Interested Party/Respondents**

The **Defendant** being neither present nor represented

Hearing date: 9 November 2010

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Judgment

As Approved by the Court

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### **Lord Justice Toulson delivered the judgment of the Court: Introduction**

1. This appeal raises a question about how a magistrates' court hearing an appeal from a decision of a licensing authority under the Licensing Act 2003 ("the Act") should approach the decision.

### **Background**

2. The appellant owns the Endurance public house in Berwick Street, Soho. The premises are licensed for the sale and supply of alcohol and for the provision of entertainment and late night refreshment. The licence was granted on 12 March 2007 by Westminster City Council ("the council") as the local licensing authority.

3. On 15 April 2008 the council's Environmental Health Consultation Service ("EHCS") applied under s51(1) of the Act for a review of the licence after complaints were made by residents about the level of noise caused by customers taking their drinks out of the pub and congregating on the street during the evenings.

4. The hearing of the review took place before the council's Licensing Sub-Committee on 26 and 27 June 2008. The sub-committee heard submissions and evidence lasting about 5 hours. It decided to attach a number of conditions to the licence, the main condition being that no customer should be permitted to take drink from the premises in an open container after 6 pm. The decision and the sub-committee's reasons were notified to the appellant's solicitors by a letter dated 4 July 2008. The sub-committee stated:

"We have no policy to ban outside drinking, and we have accordingly not approached the case on that basis. We were not referred to the Council's statement of licensing policy by any party. We have had regard, as we must, to the policy,...but we have reached our decision based on the evidence that has been put before us in relation to these premises, and not on any policy ground.

The application was made on the grounds of public nuisance, and we first consider whether it was established that a public nuisance for the purposes of the Act exists. The evidence we heard was that large numbers of customers of the Endurance congregate on a daily basis outside the public house in Kemps Court in the evening, the numbers involved ranging from very few (5-10) to very many (180 or more). Those customers drinking and talking outside the premises make a noise. The noise is amplified by the configuration of buildings in the area. The noise causes public nuisance to surrounding residents, including, in particular residents directly opposite the public house.

The licensee argued that the noise was not so bad as to constitute a nuisance and that the complaints...were exaggerated. He called expert evidence in support of that proposition. We are completely satisfied that the noise is indeed a serious nuisance...

A number of local residents and other customers of the premises gave evidence about the way in which the premises were run, and we accept that the premises are valued by its customers and that a number of people enjoy being able to drink outside. We reject however the argument that a licensee has a fundamental right to, in effect, appropriate a part of the public realm for his own commercial purposes, if the effect of doing so is to cause serious public nuisance to his neighbours. Accordingly, we are persuaded that it is appropriate to take steps to prevent that public nuisance from continuing.

We recognise that steps should only be taken where they are necessary and that it cannot be necessary to take disproportionate steps..."

5. The sub-committee then considered the conditions proposed by EHCS and additional conditions proposed by the police. It concluded that most of the proposed conditions were required.

6. The appellant appealed against the decision to the City of Westminster Magistrates Court under s181 and schedule 5 of the Act.

7. At a preliminary hearing on 7 May 2009 District Judge Snow heard argument about how he should approach the decision of the sub-committee on the hearing of the appeal. He held that he was bound by the decision of the Court of Appeal in *Sagnata Investments Limited v Norwich Corporation* [1971] 2 QB 614, in the light of which he ruled:

"I will therefore

(1) Note the decision of the licensing sub-committee.

(2) Not lightly reverse their decision.

(3) Only reverse the decision if I am satisfied it is wrong.

(4) I will hear evidence.

(5) The correct approach is to consider the promotion of the Licensing Objectives. To look at the Licensing Act 2003, the Guidance made under section 182 LA03, Westminster's Statement of Licensing Policy and any legal authorities.

(6) I am not concerned with the way in which the Licensing Sub-Committee approached their decision or the process by which it was made. The correct appeal against such issues lies by way of Judicial Review."

8. The district judge heard the appeal over 5 days between 11 and 25 June 2009, during which he heard 4 days of evidence, considered 1797 pages of statements and exhibits and visited the site. On 30 June 2009 he delivered a 22 page written judgment. His conclusions in summary were:

"I find, on the balance of probabilities, that given the number of Residents, Students and Teachers affected, and given the geographical spread, that the nuisance clearly is a public nuisance.

...

The evidence is clear, that the public nuisance arises between 6 pm and 11 pm. The conditions imposed by the Licensing Sub-Committee are necessary and proportionate to ensure the promotion of the licensing objectives.

...

On 7 May 2009 I set out that I would only interfere with the decision of the sub-committee if I was satisfied that it was wrong. In fact I am satisfied that it was right. This appeal is dismissed."

9. The appellant applied for judicial review of the district judge's decision on various grounds. The primary argument was that the district judge's ruling about how he should approach the decision of the sub-committee was wrong in law.

10. The appellant's application for permission to apply for judicial review was dismissed by Burton J in a judgment dated 21 July 2009.

11. Permission to appeal was refused by Moses LJ on paper but was granted by Sir Mark Waller after an oral hearing on 19 May 2010. The permission was limited to the single question whether the district judge's self-direction was correct. As to that, Sir Mark Waller observed:

"So far as the direction is concerned, the position may well be covered by the authority *Sagnata Investments Limited v Norwich Corporation* [1971] 2 QB 614, but it seems to me that the question of whether it is an appropriate direction and the question of whether that is the right way in which a magistrate should approach an appeal in which he is hearing all the evidence de novo is a matter of some importance. We can spend a great deal of time arguing about the arguability of the point and it is better to have a decision which clarifies the position, which at present there is not."

### **Fresh evidence**

12. In addition to the ground on which leave to appeal was granted, Mr Glen QC sought leave on behalf of the appellant to introduce fresh evidence. The purpose of the fresh evidence was to rebut evidence given by a witness, Ms Bailey, at the hearing before the district judge to the effect that noise from the Endurance disturbed lecturers and students at the nearby Westminster Kingsway College. Ms Bailey had provided a witness statement on 15 January 2009, which had been disclosed to the appellant's representatives soon afterwards, i.e. several weeks prior to the hearing before the district judge. The fresh evidence came from others at the college and was obtained in October 2010, i.e. several months after Waller LJ granted limited permission to appeal. We can see no basis on which the late discovery of this evidence could provide a proper ground for judicial review of the district judge's decision and we refuse the application for permission to introduce it.

### **Licensing Act 2003**

13. The short title of the Act is:

"An Act to make provision about the regulation of the sale and supply of alcohol, the provision of entertainment and the provision of late night refreshment, about offences relating to alcohol and for connected purposes."

14. The Act brought about major changes to the licensing system in England and Wales. The background, nature and purpose of its provisions are summarised in the Explanatory Notes to the Act.

15. Essentially, the Act integrated alcohol, public entertainment, theatre, cinema, night café and late night refreshment licensing. Previously there was a patchwork system under which liquor licences were granted by licensing magistrates but other licensing functions, such as public entertainment licensing, were

the responsibility of local authorities. The Act followed the publication in April 2000 of a White Paper (Cm 4696) entitled "Time for Reform: Proposals for the Modernisation of Our Licensing Laws".

16. The Act created a unified system of regulation of the activities of the sale and supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment, referred to in the Act as the "licensable activities". The White Paper proposed that the licensing authority under the new scheme should be the local authority; and the Act follows that proposal. The government explained its reasons in the White Paper as follows:

"117. The current responsibility of magistrates for liquor licensing reflects their traditional role in maintaining the peace and the association of alcohol with crime. Entertainment licensing came on the scene at a time when the magistrates' role had moved a long way from law enforcement towards the administration of justice. With an integrated system of licensing it is necessary to decide if the responsibilities should fall to the magistrates or the local authorities or some third body which might involve both.

...

123. There are three compelling reasons in favour of giving the local authority (at district level) the responsibilities we have described in this White Paper. They are:

- **Accountability:** we strongly believe that the licensing authority should be accountable to local residents whose lives are fundamentally affected by the decisions taken
- **Accessibility:** many local residents may be inhibited by court processes, and would be more willing to seek to influence decisions if in the hands of local councillors
- **Crime and disorder:** Local authorities now have a leading statutory role in preventing local crime and disorder, and the link between alcohol and crime persuasively argues for them to have a similar lead on licensing.

124. In reaching our conclusion, we do not in any way seek to devalue the importance of the wider contribution the local licensing justices have made for so many years. While in our proposals they would be relieved of administrative licensing responsibilities, they would retain, in their capacity as magistrates, the responsibility for dealing with people charged with offences under licensing law and for the imposition of sanctions and penalties in respect of personal licence holders."

17. Magistrates also have an appellate function, which lies at the heart of this appeal.

18. Section 4 sets out general duties of licensing authorities. It identifies "licensing objectives" which licensing authorities are to promote. These include the prevention of public nuisance. Section 5 requires licensing authorities to produce statements of licensing policy for three year periods. In carrying out its licensing functions, a licensing authority must have regard to its licensing statement and to any guidance issued by the Secretary of State for Culture, Media and Sport under s182. Before determining its policy for a three year period, a licensing authority must go through a process of public consultation: s5(3). Section 6 provides for licensing authorities to conduct their licensing functions through licensing committees. Section 9 deals with proceedings before licensing committees and empowers the Secretary of State to make regulations about them.

19. There are various types of "personal licence" and "premises licence" which a licensing authority may grant. The present case concerns a premises licence granted under s18. It is open to a licensing authority to attach such conditions to a licence under s18 as it considers necessary for the promotion of the licensing objectives identified in s4.

20. Under s51 an "interested party" or a "responsible authority" may apply to the licensing authority for a review of a premises licence. An interested party includes anyone living or involved in a business in the vicinity: s13(3). A responsible authority includes the local authority which has statutory responsibilities in relation to the protection of the environment and human health: s13(4)(e). In the present case the applicant for the review was the council, acting through the EHCS. Section 53 expressly permits a local authority to make an application under s51 for a review of a premises licence in its capacity as a responsible authority and to determine the application in its capacity as the licensing authority.

21. Section 52 provides that a licensing authority which receives an application under s51 may, after holding a hearing to consider it and any relevant representations,

"take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives."

The steps mentioned in subsection (4) include modifying the conditions of the licence.

22. Section 52(10) requires the licensing authority to notify its determination, and its reasons for making it, to the holder of the licence, the applicant, any person who made relevant representations and the local chief officer of police.

23. Section 181 and schedule 5 provide a system for appeals from decisions of a licensing authority to a magistrates' court. Paragraph 8 of schedule 5 deals with appeals against decisions made under s52. It provides:

"(1) This paragraph applies where an application for review of a premises licence is decided under section 52.

(2) An appeal may be made against that decision by-

(a) the applicant for the review,

(b) the holder of the premises licence or

(c) any other person who made relevant representations in relation to the application."

24. The powers of a magistrates' court on an appeal from a decision of the licensing authority are to dismiss the appeal, to substitute any other decision which could have been made by the licensing authority, or to remit the case to the licensing authority to dispose of it in accordance with the direction of the court: s181(2).

25. The Magistrates' Courts Rules 1981 (made under the Magistrates' Court Act 1980) provide that where a statutory appeal lies to a magistrates' court against a decision or order of a local authority or other

authority, the appeal shall be by way of complaint for an order (rule 34). The rules also provide that on the hearing of a complaint, it is for the complainant to go first in calling evidence (rule 14).

### **The appellant's submissions**

26. Mr Glen submitted that the district judge wrongly placed the burden on the appellant to disprove that the noise caused by customers of the Endurance was such as to amount to a public nuisance and that the conditions imposed by the licensing authority were necessary and proportionate. He submitted that it was for the EHCS to prove its allegation of public nuisance and to establish that the modifications to the licence were necessary and proportionate. The hearing before the district judge was a hearing de novo, at which evidence was given and tested by cross-examination. Mr Glen pointed out that the licensing sub-committee itself stated that its decision was not based on any policy ground. Rather, it turned on the sub-committee's assessment of the facts. On factual issues of that kind, it undermined the nature of an appeal process by way of rehearing if the court started with a presumption in favour of the licensing authority. Moreover, such an approach did not comply with the requirement of article 6 of the European Convention that in the determination of his civil rights everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. In support of this submission he relied on the following passage from Paterson's Licensing Acts, 2009, para 5.4:

"Assuming we are correct in saying that the hearing in the magistrates' court needs to be article 6 compliant, then the magistrates would not be an "independent and impartial" tribunal if the court starts off from a position favouring the decision of the licensing authority. The licensing authority will be a party to any appeal and the success or failure of the appeal should depend on the evidence which is given and the arguments which are put forward."

27. Mr Glen also cited the decision of the Divisional Court in *R(Chief Constable of Lancashire) v Preston Crown Court* [2001] EWHC Admin 928. That case concerned an appeal from licensing justices to the crown court under the Licensing Act 1964. It was argued that there was a breach of article 6 because the composition of the court included two members who belonged to the same licensing committee as the magistrates whose decision was under appeal. The argument was rejected, but Mr Glen relied on a passage (at para 18) where Laws LJ, who delivered the main judgment, referred to the crown court conducting "a rehearing in the full and proper sense". If it was to be a rehearing in that sense, Mr Glen submitted that it must follow that the burden of proof on the appeal was the same as on the original hearing.

28. Mr Glen cited a number of other authorities for the proposition that an appeal against a licensing decision has long been recognised to be a rehearing. It is not necessary to refer to them, because it is not in dispute that the appeal is a rehearing at which the affected parties are all entitled to call evidence, and that the court must make its decision on the full material before it. The issue is what is the proper approach to the original decision and, in particular, the reasons given for it. Mr Glen did not submit that they should be disregarded. He accepted that the court hearing the appeal could properly take into consideration the reasons given by the licensing authority, but not to the point of placing a legal burden on the appellant.

29. Mr Glen submitted that the district judge went wrong in attaching too much significance to a sentence from a judgment of Lord Goddard CJ in *Stepney Borough Council v Joffe* (1949) 1 KB 599 cited by Edmund Davies LJ in *Sagnata Investments Limited v Norwich Corporation*. In *Sagnata Investments Limited v Norwich Corporation* an application was made under the Betting Gaming and Lotteries Act 1967 for a permit to open an amusement arcade in Norwich. The application was refused by the local authority and the applicant appealed to quarter sessions. The recorder who heard the appeal had written reasons for the refusal furnished by the town clerk and evidence of witnesses on both sides as to the merits of the application. He did not have any information about what had happened before the licensing committee. He allowed the appeal. The local authority appealed to the Divisional Court (whose judgment is not reported) and then to the Court of Appeal (Lord Denning MR, Edmund Davies and Phillimore LJJ). Its appeal was dismissed by

the majority, Lord Denning dissenting. Lord Denning considered that the local authority was entitled to its opinion that it was socially undesirable to have such arcades in Norwich and that the recorder was wrong to substitute his view for those of the elected body responsible for making such decisions.

30. The majority considered that the recorder had been entitled to conclude that the local authority had effectively decided that it would not grant any permit under the Act for an amusement place in Norwich and that there was no error of law in his decision to allow the appeal. Edmund Davies LJ, at page 633, quoted Lord Denning in the course of argument as summarising the issue in this way:

"Is the hearing to be treated as a new trial to be determined on evidence de novo, without being influenced by what the local authority has done; or is the hearing to be treated as an appeal proper, in which the local authority's decision is to be regarded as of considerable weight, and is not to be reversed unless their decision is shown to be wrong?"

31. Edmund Davies LJ considered that this was a false antithesis. From the reasons which he gave for preferring an intermediate position, he must have understood the second of Lord Denning's alternatives ("an appeal proper") as confined to deciding whether the local authority's decision was wrong in law on the material before it. He went on to say, at page 636:

"The provision for an appeal to quarter sessions seems to me largely, if not entirely, "illusory" if the contention of the appellant council is right. If it is, I am at a loss to follow how the recorder set about discharging his appellate functions. Lacking all information as to what had happened before the local authority, save the bare knowledge that they had refused the application and their written grounds for refusal, he would be powerless, as I think, to make any effective examination of the validity of those reasons."

32. Edmund Davies LJ expressed his conclusion as follows:

"...I hold that the proceedings before this recorder were by way of a complete rehearing.

But, contrary to what has been contended, this conclusion does *not* involve that the views earlier formed by the local authority have to be entirely disregarded by quarter sessions. It is true that in *Godfrey v Bourne-mouth Corporation* [1969] 1 WLR 47, after observing that an appeal to quarter sessions under schedule 6 to this same Act was by way of a complete rehearing, Lord Parker CJ said, at p 52, "the discretion is a discretion which the recorder in the present case had to arrive at himself uninfluenced by what the local authority had done". But with respect, I do not accept this. It went much too far, it was in direct conflict with the view which Lord Parker had earlier expressed in *R v Essex Quarter Sessions, ex parte Thomas* [1966] 1 WLR 359-363, it was contrary to the approach adopted both by the recorder and by Lord Parker CJ himself in the instant case, and it was, with deference, an uncalled-for observation. Here again, *Stepney Borough Council v Joffe* [1949] 1 KB 599 establishes what I regard as the proper approach, for, having made the point that there was in that case an unrestricted appeal, Lord Goddard CJ continued at pp 602, 603:

"That does not mean to say that the court of appeal, in this case the metropolitan magistrate, ought not to pay great attention to the fact that the duly constituted and elected local authority have come to an opinion on the matter, and ought not lightly, of course, to reverse their opinion. It is constantly said (although I am not sure that it always sufficiently remembered) that the function of a court of appeal is to exercise its powers when it is satisfied that the judgment below is wrong, not merely because it is not satisfied that the judgment was right."

Phillimore LJ's judgment was to similar effect.



33. Mr Glen observed that that case was one in which the local authority's decision had been based on a general policy, and that it was therefore right for the recorder to attach weight to the local authority's policy, although he still had to form his own judgment on the evidence whether a permit should be granted. The decision, he submitted, provided no support for taking a similar approach where (as the licensing sub-committee recognised in the present case) no question of licensing policy was involved. The core question in this case was whether the noise caused by the customers of the Endurance amounted to a public nuisance, and this was a matter for the EHCS to establish on the evidence called before the district judge.

### The council's submissions

34. Mr Matthias QC submitted that Burton J was right in his approach to *Stepney Borough Council v Joffe and Sagnata Investments Limited v Norwich Corporation* and his dismissal of the appellant's claim. Burton J said in his judgment:

"43. I conclude that the words of Lord Goddard approved by Edmund Davies LJ are very carefully chosen. What the appellate court will have to do is to be satisfied that the judgment below "is wrong", that is to reach its conclusion on the basis of the evidence put before it and then to conclude that the judgment below is wrong, even if it was not wrong at the time. That is what this district judge was prepared to do by allowing fresh evidence in, on both sides.

44. The onus still remains on the claimant, hence the correct decision that the claimant should start, one that cannot be challenged as I have indicated.

45. At the end of the day, the decision before the district judge is whether the decision of the licensing committee is wrong. Mr Glen has submitted that the word "wrong" is difficult to understand, or, at any rate, insufficiently clarified. What does it mean? It is plainly not "*Wednesbury* unreasonable" because this is not a question of judicial review. It means that the task of the district judge - having heard the evidence which is now before him, and specifically addressing the decision of the court below - is to give a decision whether, because he disagrees with the decision below in the light of the evidence before him, it is therefore wrong."

35. Mr Matthias submitted that as a matter of principle, as well as precedent, there are good reasons why the magistrates' court should pay great attention to the decision of the licensing authority and should only allow an appeal if satisfied, on the evidence before it, that the decision was wrong. He pointed out that Parliament had chosen to make the local authority central to the promotion in its area of the licensing objectives set out in the Act, because local councillors are accountable to the local electorate and are expected to be sensitive to the needs and concerns of the local populace. In licensing matters there is often no single "right answer". Mr Matthias pointed to the conditions which the licensing authority attached to the licence on the review in the present case as an example. The ban imposed on customers taking drink from the premises in an open container after 6pm might equally have been imposed somewhat earlier or somewhat later. It is normal for an appellant to have to show that the order challenged was wrong. The only unusual feature about this type of appeal is that all parties have carte blanche to call evidence. It does not, however, follow that the respondent to the appeal should bear the responsibility of showing that the order should be upheld and so should be required to present its case first.

36. On the article 6 issue, Mr Matthias's propositions may be paraphrased as follows:

1. The decision of the licensing authority was an administrative decision, which admittedly involved a determination of the appellant's "civil rights" within the meaning of article 6, as it has been interpreted in the European case law.

2. The extent to which article 6 requires such a decision to be subject to review by an independent and impartial tribunal depends greatly on the nature of the decision. Article 6 is an important expression of the rule of law, but the rule of law itself allows proper scope for democratic process in administrative decision making.

3. Administrative decisions often involve making judgments and assessing priorities on matters of social and economic policy. It accords with democratic principles for such decisions to be taken primarily by democratically accountable bodies. The power of the High Court in judicial review proceedings to review the legality of such decisions and the procedures followed is sufficient to ensure compatibility with article 6.

4. Some administrative decisions, although not necessarily involving wide issues of policy, call for particular knowledge or experience on the part of the decision maker. Often such decisions will involve an evaluative judgment and the exercise of discretion. In such cases, too, the availability of judicial review in the High Court is sufficient to meet the requirements of article 6. It would be perverse if article 6 were to require a full fact-finding appeal to a tribunal which lacked the degree of knowledge and expertise of the original decision maker.

5. There may be cases where an administrative decision does not depend on what may be described as democratic questions (questions of local or national policy, such as belong to the political forum), but which depends essentially on a question of fact requiring no special knowledge or experience on the part of the decision maker. In such a case article 6 may require that an aggrieved person whose civil rights are determined by the decision should be entitled to have it reviewed by a tribunal whose power includes whatever factual review is necessary for justice to be done.

6. There is nothing in domestic or Strasbourg case law to suggest that there is a general principle that it is incompatible with article 6 for a person aggrieved by an administrative decision to bear the responsibility of establishing his complaint.

37. Mr Matthias's concession that article 6 is engaged in the present case followed from the decision in *Kingsley v The United Kingdom* (2002) 35 EHRR 10, paragraph 34, where it was held that article 6 is engaged in proceedings which determine whether or not an individual is entitled to undertake licensable activities. For his other submissions he cited a number of authorities including particularly *R (Alconbury Developments Limited) v Secretary of State for the Environment, Trade and the Regions* [2001] UKHL 23, [2003] 2 AC 295, *Runa Begum v Tower Hamlets London Borough Council* [2003] UKHL 5, [2003] 2 AC 430, *Tsfayo v United Kingdom* 48 EHRR 47, [2007] LGRI, and *Ali v Birmingham City Council* [2010] UKSC 8, [2010] 2 AC 39.

38. Mr Matthias submitted that in this case the appellant's right of appeal to the district judge amply satisfied the requirements of article 6.

## Conclusion

39. Since Mr Glen accepted (in our view rightly) that the decision of the licensing authority was a relevant matter for the district judge to take into consideration, whether or not the decision is classified as "policy based", the issues are quite narrow. They are:

1. How much weight was the district judge entitled to give to the decision of the licensing authority?

2. More particularly, was he right to hold that he should only allow the appeal if satisfied that the decision of the licensing authority was wrong?

3. Was the district judge's ruling compliant with article 6?

40. We do not consider that it is possible to give a formulaic answer to the first question because it may depend on a variety of factors - the nature of the issue, the nature and quality of the reasons given by the licensing authority and the nature and quality of the evidence on the appeal.

41. As Mr Matthias rightly submitted, the licensing function of a licensing authority is an administrative function. By contrast, the function of the district judge is a judicial function. The licensing authority has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure, but the decision itself is not a judicial or quasi-judicial act. It is the exercise of a power delegated by the people as a whole to decide what the public interest requires. (See the judgment of Lord Hoffmann in *Alconbury* at para 74.)

42. Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance. Although such questions are in a sense questions of fact, they are not questions of the "heads or tails" variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact.

43. The statutory duty of the licensing authority to give reasons for its decision serves a number of purposes. It informs the public, who can make their views known to their elected representatives if they do not like the licensing sub-committee's approach. It enables a party aggrieved by the decision to know why it has lost and to consider the prospects of a successful appeal. If an appeal is brought, it enables the magistrates' court to know the reasons which led to the decision. The fuller and clearer the reasons, the more force they are likely to carry.

44. The evidence called on the appeal may, or may not, throw a very different light on matters. Someone whose representations were accepted by the licensing authority may be totally discredited as a result of cross-examination. By contrast, in the present case the district judge heard a mass of evidence over four days, as a result of which he reached essentially the same factual conclusions as the licensing authority had reached after five hours.

45. Given all the variables, the proper conclusion to the first question can only be stated in very general terms. It is right in all cases that the magistrates' court should pay careful attention to the reasons given by the licensing authority for arriving at the decision under appeal, bearing in mind that Parliament has chosen to place responsibility for making such decisions on local authorities. The weight which the magistrates should ultimately attach to those reasons must be a matter for their judgment in all the circumstances, taking into account the fullness and clarity of the reasons, the nature of the issues and the evidence given on the appeal.

46. As to the second question, we agree with the way in which Burton J dealt with the matter in paragraphs 43-45 of his judgment.

47. We do not accept Mr Glen's submission that the statement of Lord Goddard in *Stepney Borough Council v Joffe*, applied by Edmund Davies LJ in *Sagnata Investments Limited v Norwich Corporation* is applicable only in a case where the original decision was based on "policy considerations". We doubt whether such a distinction would be practicable, because it involves the unreal assumption that all decisions can be

put in one of two boxes, one marked policy and the other not. Furthermore, *Stepney Borough Council v Joffe* was not itself a case where the original decision was based on "policy considerations". In that case three street traders had their licences revoked by the London County Council after they were convicted of selling goods at prices exceeding the maximum fixed by statutory regulations. On appeal the magistrate decided that they were still fit to hold the licences. The county council unsuccessfully argued before the Divisional Court that the magistrate's jurisdiction was limited to considering whether or not there was any material on which the council could reasonably have arrived at its decisions to revoke the licences. The court held that the magistrate's power was not limited to reviewing the decision on the ground of an error of law, but that he was entitled to review also the merits. It was in that context that Lord Goddard went on to say that the magistrate should, however, pay great attention to the decision of the elected local authority and should only reverse it if he was satisfied that it was wrong.

48. It is normal for an appellant to have the responsibility of persuading the court that it should reverse the order under appeal, and the Magistrates Courts Rules envisage that this is so in the case of statutory appeals to magistrates' courts from decisions of local authorities. We see no indication that Parliament intended to create an exception in the case of appeals under the Licensing Act.

49. We are also impressed by Mr Matthias's point that in a case such as this, where the licensing sub-committee has exercised what amounts to a statutory discretion to attach conditions to the licence, it makes good sense that the licensee should have to persuade the magistrates' court that the sub-committee should not have exercised its discretion in the way that it did rather than that the magistrates' court should be required to exercise the discretion afresh on the hearing of the appeal.

50. As to article 6, we accept the propositions advanced by Mr Matthias and we agree that the form of appeal provided by s182 and schedule 5 of the Act amply satisfies the requirements of article 6.

51. Although the point is academic in the present case, we doubt the correctness of part of the district judge's ruling where he said:

"I am not concerned with the way in which the licensing sub-committee approached their decision or the process by which it was made. The correct appeal against such issues lies by way of judicial review."

52. Judicial review may be a proper way of mounting a challenge to a decision of the licensing authority on a point of law, but it does not follow that it is the only way. There is no such express limitation in the Act, and the power given to the magistrates' court under s181(2) to "remit the case to the licensing authority to dispose of it in accordance with the direction of the court" is a natural remedy in the case of an error of law by the authority. We note also that the guidance issued by the government under s182 and laid before Parliament on 28 June 2007 states in para 12.6:

"The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both."

However, this point was not the subject of any argument before us.

53. For the reasons which we have given, the appeal is dismissed.

The Applicant intends to surrender the following two issued premises licences, if this application is granted.

The details of the premise licence are as follows:

- 15/02410/LIPT – which relates to Third Floor to Fifth Floor, 1-4 Leicester Square, London, WC2H 7NA.
- 14/11478/LIDPSR – which relates to Sixth Floor to Eighth Floor, 1-4 Leicester Square, London, WC2H 7NA

Copies of the premises licences are enclosed.



Schedule 12  
Part A

WARD: St James's  
UPRN: 010033537369

## City of Westminster

64 Victoria Street, London, SW1E 6QP

Premises licence

Regulation 33, 34

Premises licence number:

15/02410/LIPT

Original Reference:

06/00699/LIPT

### Part 1 – Premises details

Postal address of premises:

One London  
Third Floor To Fifth Floor  
1-4 Leicester Square  
London  
WC2H 7NA

Telephone Number:

Where the licence is time limited, the dates:

Not applicable

Licensable activities authorised by the licence:

Performance of Dance  
Exhibition of a Film  
Performance of Live Music  
Playing of Recorded Music  
Anything of a similar description to Live Music, Recorded Music or Performance of Dance  
Performance of a Play  
Late Night Refreshment  
Sale by Retail of Alcohol

The times the licence authorises the carrying out of licensable activities:

**Performance of Dance**

Monday to Sunday: 09:00 to 03:00

**Exhibition of a Film**

Monday to Sunday: 09:00 to 03:00

**Performance of Live Music**

Monday to Sunday: 09:00 to 03:00

**Playing of Recorded Music**

Monday to Sunday: 09:00 to 03:00

**Anything of a similar description to Live Music, Recorded Music or Performance of Dance**

Monday to Sunday: 09:00 to 03:00

**Performance of a Play**

Monday to Saturday: 09:00 to 23:00  
Sunday: 12:00 to 22:30

**Late Night Refreshment**

Monday to Sunday: 23:30 to 03:30

**Sale by Retail of Alcohol**

Monday to Sunday: 10:00 to 03:00

**The opening hours of the premises:**

Monday to Sunday: 00:00 to 00:00

**Where the licence authorises supplies of alcohol, whether these are on and/or off supplies:**

Alcohol is supplied for consumption on the Premises.

**Part 2****Name, (registered) address, telephone number and email (where relevant) of holder of premises licence:**

Central London Investments Limited  
13 Peel Road  
Douglas  
Isle Of Man  
IM1 4LR  
C/O LT Law  
18 Soho Square  
London  
W1D 3QL  
*Electronic Mail : C- lana@lflaw.co.uk*  
*Business Phone Number : C- 020 3755 5138*

**Registered number of holder, for example company number, charity number (where applicable)**

000593V

**Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol:**

**Name:** Chase McGuinness

*Please note: It is the policy of the Licensing Authority not to display the address details of a designated premises supervisor.*

**Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol:**

<b>Licence Number:</b> BOP_M005760
<b>Licensing Authority:</b> Poole Borough Council

**Date:** 22 October 2015

**This licence has been authorised by Miss Susan Patterson on behalf of the Director -  
Public Protection and Licensing.**



## Annex 1 – 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.
  - (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.
- (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.
- (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.
9. All persons guarding premises against unauthorised access or occupation or against outbreaks of disorder or against damage (door supervisors) must be licensed by the Security Industry Authority.
10. 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

## Annex 2 – Conditions consistent with the operating Schedule

11. All drinking vessels used in the venue shall be polycarbonate. All alcohol in glass bottles are to be decanted into polycarbonate containers or polycarbonate carafes prior to being served, with the exception of champagne or bottles of spirits with a minimum size of 70cl supplied by waiter/waitress service to tables. Staff shall clear all empty champagne and spirit bottles promptly from the tables. Customers shall not be permitted to leave their table carrying any such glass bottles or drink directly from the bottle.
12. Notwithstanding condition 11 above, with the written agreement of the Westminster Licensing Police, a copy of which will be held at the premises reception, glass drinking vessels may be used for private or pre-booked events within the lounge/club area.
13. 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 or searching equipment or scanning equipment
  - (g) any refusal of the sale of alcohol
  - (h) any visit by a relevant authority or emergency service
14. An up to date record of all names, badge numbers and times worked of all door supervisors will be maintained daily and made available on request to the Metropolitan Police and the Licensing Authority.
  15. "All external promotions shall be notified to the Metropolitan Police Service and a form 696 completed and submitted within 14 days prior to the event, or such less time as agreed with the Police from time to time. When carrying out the risk assessment for the event and holding the event the venue will take into account any reasonable advice received from the Westminster Police Licensing Team and the central Clubs/Promoters Police Team who receive the form 696 (or their equivalent) and upon a reasonable request by Police the venue will not run the event.
16. All security employed at the premises shall wear yellow high viz jackets or tabards  
No alcohol shall be consumed outside the premises nor glasses/glass bottles removed from the premises by patrons when leaving.
17. (a). There shall be an electronic search arch installed and every patron entering the premises when in use under this licence shall pass through the search arch.  
  
Notwithstanding (a) with the written agreement of the Westminster Licensing Police, a copy of which will be held at the premises reception specifying the event and any time restrictions, patrons may enter the premises without passing through the search arch.
18. (a) That all customers entering the premises after 21:00 will have their ID scanned on entry.
  - (b) Notwithstanding (a) with the written agreement of the Westminster Licensing Police for specified event/s, a copy of which will be held at the premises reception patrons may be admitted at the managers discretion without ID being scanned and recorded, and that a legible record of these peoples names shall be retained on the premises for inspection by the licensing authority and police for a period of 31 days.

The name of the manager authorising the entrance without scanning will also be recorded.

19. Whilst the premises are open to the public the CCTV shall be monitored continuously by a dedicated officer with a Level 2 Award in CCTV Operations (Public Space Surveillance).

### Annex 3 – Conditions attached after a hearing by the licensing authority

20. This licence is subject to all the former Rules of Management for Places of Public Entertainment licensed by Westminster City Council, in force from 4 September 1998 and incorporating amendments agreed by the Council on 25 October 1999, 30 June 2000, 16 January 2001 and 1 October 2001
21. Notwithstanding the provisions of Rule of Management No. 6 the premises may remain open for the purposes of this licence from 11pm on each of the days Sunday to Saturday to 3am on the day following.
22. The existing sound system shall not be altered or modified without the approval of the Environmental Health Officer.
23. A noise limiter located in a separate and remote lockable cabinet from the volume control 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's Community Protection Department 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 to the satisfaction of officers from the Environmental Health Service. The keys securing the noise limiter cabinet shall be held by the applicant only, and shall not be accessed by any other person. The limiter shall not be altered without prior agreement with the Environmental Health Service.
24. A sound limiter device shall be fitted to the sound system shall be set to the levels agreed by the Environmental Health Officer. The operational panel shall then be secured and the system will not be altered without the approval of the Environmental Health Officer.
25. No additional sound generation equipment shall be used on the premises without being routed through the sound limiter device.
26. Whenever queuing by customers waiting to enter the premises takes place, that part of the highway shall be swept as often as is necessary to ensure that the area is clean and tidy, and litter and sweepings collected, stored and disposed of in accordance with the approved refuse storage and disposal arrangements.
27. At the close of business each day the premises are open for business, the licensee shall ensure that the highway immediately outside the premises is swept and litter and sweepings collected, stored and disposed of in accordance with the approved refuse storage and disposal arrangements.
28. Queues outside the premises shall be organised by registered door supervisors so that patrons stand no more than two abreast and do not block the pavement or obstruct the entrance or exit to any premises.
29. Loudspeakers shall not be located at or near the entrance to the premises.
30. There shall be suitable and sufficient drug testing equipment available for use by staff.
31. The last hour of trade on each night shall be a winding down period during which:
  - o Subdued music shall be played.
  - o Lighting shall be turned up.
  - o Soft drinks, hot drinks and food shall be available. Hot drinks and water shall be free.
  - o A taxi service shall be available.
  - o Announcements regarding the service shall be made.
  - o Notices concerning the service shall be posted throughout the premises.

32. Door staff shall use reasonable endeavours to encourage customers to keep good order after they leave the premises
33. 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. Recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.
34. 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 to the public. This staff member must be able to show a Police or authorised council officer recent data or footage with the absolute minimum of delay when requested.
35. There shall be no payment made by or on behalf of the licensees to any person for bringing customers to the premises directly off the street.
36. No nudity and all persons on the premises to be decently attired.
37. Substantial food and suitable beverages other than intoxicating liquor (including drinking water) shall be available during the whole of the permitted hours in all parts of the premises where intoxicating liquor is sold or supplied.
38. The maximum numbers of persons accommodated at any one time at the premises (excluding staff) shall not exceed;

In Total over all floors - maximum 1000 persons

The maximum numbers of persons accommodated at any one time per floor shall not exceed;  
 3rd floor - 387 persons  
 4th floor - 354  
 5th floor - 259 persons

39. A daily log is to be maintained to ensure that any capacity limit set for the various floors and the overall capacity of the premises is recorded hourly and can be properly monitored. Information regarding the authorised officer will be given to an authorised officer or Police Officer on request.
40. At all times the premises are used under this licence the door staff shall be registered by the Security Industry Authority as appropriate and shall consist of a door supervisor outside the entrance, two members of staff (male or female) conducting/supervising searches, staff on the floor of the licensed area and a supervisor of the door supervisors.
41. The last hours or trade on each night shall be a winding down period during which subdued music shall be played.
42. If any entertainment is provided for children or if an entertainment is provided at which the majority of persons attending are children, then, if the number of children attending the entertainment exceeds 100, it shall be the duty of the holder of the premises licence (or the holder of the club premises certificate):
  - (a) to station and keep stationed wherever necessary a sufficient number of adult attendants, properly instructed as to their duties, to prevent more children or other persons being admitted to the building, or to any part thereof, than the building or part can properly accommodate,

- (b) to control the movement of the children and other persons admitted while entering and leaving the building or any part thereof, and
  - (c) to take all other reasonable precautions for the safety of the children.
43. The sale of intoxicating liquor shall be ancillary to the provision of music and dancing and substantial refreshment.
44. Alcohol may only be sold for consumption on the premises.
45. For the last 30 minutes of trade on each day alcohol shall not be sold.
46. A proof of age scheme (Challenge 21) shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence or passport"
47. In the event that a serious assault is committed on the premises (or appears to have been committed) the management will immediately ensure that:
- (a) The Police (and where appropriate, the London Ambulance Service) are called without delay, using emergency telephone number 999;
  - (b) All measures that are reasonably practicable are taken to apprehend any suspects pending the arrival of the Police;
  - (c) As is reasonably practicable, the crime scene is preserved so as to enable a full forensic investigation to be carried out by the Police; and
  - (d) Such other measures are taken (as appropriate) to fully protect the safety of all persons present on the premises."

'Serious assault' includes (but is not limited to) any assault in which emergency medical treatment is required and any assault in which a weapon is used.

48. The premises shall ensure that they are members of the local pubwatch or other local crime reduction scheme approved by the police, as well as the local radio scheme.



**Annex 4 – Plans**

Attached



**City of Westminster**  
64 Victoria Street, London, SW1E 6QP

Schedule 12  
Part B

WARD: St James's  
UPRN: 010033537369

Premises licence  
summary

Regulation 33, 34

Premises licence number:

15/02410/LIPT

**Part 1 – Premises details**

**Postal address of premises:**

One London  
Third Floor To Fifth Floor  
1-4 Leicester Square  
London  
WC2H 7NA

**Telephone Number:**

**Where the licence is time limited, the dates:**

Not applicable

**Licensable activities authorised by the licence:**

Performance of Dance  
Exhibition of a Film  
Performance of Live Music  
Playing of Recorded Music  
Anything of a similar description to Live Music, Recorded Music or Performance of Dance  
Performance of a Play  
Late Night Refreshment  
Sale by Retail of Alcohol

**The times the licence authorises the carrying out of licensable activities:**

**Performance of Dance**

Monday to Sunday: 09:00 to 03:00

**Exhibition of a Film**

Monday to Sunday: 09:00 to 03:00

**Performance of Live Music**

Monday to Sunday: 09:00 to 03:00

**Playing of Recorded Music**

Monday to Sunday: 09:00 to 03:00

**Anything of a similar description to Live Music, Recorded Music or Performance of Dance**

Monday to Sunday: 09:00 to 03:00

**Performance of a Play**

Monday to Saturday: 09:00 to 23:00  
Sunday: 12:00 to 22:30

**Late Night Refreshment**

Monday to Sunday: 23:30 to 03:30

**Sale by Retail of Alcohol**

Monday to Sunday: 10:00 to 03:00

**The opening hours of the premises:**

Monday to Sunday: 00:00 to 00:00

**Where the licence authorises supplies of alcohol, whether these are on and/or off supplies:**

Alcohol is supplied for consumption on the Premises.

**Name and (registered) address of holder of premises licence:**

Central London Investments Limited  
13 Peel Road  
Douglas  
Isle Of Man  
IM1 4LR  
C/O LT Law  
18 Soho Square  
London  
W1D 3QL

**Registered number of holder, for example company number, charity number (where applicable)**

000593V

**Name of designated premises supervisor where the premises licence authorises for the supply of alcohol:**

Name: Chase McGuinness

**State whether access to the premises by children is restricted or prohibited:**

Restricted

Date: 22 October 2015

This licence has been authorised by Miss Susan Patterson on behalf of the Director - Public Protection and Licensing.



Schedule 12  
Part A

WARD: St James's  
UPRN: 010033557708

**City of Westminster**  
64 Victoria Street, London, SW1E 6QP

**Premises licence**

Regulation 33, 34

**Premises licence number:**

14/11478/LIDPSR

**Original Reference:**

05/06828/LIPCV

**Part 1 – Premises details**

**Postal address of premises:**

The Penthouse London  
Sixth Floor To Eighth Floor  
1-4 Leicester Square  
London  
WC2H 7NA

**Telephone Number:** Not Supplied

**Where the licence is time limited, the dates:**

Not applicable

**Licensable activities authorised by the licence:**

Performance of Dance  
Performance of Live Music  
Playing of Recorded Music  
Anything of a similar description to Live Music, Recorded Music or Performance of Dance  
Late Night Refreshment  
Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit  
Sale by Retail of Alcohol

**The times the licence authorises the carrying out of licensable activities:**

**Performance of Dance**

Monday to Saturday: 09:00 to 03:00 (Floors 6, 7 and 8)  
Sunday: 09:00 to 00:30 (Floors 6, 7 and 8)

**Performance of Live Music**

Monday to Saturday: 09:00 to 03:00 (Floors 6, 7 and 8)  
Sunday: 09:00 to 00:30 (Floors 6, 7 and 8)

**Playing of Recorded Music**

Unrestricted

**Anything of a similar description to Live Music, Recorded Music or Performance of Dance**

Monday to Saturday: 09:00 to 03:00 (Floors 6, 7 and 8)  
Sunday: 09:00 to 00:30 (Floors 6, 7 and 8)

**Late Night Refreshment**

Monday to Saturday: 23:00 to 03:30 (Floors 6, 7 and 8)  
Sunday: 23:00 to 01:00 (Floors 6, 7 and 8)

**Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit** Unrestricted

**Sale by Retail of Alcohol**

Monday to Saturday: 10:00 to 03:00 (Floors 6, 7 and 8)  
Sunday: 12:00 to 00:30 (Floors 6, 7 and 8)

*For times authorised for Christmas, New Year and Good Friday see conditions at Annex 1  
12:00 to 00:30 (Floors 6, 7 and 8)*

**The opening hours of the premises:**

Monday to Saturday: 09:00 to 03:30  
Sunday: 09:00 to 01:00

**Where the licence authorises supplies of alcohol, whether these are on and/or off supplies:**

Alcohol is supplied for consumption both on and off the Premises.

**Part 2**

**Name, (registered) address, telephone number and email (where relevant) of holder of premises licence:**

Interguide Limited  
New Bury Farm Mill Road  
Slapton  
Leighton Buzzard  
Bedfordshire  
LU7 9BT  
*Business Phone Number : Not Supplied*

**Registered number of holder, for example company number, charity number (where applicable)**

04808018

**Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol:**

**Name:** Not assigned

*Please note: It is the policy of the Licensing Authority not to display the address details of a designated premises supervisor.*

**Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol:**

**Licence Number:** N/A  
**Licensing Authority:** N/A

**Date:** 17<sup>th</sup> February 2015

**Signed:** pp  
**Operational Director - Premises Management**

## Annex 1 – 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.
9. All persons guarding premises against unauthorised access or occupation or against outbreaks of disorder or against damage (door supervisors) must be licensed by the Security Industry Authority.

**Conditions reproducing the effect of conditions subject to which the relevant existing licences have effect**

**Conditions relating to regulated entertainment**

10. This licence is subject to all the former Rules of Management for Places of Public Entertainment licensed by Westminster City Council, in force from 4 September 1998 and incorporating amendments agreed by the Council on 25 October 1999, 30 June 2000, 16 January 2001 and 1 October 2001.
11. On New Year's Eve the premises can remain open for the purpose of providing regulated entertainment from the time when the provision of regulated entertainment must otherwise cease on New Year's Eve to the time when regulated entertainment can commence on New Year's Day (or until midnight on New Year's Eve where no regulated entertainment takes place on New Year's Day).
12. Admittance to the 8th floor after 01.30am on each of the days following Monday to Saturday shall be restricted to persons leaving the 6th and 7th floors.
13. Adequate door supervisor is to be provided at all times, including monitoring the behaviour of persons leaving the premises.
14. The management shall use their best endeavours to ensure that patrons leave the premises quietly.
15. No recorded or live music shall be played or amplified outside the premises.
16. Windows in any room in which music is audible in the premises shall be kept shut.
17. Floor 7 will only be used for restaurant purposes with an ancillary bar facility.

18. A sound limiting device shall be located in a separate and remote lockable cabinet from the volume control 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's Protection Department so as to ensure that no noise nuisance is caused to local residents. The operational panel of the noise limiter shall then be secured to the satisfaction of officers from the Environmental Health Service. The keys securing the noise limiter cabinet shall be held by the applicant only, and shall not be accessed by any other person. The limiter shall not be altered without prior agreement with the Environmental Health Service.
19. No alteration or modification to any existing sound system(s) should be effected without prior knowledge or an authorised Officer of the Environmental Health Services.
20. Any additional sound generating equipment shall not be used on the premises without being routed through the sound limiter device.
21. That a comprehensive CCTV system be installed to the satisfaction of the Metropolitan Police Crime Prevention Officer and Environmental Health Service. All cameras shall continually record whilst the premises are open to the public which enable frontal identification of every person entering in any light condition. The video recording (i) shall be kept available for a minimum of 31 days with time and date stamping. (ii) tape recordings shall be made available to an authorised officer or a police officer together with facilities for viewing. (iii) the recordings for a preceding two days shall be made available immediately or request. Recordings outside this period shall be made available on 24 hours notice.

#### **Conditions for Sale of Alcohol**

22. Substantial food and non-intoxicating beverages (including drinking water) shall be available during the whole of the permitted hours in all parts of the premises where intoxicants are provided.
23. No striptease, no nudity and all persons to be decently attired at all times.
24. No commission shall be paid by or on behalf of the Licensee to a taxi, mini cab driver or the like for transporting customers to the premises.
25. To comply with the reasonable requirements of the EHO, LFEPa and the Metropolitan Police Crime Prevention Officer.
26. The Licensees shall take reasonable steps to actively discourage patrons within in the immediate vicinity of the premises from using unlicensed mini-cabs when leaving the premises.
27. The maximum numbers including staff shall not exceed the numbers specified from time to time by the LFEPa.
28. Before employing any outside promoters the Licensee, or someone on his behalf, will consult with the Metropolitan Police Service and the details of any outside promoters shall be provided to Police at least 24 hours before the event is scheduled.

#### **Conditions which reproduce the effect of any restriction imposed on the use of the premises by specified enactments**

##### **Conditions related to the Sale of Alcohol**

29. If any entertainment is provided for children or if an entertainment is provided at which the majority of persons attending are children, then, if the number of children

attending the entertainment exceeds 100, it shall be the duty of the holder of the premises licence (or the holder of the club premises certificate):

- (a) to station and keep stationed wherever necessary a sufficient number of adult attendants, properly instructed as to their duties, to prevent more children or other persons being admitted to the building, or to any part thereof, than the building or part can properly accommodate,
- (b) to control the movement of the children and other persons admitted while entering and leaving the building or any part thereof, and
- (c) to take all other reasonable precautions for the safety of the children.

30. The terminal hour for late night refreshment on New Year's Eve is extended to 05:00 on New Year's Day.

## **Annex 2 – Conditions consistent with the operating Schedule**

31. The premises shall install and maintain a CCTV system as per the minimum requirements of a Metropolitan Police Crime Prevention Officer. 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. Recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.
32. 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 to the public. This staff member shall be able to show Police recent data or footage with the absolute minimum of delay when requested.
33. All SIA door supervisors engaged outside the entrance to the premises, or supervising or controlling queues, shall wear high visibility armbands illustrating SIA badge and number.
34. 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) any complaints received.
  - (c) any incidents of disorder.
  - (d) any faults in the CCTV system.
  - (e) any refusal of the sale of alcohol.
  - (f) any visit by a relevant authority or emergency service.
35. All drinking vessels used in the venue shall be polycarbonate. All drinks in glass bottles are to be decanted into polycarbonate containers or polycarbonate carafes prior to being served, with the exception of champagne or bottles of spirits with a minimum size of 70 cl supplied by waiter/waitress service at tables. Staff shall clear all empty champagne and spirit bottles promptly from the tables. Customers shall not be permitted to leave their table carrying any such glass bottles or drinks directly from the bottle.
36. Notwithstanding condition 35 above, with the written agreement of the Westminster Licensing Police, a copy of which will be held at the premises reception, glass drinking vessels may be used for private or pre-booked events within the premises.

### **Annex 3 – Conditions attached after a hearing by the licensing authority**

#### **Conditions relating to regulated entertainment**

37. On Sundays to Wednesdays members of the public will be allowed entry to the premises without charge but on Thursday to Saturdays inclusively a minimum admission fee of £10 will apply.
38. After 23:00 intoxicating liquor will only be sold or supplied to the following:
- (a) A person attending a private booked function;
  - (b) A person taking a table meal;
  - (c) Artistes or persons employed on the premises;
  - (d) Guests of the proprietor, a list of whom shall be kept at reception for inspection by the appropriate authorities upon reasonable request;
  - (e) Members and their guests of the proprietary club operated by the owner. A copy of the club rules shall be deposited with the Licensing Authority and Police. Other than founder members, the annual membership fee shall not be less than £250;
  - (f) On Sundays to Wednesdays inclusively, members of the public will be allowed entry to the premises without charge but Thursdays to Saturdays inclusively, a minimum admission fee of £10 will apply.'
39. When the premises are open, from 10pm, a minimum of one door supervisor will be on duty but in any event the ratio of one member of door staff to 100 customers will apply to the premises with a minimum of 13 door staff on duty when all three floors are trading to maximum capacity other than when there is a private function at the premises when the Designated Premises Supervisor will conduct a risk assessment as to the appropriate number of door staff for each function. Such risk assessment will be available to the Police on request.
40. On the 7<sup>th</sup> floor, prior to 11pm, there shall be a minimum 120 covers and during this time table service shall be provided and menus for the premises shall be displayed.
41. (i) Minimum seating which will now be provided one each floors is as follows:
- 6<sup>th</sup> floor – 110
  - 7<sup>th</sup> floor – 120 (as existing condition 20 stipulates)
  - 8<sup>th</sup> floor – 80 (as existing condition 20 stipulates)
- (ii) The maximum number of persons allowed in the premises shall not exceed 770, and on each floor:
- 6<sup>th</sup> floor – 350
  - 7<sup>th</sup> floor – 250
  - 8<sup>th</sup> floor – 170

#### **Conditions related to the Sale of Alcohol**

42. Floors 6, 7 & 8:
- (a) Subject to the following paragraphs, the permitted hours on weekdays shall commence at 10.00 and extend until 03.00 on the morning following, except that
  - (b) in relation to the morning on which summer time begins, paragraph (a) of this condition shall have effect –
    - (i) with the substitution of references to 04.00 for references to 03.00.
  - (c) The sale of alcohol must be ancillary to the use of the premises for music and dancing and substantial refreshment.

- (d) The permitted hours on New Year's Eve will extend to the start of permitted hours on the following day, or if there are no permitted hours on 1 January, to 00.00 on New Year's Eve.

43. Waiter/waitress service of food and drink will be available

44. There shall be a personal licence holder on duty on the premises at all times when the premises are authorised to sell alcohol.
45. No person on behalf of the premises or on behalf of a person carrying or attempting to carry on a licensable activity shall cause, permit, employ or allow, directly or indirectly, whether on payment of otherwise, any person(s) to importune or tout members of the public on any public highway within the specified area outlined below for the purpose of bringing customers to the premises. The distribution of leaflets or similar promotional materials is also prohibited within the specified area.

For the purpose of this section,

'Directly' means: - employ, have control of or instruct

'Indirectly' means allowing/permitting the service of or through, a third party.

'Specified' Area means the West End Stress Area as defined in the Westminster Licensing Policy.

46. No persons under fourteen shall be in the bar of the licensed premises during the permitted hours unless one of the following applies:
- a). He is the child of the holder of the premises licence.
  - b). He resides in the premises, but is not employed there.
  - c). He is in the bar solely for the purposes of passing to or from some part of the premises which is not a bar and to or from which there is not other convenient means of access or egress.
  - d). The bar is in railway refreshment rooms or other premises constructed, fitted and intended to be used bona fide for any purposes to which the holding of the licence is ancillary.

In this condition "bar" includes any place exclusively or mainly used for the consumption of intoxicating liquor. But an area is not a bar when it is usual for it to be, and it is set apart for the service of table meals and alcohol is only sold or supplied to persons as an ancillary to their table meals.

**Annex 4 – Plans**

Attached



**City of Westminster**  
64 Victoria Street, London, SW1E 6QP

Schedule 12  
Part B

WARD: St James's  
UPRN: 010033557708

Premises licence  
summary

Regulation 33, 34

Premises licence number:

14/11478/LIDPSR

**Part 1 – Premises details**

**Postal address of premises:**

The Penthouse London  
Sixth Floor To Eighth Floor  
1-4 Leicester Square  
London  
WC2H 7NA

**Telephone Number:** Not Supplied

**Where the licence is time limited, the dates:**

Not applicable

**Licensable activities authorised by the licence:**

Performance of Dance  
Performance of Live Music  
Playing of Recorded Music  
Anything of a similar description to Live Music, Recorded Music or Performance of Dance  
Late Night Refreshment  
Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit  
Sale by Retail of Alcohol

**The times the licence authorises the carrying out of licensable activities:**

**Performance of Dance**

Monday to Saturday: 09:00 to 03:00 (Floors 6, 7 and 8)  
Sunday: 09:00 to 00:30 (Floors 6, 7 and 8)

**Performance of Live Music**

Monday to Saturday: 09:00 to 03:00 (Floors 6, 7 and 8)  
Sunday: 09:00 to 00:30 (Floors 6, 7 and 8)

**Playing of Recorded Music**

Unrestricted

**Anything of a similar description to Live Music, Recorded Music or Performance of Dance**

Monday to Saturday: 09:00 to 03:00 (Floors 6, 7 and 8)  
Sunday: 09:00 to 00:30 (Floors 6, 7 and 8)



**Late Night Refreshment**

Monday to Saturday:  
Sunday:

23:00 to 03:30 (Floors 6, 7 and 8)  
23:00 to 01:00 (Floors 6, 7 and 8)

**Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit** Unrestricted

**Sale by Retail of Alcohol**

Monday to Saturday:  
Sunday:

10:00 to 03:00 (Floors 6, 7 and 8)  
12:00 to 00:30 (Floors 6, 7 and 8)

*For times authorised for Christmas, New Year and Good Friday see conditions at Annex 1*  
12:00 to 00:30 (Floors 6, 7 and 8)

**The opening hours of the premises:**

Monday to Saturday:  
Sunday:

09:00 to 03:30  
09:00 to 01:00

**Where the licence authorises supplies of alcohol, whether these are on and/or off supplies:**

Alcohol is supplied for consumption both on and off the Premises.

**Name and (registered) address of holder of premises licence:**

Interguide Limited  
New Bury Farm Mill Road  
Slapton  
Leighton Buzzard  
Bedfordshire  
LU7 9BT

**Registered number of holder, for example company number, charity number (where applicable)**

04808018

**Name of designated premises supervisor where the premises licence authorises for the supply of alcohol:**

Name: Not assigned

**State whether access to the premises by children is restricted or prohibited:**

Restricted

Date: 17<sup>th</sup> February 2015

Signed: pp

Operational Director - Premises Management

A copy of the pre-application report for this premises is enclosed.



# City of Westminster

Office Name: Ian Watson  
 Designation: Senior Practitioner  
 Environmental Health  
 Date: 4/1/18  
 Contact number: 020 7641 3183  
 Email: iwatson@westminster.gov.uk  
 Signed: Ian Watson  
 Uniform Ref Number: 17/13080/PREAPM

Trading name of business and Address:  Hotel, 27-31 Charing Cross Road, WC2H 0AU  Reference Number if Applicable: 17/13080/PREAPM		
Licence: No	Applicant/Solicitor: Lisa Sharkey Poppleston Allen	Cumulative Impact Area: Yes.
<p>Proposed Business: Hotel with Restaurant/Bar</p> <p>Proposed Licensed Areas: 10<sup>th</sup> Floor plus 121 bedrooms (mini bars).</p> <p>Proposed Activities: Supply of Alcohol, Late Night Refreshment, Regulated Entertainment.</p> <p>Proposed Alcohol Hours: Monday to Sunday 10.00 to 02.00 hours. Residents and their guests 24 hours. New Year's Eve to New Year's Day.</p>		
<p><b>Pre application advice purpose:</b> To assess the proposal to licence a new hotel within the West End Cumulative Impact area to include all rooms and a 10th floor bar/restaurant for the public. Advise on technical suitability and policy implications in advance of the appropriate application.</p> <p><b>Background to application:</b> The building was an office block but have recently been granted planning consent 17/03318/FULL for hotel use with conditions.</p> <p><b>Issues discussed and actions taken:</b></p> <p>Visit carried out by Alan Lynagh (District Surveyor Licensing - DS) and Ian Watson (Environmental Health – EH) to discuss the application and assess the proposed layout plans. The findings are detailed below.</p> <p><b><u>District Surveyor Comments</u></b></p> <p><b>General Fire/Public Safety Considerations (Detailed advice will follow)</b></p> <p>We would recommend the proposed fire/public strategy for the building licence considers the points detailed below:</p> <ul style="list-style-type: none"> <li>• Level of fire alarm detection to be considered and it is recommended that system is in line with BS 5839 Part 1 2002 Category L2 protection to allow maximum flexibility with capacity calculations.</li> </ul>		

- All protected exit routes to be provided with 30 minutes fire separation to other parts of the premises. The existing areas of penetration to other floors should be appropriately fire stopped/rated.
- All Fire doors protecting escape routes will be provided with intumescent strips and smoke seals and all fire doors will comply with the relevant provisions of Table B1 of Approved Document B.
- Every escape route (other than those in ordinary use) will be marked by emergency exit signs complying with BS 5499: Part 1 and these will be located in accordance with the recommendations of BS 5499: Part 4.
- Full details of the emergency lighting scheme should be provided and we would expect the system to be in line with BS5266.
- Lighting to all public areas should be under management control.

A copy of the fire risk assessment for the premises should be provided for assessment.

Details of the cause and effect for the fire alarm system for the overall premises should be provided detailing the interlink with other occupancies and the evacuation procedure to be adopted.

### **Licensing Policy:**

The premises are located within the West End Cumulative Impact area and revised guidance paragraph 13.34 continues to recognise that different types of premises have different impacts.

Policy HOT1 recognises that hotels in Westminster provide a range of licensed activities including entertainment for hotel residents and others.

Subject to the effect on the promotion of the licensing objectives and other relevant policies in the statement, premises licenses for hotels will generally be granted so that:

- a) Alcohol is permitted to be sold at any time to people staying in hotel rooms for consumption on the premises.
- b) The hours of serving alcohol to the general public will be subject to conditions limiting the sale of alcohol after a specified time to those attending pre-booked events held at the hotel.

I assume that pre-booked events would be very limited at this hotel due to a lack of function rooms.

The operation of the 10th floor as a bar/restaurant would be classified as bar use under policy even if there was no proposal to install a fixed bar, unless it's use was otherwise conditioned. The plan provided does not show a fixed bar although this level of detail may still be proposed along with other fixed furniture when the licensing plans are provided.

Policy 2.5.57 states that the extent and location of provision of bar facilities will be taken into account. Hotel bars that are directly or easily reached from the street will be likely to raise similar concerns to pubs and bars. The advertising of the operation of late bars by hotels would give rise to concerns in relation to the licensing objectives. The provision of 'Off' sales is not proposed and therefore will allay some concerns about the provision of alcohol and street drinking.

Therefore, the use of the 10th floor licensed area by the public would have to be suitably conditioned to minimise the impact on the CIA especially if hours are sought to 2am for public use. Some comfort can be gained due to the location of the public bar/restaurant on the 10<sup>th</sup> floor and that any non-resident would have to pass through the hotel reception on the ground floor to access the lifts. It would be positive if the operator can confirm the arrangement for public access to the 10<sup>th</sup> floor with plans showing the location of the reception/concierge and public lifts.

The applicant states that they currently hold two entertainment led premises licenses that will be surrendered in support of the application. The maximum alcohol hours are Monday to Sunday 10.00 to 03.00 hours on one licence and Monday to Saturday 10.00 to 03.00 hours and Sunday 12.00 to 00.30 hours on the other. Both licenses give a maximum capacity of 1770 persons.

This licence application will be part of a total of three applications that will in some part rely on the surrender of the two existing entertainment led premises licenses located within the west end cumulative impact area. Policy 2.4.8 does not give any weight to the surrender of licenses which can have no practical effect because the premises to which they applied will not continue to exist in their previous form because of redevelopment, although the provision of hotel facilities is supported over entertainment led premises within policy.

#### **Public Nuisance:**

The proposed internal capacity of the 10<sup>th</sup> floor will be around 168 person's subject to adequate means of escape/floor space.

The 10<sup>th</sup> floor will be provided with an external terrace facing onto Charing Cross Road the use of which is restricted by planning consent to 23.00 hours. To minimise nuisance, it would be wise to condition that the doors leading onto the terrace are maintained closed after 23.00 hours or whenever regulated entertainment is provided. The use of the terrace may be used for smoking if compliant with the Health Act 2006, although it's use after 23.00 hours may cause noise nuisance.

I am aware that there are residential dwellings opposite the premises and whilst Charing Cross Road is a busy thoroughfare there is a possibility that they may be disturbed by the breakout of loud noise/music.

Adequate toilet provision must be provided to the 10<sup>th</sup> floor licensed area for the proposed capacity in accordance with BS 6465 Part 1 2009 table 10 Restaurants and other places where seating is provided for eating and drinking.

#### **Conditions**

To address the licensing objectives with regard to the Licensing Policy and the West End Cumulative Impact area the following conditions are proposed.

- Licensable activities authorised under this licence shall remain ancillary to the main use of the premises as a hotel.
- 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.
- Admission to the 10th floor licensed area from the street by members of the public shall be through the hotel reception area only and which shall be supervised at all times.
- A minimum of 100 seats shall be provided within the 10<sup>th</sup> floor licensed area.

- With the exception of residents and their bona fide guests, no alcohol shall be consumed more than 30 minutes after the permitted terminal hour for the supply of alcohol
- 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.
- 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 premise is open for licensable activities. 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.
- 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
  - (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.
- 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.
- There shall be no advertising of the 10<sup>th</sup> floor licensed area external to the premises building.
- 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.
- 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.
- Loudspeakers shall not be located in the entrance lobby or outside the premises building, including the 10<sup>th</sup> floor terrace.
- All doors and windows on the 10<sup>th</sup> floor shall be kept closed after 23:00 hours or whenever regulated entertainment is provided.
- The 10<sup>th</sup> floor terrace shall not be used after 23.00 hours Monday to Saturday and 22.30 hours Sunday.

- 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.
- 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.
- All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.
- All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.
- The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
- 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.
- Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
- No licensable activities shall take at the premises until the capacity of the 10<sup>th</sup> floor 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.
- No licensable activities shall take place at the premises until the premises 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.
- Before the premises open to the public, the plans as deposited will be checked by the Environmental Health Consultation Team to ensure they are an accurate reflection of the premises constructed. Where the premises layout has changed during the course of construction new plans shall be provided to the Environmental Health Consultation Team and the Licensing Authority.

#### **Deliveries and collection of waste**

The following conditions are proposed which cover two street collection times by Westminster Council. Please advise if these are suitable or otherwise advise what delivery/collection arrangements the hotel will be making.

- 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.
- No deliveries to the premises shall take place between 23.00 and 08.00 on the following day.

## Conclusion

Licensing policy supports hotel use but concern is raised by the provision of bar facilities policy 2.5.57. The plans provided do not show sufficient detail to determine if bar facilities are to be provided or just a servery area. The location of the licensed area on the 10<sup>th</sup> floor is a benefit due to there being no direct access to the public licensed area. The 10<sup>th</sup> floor public licensed area should not be determined under PB2 as policy 2.5.21 states that such policy only apply to premises being used exclusively or primarily for the supply of alcohol for consumption on those premises. It excludes music and dancing premises and other premises as defined in separate policies e.g. HOT1.

The provision of alcohol without food to the public will be determined on merit and subject to conditions to minimise the impact within the CIA. Policy CIP1 2.4.15 states that the council considers that prescribed capacities and the provision of minimum levels of seating and tables can also promote the licensing objective of prevention of public nuisance. It is stated that customers who have been seated in less crowded premises behave differently and will leave the premises more quietly than premises with more vertical drinking.

Additional conditions may be proposed following the consultation period depending upon the content or concern of other representations. Such conditions may address waiter/waitress service, light nuisance etc.

If a noise impact assessment was provided in support of the planning application it would be pertinent to provide such document in support of the licensing application due to the later hour of operation.

Specific comments on maximum capacities and escape requirements will be forwarded to you directly from Alan Lynagh, District Surveyor.

As part of the application process it is advised that the other responsible authorities will also need to assess the proposals and may wish to make additional comments.

**Please note that any advice given will not guarantee that your application will be granted by the Licensing Service and the Environmental Health Consultation Team may still choose to make a representation to the application submitted.**



**Westminster Police Licensing Team**  
**Report detailing police representation to:**  
**Sky Bar, Trocadero**  
**Hotel Indigo, 1-4 Leicester Square**  
**Assembly Hotel, Alhambra House, Charing Cross Road**

**PC Sandy Russell. Police Licensing Officer. 3<sup>rd</sup> April, 2018**

**Introduction**

The purpose of this report is to provide a policing overview regarding the affect the above premises may have in relation to the prevention of crime and disorder within Westminster's cumulative impact area.

Westminster Police Licensing Unit is responsible for all licensed premises within Westminster Borough; approximately 3000 premises. The majority are located within the West End, Soho and China Town. The core purpose of Westminster Police Licensing Unit is working with premises to promote the Licensing Objectives in relation to the prevention of crime and disorder. We also carry out work that is of a reactive nature and stems from information sharing between other agencies or indeed members of the public who often witness on-going issues. The Westminster Licensing Unit also works proactively and there have been occasions when the licensing officers have witnessed incidents at premises and by premises customers on the streets that are clearly not promoting the licensing objectives or the Licensing Act 2003.

**Compliance requirements - Westminster Borough's licenced premises working with the police:**

The Licensing legislation promotes close working relationships with those who hold a premises licence and the Designated Premises Supervisors, therefore much of our unit's work falls under compliance. During visits we are able to provide supportive advice, guidance and training where necessary. We strive to achieve good partnership working relationships with our premises. In some cases enforcement action is required, however, this is always seen as a last resort when all other methods of working together and the support we offer to promote the licensing objectives has failed.

**Westminster Police Licensing Units Priorities**

As I have outlined above, we work closely with our licenced premises and partners. We also support our Westminster Council colleagues, Police colleagues and other relevant agencies. We fully support all four licensing objectives across Westminster; by far the most challenging area in relation to this for us is the West End Cumulative Impact Area. The Sky Bar, Trocadero, the Assembly Hotel and Hotel Indigo will all be located within this cumulative impact area. If granted these premises would have a significant impact on policing and our powers to effectively manage our night-time economy.

**Work undertaken in the application process so far:**

To date, two meetings have been held between the police, the applicant and the applicant's legal advisor. Each of these premises licence applications have been discussed in detail, the applicant's 'vision' for how they hope their venues will trade and what they will offer their customers has been explained. Suitable conditions have been discussed and some have been agreed in principal however, it was made clear from the

outset that various conditions relating to all four of the licensing objectives would still need to be discussed with more senior police licensing officers before they could be agreed.

### **Sky Bar, Trocadero**

A 1000 person capacity roof top bar/restaurant to be located on the 12<sup>th</sup> and 13<sup>th</sup> floor of the Trocadero. There will also be a large hotel located within the building but the entrance to the hotel and Sky Bar will be separate. The hotel will not actually be licenced for alcohol as there is no bar area within the confines of the hotel and there will be no mini bars within the hotel bedrooms.

The applicant has requested later drinking hours and opening hours within Sky Bar for the hotel residents and their bone fide guests. The police do not feel this would be appropriate as the hotel and Sky Bar, are, in fact separate.

Prevention of Crime and Disorder: This late night bar licence will have a huge impact on policing the area, not only will officers have to deal with matters arising from the venue itself, they will also have to deal with customers leaving the venue late at night and assisting them leaving the area safely. Local residents will also be affected by customers arriving at and leaving this venue. Customers leaving the area may become vulnerable to crime being committed against them due to potential intoxication and a lack of local area knowledge. Police resources in the busiest area of Westminster are already under pressure and are doing as much as is feasible with the resources available. Another late night bar will add further pressure due to the potential increase in crime and disorder.

### **The Metropolitan Police strongly object to this application.**

We request that should this licence be granted the venue's premises licence will be conditioned accordingly. The applicant must provide the required minimum amount of Security Industry Authority registered door staff (as requested by police) to ensure their customers safety whilst at their venue and once they have left. We request that a dispersal plan is put in place by the venue's door staff to alleviate the pressure on police resources. We request fully monitored and supervised facilities for queuing and smoking outside the venue. We request that there will be at least one member of SIA door staff in the hotel reception and the Sky Bar foyer whilst the premises are open. We require the use of Body Worn Video, sufficient training in its use and that recordings are kept in accordance with the CCTV conditions proposed by police.

To ensure the customers safety and security we require an ID scan system is installed to all customers entering the Sky Bar after 22.00hrs and used in accordance to the ID scan condition proposed by police. Since the installation of ID scan at similar type venue crime levels have dropped significantly. The use of this system is common place nowadays in venue's such as this, most customers are aware they need to leave home for a night out with some sort of suitable ID. These systems deter criminals from entering the venues if they are aware they may be identified if a crime is committed by them.

During meetings the applicant has suggested that most of their customers should be seated. Police prefer the use of the condition wording to be 'will' be seated and not 'should' be seated. We require that suitable seating be provided to ensure that vertical drinking does not take place or is significantly limited.

The applicant has suggested he does not require the venue has a dance floor. Police would like this conditioned accordingly please.

As the bar/restaurant will be located on the roof top of the Trocadero building and would trade with a large capacity of customers, police have concerns glass related incidents may occur. To ensure public safety both within and outside the venue and the prevention of any kind of glass enabled assault we require the venue serve drinks out of polycarbonate vessels. We request that the condition we have proposed be added to any future operating schedule should this licence be granted.

Over recent months there have been a high number of sexual offence allegations made whilst the victim has been inside a licenced premises toilet area. Unless the toilets are supervised customers may be able to enter toilet cubicles to engage in sexual or drug taking activity. To ensure customers are prevented from doing this we request that toilet attendants are present in all male, female or alternative use toilets from 22.00hrs until closing.

We also request that a last entry time of 01.00hrs is conditioned. This will prevent a surge of customers turning up within the last hour of trading and attempting entry, causing public nuisance outside and blocking the highway.

We request that this venue trades within core-hours unless the applicant is willing for the full model restaurant condition 66 to be added to any future operating schedule.

### **Indigo Hotel, 1-4 Leicester Square**

Formerly a club known as One Leicester Square and another known as Penthouse. Both venues put huge strain on police resources during their existence, strain on the Westminster Police Licensing team and Westminster Councils Licensing authorities. They were serious and significant crime generators, they provided most of the public nuisance issues within the confines of Leicester Square, they attracted a very young and sometimes underage customer base. Their customers often became victims of crime once they had left the venue due to their vulnerability through the excessive consumption of alcohol. The fact that these two venues have gone is a huge relief all round. Leicester Square.

Since the closure of the above nightclubs at this location, Leicester Square has undergone a huge aesthetic improvement and nightclubs have been replaced by family themed retail outlets or food led outlets. This has had a significant effect on the reduction of crime and disorder offences committed in this area.

Whilst the proposed application will enhance the Square's appearance and appeal to tourists visiting the area. This application covers the building's use as a hotel with a bar that allows use by non-residents. Effectively, opening a new bar at a premises that was once a high crime generator, and, as detailed above, is within the cumulative impact area where there already exists a high concentration of bars and police resources are already under pressure.

### **The Metropolitan Police objects to this application**

Should the committee be minded to grant this application, we would ask for the following:

- The entrance to the hotel and bar areas is from one foyer/reception area; We require the use of an SIA registered member of door staff's presence within the hotel reception at all times. This condition applies to other similar venues located nearby.
- The applicant in this report has recently had a shadow licence granted for a separate venue located opposite this one. That venue has not, in my opinion

become as it was assured to be during the application process and at LSC. The venue remained closed for a significant amount of time after the licence was granted and has recently begun trading again a few weeks ago. Our team has already encountered issues and concerns with the new operators that are currently being rectified. The venue the licence was originally applied for has not ended up as described by the applicant or his legal advisor. A recent incident of Grievous Bodily Harm that took place in the Square involved customers from this venue. The Metropolitan Police support applications from venues who will fully support the Licensing Objectives and the Westminster Council Licensing Policy no matter what tenant occupies their premises.

- In relation to Hotel Indigo we require sufficient SIA door staff as the proposed police condition. No glass in any outside area (due to a significantly reduced capacity and customers being seated we support the use of glass elsewhere)
- We require that customers will be seated.
- We respectfully request core hours for this venue's use by non- residents. After core hours use for residents and their (maximum of 4) bone fide guests only.
- We would like the applicant to consider the Model Condition 66 (Restaurant)

### **Assembly Hotel, Alhambra House, Charing Cross Road**

Charing Cross Road has, up until recently been a high street crime area. It put significant strain on police resources; it has been vastly improved by new premises locating within this area over the last 12-18 months. Premises licences have recently been issued for a number of new venues, as a result the street has become safer in that it's better lit, well covered with CCTV and the venues have hugely improved the appearance of the area. Westminster Police Licensing Team feel that if conditioned correctly this venue will do the same. However, as with 1-4 Leicester Square Alhambra will be a hotel with a bar attached to it allowing use by non-residents. The foyer/reception area is the entrance/exit for both the bar and the hotel, we request that there is an SIA register member of door staff present in this area at all times to ensure the safety and security of both customers and staff.

In relation to the use of the bar by non-residents, police feelings mirror those to the Hotel Indigo application view point I have detailed above.

- We require that there will be adequate numbers of SIA registered door staff on duty as per the police conditions proposed.
- We require customers will be seated
- We request that the outside terrace shall use polycarbonate drinking vessels.
- We respectfully request core hours for this venue's use by non- residents. After core hours use for residents and their (maximum of 4) bone fide guests only.
- We would like the applicant to consider the Model Condition 66 (Restaurant)

### **The Metropolitan Police objects to this application**

## **Summary**

The Metropolitan Police strongly object to the application made by Sky Bar. The Police Licensing Team have a duty to support the Licensing Objectives and The Westminster Council's Licensing Policy. We do not feel that this application will be able to do the same.

There is currently a late night venue within this locality which is currently not trading on its premises licence. We anticipate that this venue will be re-opening very shortly.

Therefore an additional late night venue will have a detrimental effect on the cumulative impact at that locality.

Bar Rumba is another venue located within the Trocadero but has recently ceased trading. A new premises licence has been applied for but appears to have stalled. We have no knowledge as to whether Bar Rumba will continue with their application, until this time there is a possibility that another 300 capacity night club venue could trade from within the confines of the Trocadero building. The Metropolitan Police have objected to this application.

Within very close proximity to these premises there are other late night venues which have, until recently, ceased trading but retained their licences. A night club has just re-opened a matter of a few weeks ago, unfortunately police licensing are already working with the premises to provide supportive advice, guidance and training due to issues that have already arisen.

Furthermore, close by there is an existing premises, which has a late night club licence that is planning to re-open imminently.

The Metropolitan Police will maintain our objection to Hotel Indigo and Assembly Hotel but request that should the LSC be minded to grant they will be conditioned accordingly and trade within core hours for non-residents.

This report is submitted respectfully for your consideration.

## **CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE AND CONDITIONS PROPOSED BY A PARTY TO THE HEARING**

When determining an application for a new premises licence under the provisions of the Licensing Act 2003, the licensing authority must, unless it decides to reject the application, grant the licence subject to the conditions which are indicated as mandatory in this schedule.

At a hearing the licensing authority may, in addition, and having regard to any representations received, grant the licence subject to such conditions which are consistent with the operating schedule submitted by the applicant as part of their application, or alter or omit these conditions, or add any new condition to such extent as the licensing authority considers necessary for the promotion of the licensing objectives.

This schedule lists those conditions which are consistent with the operating schedule, or proposed as necessary for the promotion of the licensing objectives by a responsible authority or an interested party as indicated. These conditions have not been submitted by the licensing service but reflect the positions of the applicant, responsible authority or interested party and have not necessarily been agreed

### **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.



## **Conditions consistent with the operating schedule**

9. Premises Licences 15/02410/LIPT and 14/11478/LIDPSR 1–4 Leicester Square which allow licensable activities until 03:00 hours with a combined capacity of 1,770 will be surrendered, subject to the grant of this application together with two further premises licences for Hotel Indigo, 1-4 Leicester Square, London WC2H 7NA and Trocadero Hotel, Skybar and Restaurant [Planning address – 13 Coventry Street, London W1D 7AB. Postal address to be subject to formal street naming process but main access to the Hotel will be from Shaftesbury Avenue]. The licences to be surrendered before the opening of the Trocadero Hotel at which time this condition shall be removed by the Licensing Authority.
10. The number of persons accommodated at any one time in the 10<sup>th</sup> floor bar and restaurant shall be 100 (excluding staff). (Informative: This condition is subject to amendment following determination by the District Surveyor in accordance with condition 37 below.)
11. The supply of alcohol in the 10<sup>th</sup> floor bar and restaurant shall be by waiter or waitress service only.
12. Licensable activities authorised under this licence shall remain ancillary to the main use of the premises as a hotel.
13. The sale of alcohol on the 10<sup>th</sup> floor shall predominantly be to persons who are dining; to hotel residents and their guests or to persons attending a pre-booked function.
14. Other than to persons who are dining; attending a pre-booked function or hotel residents and their guests, new admissions to the 10<sup>th</sup> floor bar and restaurant shall not be permitted after 23:00 hours.
15. The sale of alcohol to the guest of a resident after 02:00 hours shall only be permitted if the resident is present. If the resident has retired to bed or left the hotel then the sale shall be declined.

## **Condition proposed by the Police**

- 15a. The sale of alcohol to the guest of a resident after midnight shall only be permitted if the resident is present. If the resident has retired to bed or left the hotel then the sale shall be declined.
16. With the exception of the external terrace and a maximum of 10 customers who may be stood at the bar, all customers should be seated.

## **Condition proposed by the Police**

- 16a. With the exception of the external terrace and a maximum of 10 customers who may be stood at the bar, all customers will be seated.
17. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the 10<sup>th</sup> floor bar and restaurant where alcohol is sold or supplied for consumption on the premises.

18. Substantial food shall be in the form of substantial table meals that are prepared upon the premises and are served and consumed at a table using non-disposable crockery. Other than to hotel residents and guests as part of room service then food and drink shall not be provided as part of any takeaway service.

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

19. Admission to the 10<sup>th</sup> floor licensed area from the street by members of the public shall be through the hotel reception area only and which shall be supervised at all times.

#### **Condition proposed by Police**

- 19a. Admission to the 10<sup>th</sup> floor licensed area from the street by members of the public shall be through the hotel reception area only and which shall be supervised at all times by a SIA registered member of door staff.

20. A minimum of 80 seats shall be provided within the 10<sup>th</sup> floor licensed area.

#### **Condition proposed by Police**

- 20a. A minimum of 90 seats shall be provided within the 10<sup>th</sup> floor licensed area.

21. Notwithstanding the permitted hours, alcohol may be supplied to persons residing in the premises for consumption by such persons and their bona fide guests at any time without restriction.

22. There shall be at least one SIA registered person on duty within the hotel at all times. The need for further SIA registered personnel shall be subject to written risk assessment by management taking cognizance of police advice. A copy of the risk assessment to be made available to the Police and Licensing Authority. From 17:00 hours, a member of staff shall be located in the ground floor reception area to greet and direct patrons to the 10th floor bar and restaurant.

#### **Condition proposed by Police**

- 22a. There shall be at least one SIA registered member of door staff on duty within the hotel reception at all times. There shall be at least one SIA registered member of door staff on duty on the 10<sup>th</sup> floor whilst the premises are open for licensable activities. From 17:00 hours, a member of staff shall be located in the ground floor reception area to greet and direct patrons to the 10th floor bar and restaurant.

23. 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.

24. 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 premise is open for licensable activities. 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.
25. 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) any faults in the CCTV system,
  - f) any refusal of the sale of alcohol,
  - g) any visit by a relevant authority or emergency service.
26. 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.
27. There will be no self-service of alcohol except for in the guest bedrooms.
28. There shall be no payment made by or on behalf of the licence holder to any person for bringing customers to the premises directly off the street.
29. Patrons leaving the bar and restaurant areas for the purpose of smoking externally to the hotel building shall not be permitted to take drinks or glass containers with them.

### **Condition proposed by the Police**

- 29a. The premises licence holder shall ensure that any patrons drinking and/or 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. No glass containers shall be taken outside of the building by customers at any time.
30. 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.
31. Loudspeakers shall not be located in the entrance lobby or outside the premises building, including the 10th floor terrace.
32. All doors leading to the external terrace and windows on the 10th floor shall be maintained closed after other than for access and egress. The windows on the 10<sup>th</sup> floor shall remain closed at all times.

33. The premises licence holder shall ensure that any patrons using the external terrace do so in an orderly manner.
34. The 10th floor terrace shall not be used prior to 07:00 nor after 23:00 hours Monday to Saturday and prior to 08:00 nor after 22:30 hours Sundays, bank holidays and public holidays regardless as to whether licensable activities are being provided.
35. 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.
36. 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.
37. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.
38. All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.
39. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
40. 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.
41. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
42. 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.
43. With the exception of fresh produce, linen and newspapers, no deliveries to the premises shall take place between 23:00 and 08:00 on the following day.
44. No licensable activities shall take place at the premises until the capacity of the 10<sup>th</sup> floor 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.
45. No licensable activities shall take place at the premises until the premises has 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.

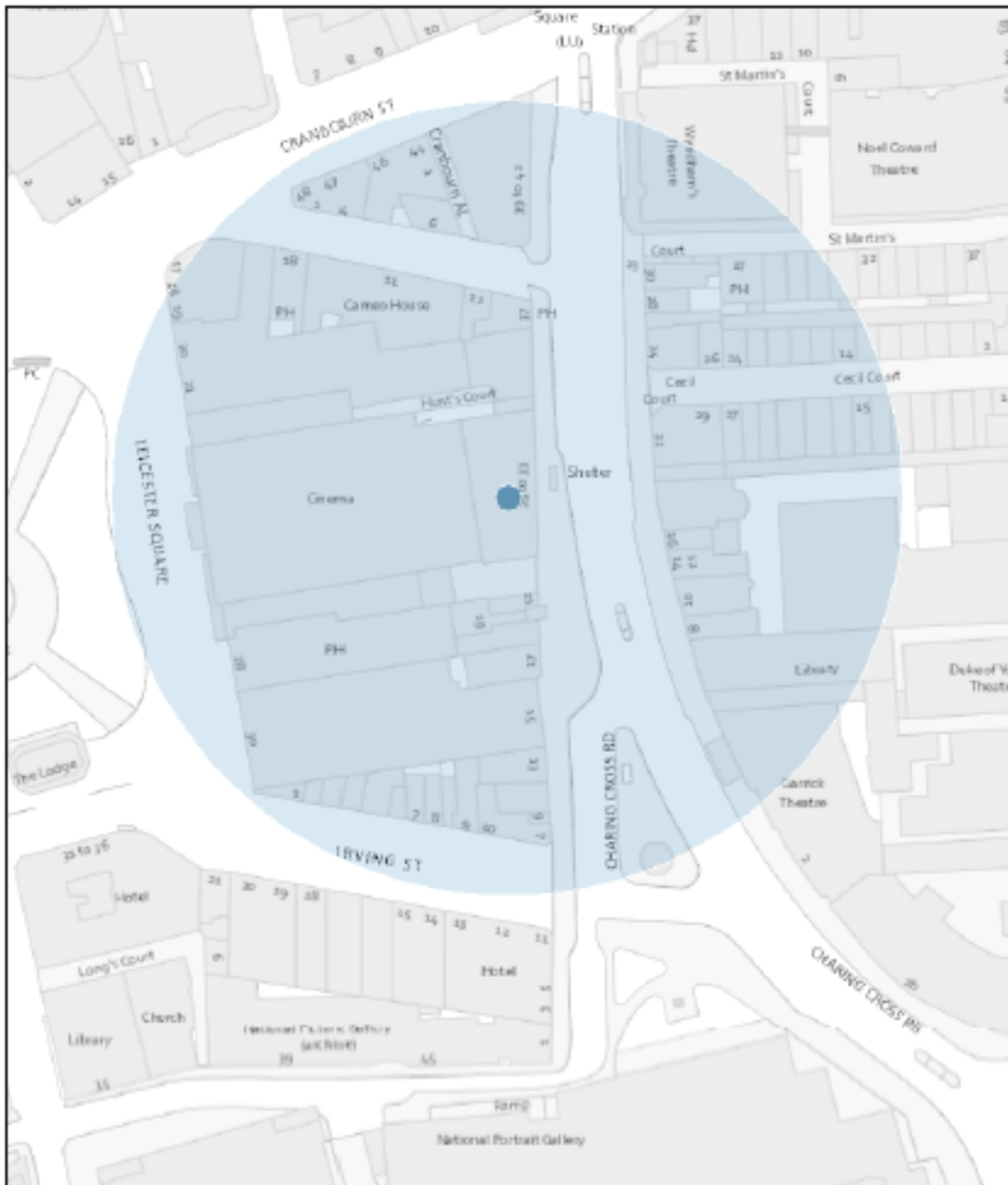
46. Before the premises open to the public the plans as deposited will be checked by the Environmental Health Consultation Team to ensure they are an accurate reflection of the premises constructed. Where the premises layout has changed during the course of construction new plans shall be provided to the Environmental Health Consultation Team and the Licensing Authority. This condition shall be removed by the Licensing team once satisfied.
47. The premises shall join the local Pubwatch or other local crime reductions scheme approved by the Police and radio scheme, if required.
48. For any pre-booked event or occasion when a guest list is in operation, only a Director, the Premises Licence Holder, the Designated Premises Supervisor or the Duty Manager will be authorised to add additional names to the guest list. Any additions less than 48 hours before the pre-booked event or occasion must be legibly entered on the list and signed for by the Director, the Premises Licence Holder, the Designated Premises Supervisor or the Duty Manager. This list will be kept for a period of 28 days following the event and will be made available immediately for inspection upon request by a Police Officer or Council Officer.
49. Any externally promoted events held at the venue shall be notified to the Metropolitan Police Service. A form 696 (or equivalent) will be completed and submitted within 14 days prior to the event, or such less time as agreed with the Police. When carrying out the risk assessment for the event and holding the event, the premises will take into account any reasonable advice received from the Westminster Police Licensing Team and the Central Clubs/Promoters Police Team who receive the Form 696 (or equivalent) and upon reasonable request by Police the venue will not run the event.

**Conditions proposed by the Police**

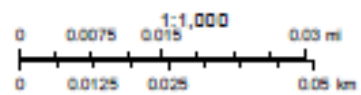
25. No glass items shall be permitted within the 10th floor terraced area at any time.

26. After midnight, alcohol may only be sold for consumption by residents of the hotel and their bona fide guests (not exceeding 4 guests per member).

### Alhambra Hotel, 37-31 Charing Cross Road



April 9, 2018



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Resident count: 197

Licence Number	Trading Name	Address	Premises Type	Time Period
16/00395/LIPT	Maharaja Of India	19A Charing Cross Road London WC2H 0ET	Restaurant	Monday to Saturday; 10:00 - 23:30   Sunday; 12:00 - 23:00
14/04885/LIPVM	K. S. Food And Wine	Ground Floor 35 Charing Cross Road London WC2H 0AT	Shop	Monday to Sunday; 08:00 - 05:00
18/01279/LIPDPS	Saravana Bhavan	17 Charing Cross Road London WC2H 0EP	Restaurant	Monday to Sunday; 10:00 - 00:30
17/09463/LIPVM	Saravana Bhavan	17 Charing Cross Road London WC2H 0EP	Restaurant	Monday to Sunday; 10:00 - 00:30
17/01069/LIPDPS	Bear & Staff Public House	10-12 Bear Street London WC2H 7AS	Public house or pub restaurant	Monday to Thursday; 07:00 - 23:30   Monday to Saturday; 07:00 - 00:30   Friday to Saturday; 07:00 - 00:00   Sunday; 07:00 - 00:00   Sunday; 07:00 - 22:30   Sundays before Bank Holidays; 07:00 - 00:00
15/06521/LIPVM	The Zoo Bar And Club	Basement And Ground Floor Cameo House 13-17 Bear Street London WC2H 7AQ	Night clubs and discos	Monday to Saturday; 09:00 - 03:30   Monday to Saturday; 09:00 - 02:30   Sunday; 09:00 - 01:00   Sundays before Bank Holidays; 09:00 - 02:30
17/12198/LIPDPS	The Garrick Arms	8-10 Charing Cross Road London WC2H 0HG	Public house or pub restaurant	Monday to Thursday; 08:00 - 23:30   Friday to Saturday; 08:00 - 00:00   Sunday; 08:00 - 22:30   Sundays before Bank Holidays; 08:00 - 00:00
18/01078/LIPT	Byron	24 Charing Cross Road London WC2H 0HX	Restaurant	Monday to Saturday; 10:00 - 00:30   Sunday; 12:00 - 00:00
15/05230/LIPDPS	Odeon Cinema	24-27 Leicester Square London WC2H 7LE	Cinema	Monday to Sunday; 00:00 - 00:00
15/07167/LIPDPS	Bella Italia	22 Leicester Square London	Restaurant	Monday to Saturday; 09:00 - 01:00   Sunday; 09:00 - 00:00   Sundays before Bank Holidays; 09:00 - 01:00



18/02327/LIPDPS	Club Storm	28A Leicester Square London WC2H 7LE	Night clubs and discos	Monday to Wednesday; 09:00 - 03:30   Thursday to Saturday; 09:00 - 06:00   Sunday; 07:00 - 02:00
14/03108/LIPDPS	Moon Under Water	28 Leicester Square London WC2H 7LE	Public house or pub restaurant	Monday to Thursday; 07:00 - 23:30   Friday to Saturday; 07:00 - 00:00   Sunday; 07:00 - 22:50   Sundays before Bank Holidays; 07:00 - 00:00
17/12764/LIPDPS	Chiquitos	20-21 Leicester Square London WC2H 7LE	Restaurant	Monday to Wednesday; 08:00 - 00:30   Thursday to Saturday; 08:00 - 01:00   Sunday; 08:00 - 00:00
18/01056/LIPDPS	TGI Fridays	29-30 Leicester Square London WC2H 7LA	Not Recorded	Monday to Saturday; 09:00 - 01:30   Sunday; 09:00 - 01:00   Sundays before Bank Holidays; 09:00 - 01:30
16/13168/LIPDPS	Global Radio	29-30 Leicester Square London WC2H 7LA	Office	Monday to Friday; 07:00 - 00:00
09/06144/LIPDPS	Gaby's Continental Bar	30 Charing Cross Road London WC2H 0DE	Shop	Monday to Saturday; 10:00 - 00:30   Sunday; 12:00 - 00:00
17/12395/LIPVM	Not Recorded	9A Irving Street London WC2H 7AT	Cafe	Monday to Saturday; 08:00 - 23:30   Sunday; 08:00 - 23:00
06/12648/WCCMAC	Beefsteak Club	Basement To First Floor 9 Irving Street London WC2H 7AT	Club or institution	Monday to Friday; 13:00 - 15:00   Monday to Friday; 17:30 - 23:30
10/05756/LIPN	Pompidou	9A Irving Street London WC2H 7AT	Cafe	Monday to Saturday; 07:00 - 23:30   Sunday; 09:00 - 23:00
09/02717/LIPT	Wox	8 Irving Street London WC2H 7AT	Cafe	Monday to Saturday; 23:00 - 05:00
13/04940/LIPDPS	Zoo Too	18 Bear Street London WC2H 7AS	Pub or pub restaurant with lodge	Monday to Wednesday; 10:00 - 00:00   Thursday; 10:00 - 01:00   Friday to Saturday; 10:00 - 02:00   Sunday; 12:00 - 23:00

16/06226/LIPDPS	Bella Italia	10 Irving Street London WC2H 7AT	Restaurant	Monday to Saturday; 09:00 - 01:00   Sunday; 09:00 - 00:00   Sundays before Bank Holidays; 09:00 - 01:00
16/11445/LIPN	Il Padrino	6-7 Irving Street London WC2H 7AT	Not Recorded	Monday to Saturday; 10:00 - 05:00   Sunday; 11:00 - 01:30
13/04895/LIPV	El Padrino	6-7 Irving Street London WC2H 7AT	Restaurant	Monday to Saturday; 10:00 - 01:30   Sunday; 11:00 - 01:30
16/03494/LIPCH	Round Table Public House	26-27 St Martin's Court London WC2N 4AL	Public house or pub restaurant	Monday to Thursday; 07:00 - 23:30   Friday to Saturday; 07:00 - 00:00   Sunday; 07:00 - 22:50   Sundays before Bank Holidays; 07:00 - 23:30
10/07083/LIPT	Cork And Bottle Wine Bar	Basement 44-46 Cranbourn Street London WC2H 7AN	Wine bar	Monday to Saturday; 10:00 - 00:30   Sunday; 12:00 - 00:00
09/02405/LIPV	Noodle Stop	Ground 44-46 Cranbourn Street London WC2H 7AN	Restaurant	Monday to Saturday; 10:00 - 05:00   Sunday; 12:00 - 05:00
08/07461/LIPT	Rimini Coffee Bar	Basement And Ground Floor West 47 Cranbourn Street London WC2H 7AN	Cafe	Monday to Thursday; 10:00 - 02:00   Monday to Thursday; 10:00 - 02:00   Friday to Saturday; 10:00 - 04:00   Friday to Saturday; 10:00 - 03:00   Sunday; 12:00 - 01:30   Sunday; 12:00 - 02:00
14/00705/LIPV	Stephano's Cafe La Chandelle	2-3 Irving Street London WC2H 7AT	Restaurant	Monday to Saturday; 08:00 - 00:30   Sunday; 08:00 - 00:00
17/14404/LIPDPS	Wyndhams Theatre	Wyndhams Theatre Charing Cross Road London WC2H 0DA	Theatre	Monday to Sunday; 09:00 - 01:00
17/05123/LIPVM	Pizza Hut	19 Leicester Square London WC2H 7LE	Restaurant	Monday to Thursday; 10:00 - 02:00   Friday to Saturday; 10:00 - 05:00   Sunday; 12:00 - 02:00
17/07548/LIPVM	Burger King	17-18 Leicester Square London WC2H 7LE	Restaurant	Monday to Sunday; 23:00 - 03:00

17/15035/LIPT	Cafe Fiori	42 Cranbourn Street London WC2H 7JH	Cafe	Monday to Saturday; 10:00 - 05:00   Sunday; 12:00 - 05:00
18/00776/LIPDPS	J Sheekey	28-32 St Martin's Court London WC2N 4AL	Restaurant	Monday to Saturday; 10:00 - 01:30   Sunday; 12:00 - 00:00