



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (1)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (1)** Committee held on **Thursday 14th May, 2015**, Rooms 5, 6 & 7 - 17th Floor, City Hall.

Members Present: Councillors Tim Mitchell (Chairman), Louise Hyams and Melvyn Caplan

Apologies for Absence: Councillor Jan Prendergast

1 MEMBERSHIP

Councillor Melvyn Caplan replaced Councillor Jan Prendergast.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 DAR MARRAKESH, 422 EDGWARE ROAD, W2

LICENSING SUB-COMMITTEE No. 1

Thursday 14th May 2015

Membership: Councillor Tim Mitchell (Chairman), Councillor Melvyn Caplan and Councillor Louise Hyams

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officers: Jonathan Deacon

Relevant Representations: Environmental Health and 12 local residents.

Present: Ms Sarah Le Fevre (Counsel, representing the Applicant), Mr Howard Timms (Solicitor, on behalf of the Applicant), Mr Zak Derissy (Applicant), Mr Omah Derissy and Mr Mehdi Derissy (Premises Managers), Mr Dan Saunders (Vanguardia Consulting), Mr Dai Davies (Consultant), Mr Anil Drayan (Environmental Health) and Mr Nigel Smith (local resident)

Declaration: Councillor Melvyn Caplan stated for information that Dar Marrakesh is located directly opposite the ward he represents, Little Venice. He did not believe he was conflicted in any way as Dar Marrakesh is located in Church Street ward and no residents from Little Venice had submitted representations.

Dar Marrakesh, 422 Edgware Road, W2 15/00928/LIPV	
1.	Late Night Refreshment
<p><u>From</u></p> <p>Monday to Thursday: 23:00 to 23:30 Friday to Saturday:23:00 to 00:00</p>	<p><u>To</u></p> <p><u>Internal area</u> Monday to Thursday: 23:00 to 23:30 Friday to Saturday:23:00 to 00:00 <u>Sunday 23:00 – 23:30</u></p> <p><u>External Garden Area</u> <u>Monday to Thursday: 23:00 to 00:00</u> <u>Friday to Saturday:23:00 to 02:00 (the following day)</u> <u>Sunday 23:00 – 00:00</u></p>
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>This application was for a variation of a premises licence application to extend the terminal hour to midnight for late night refreshment in the garden area only on Monday to Thursday evenings and to 02:00 on the morning after Friday and Saturday evening. Late night refreshment was also applied for on Sundays until 23:30 inside the premises and until midnight in the garden. The application involved the removal of two conditions on the existing licence requiring the beer garden to be cleared of patrons after 23:00 and that toughened drinking glasses shall be used in the premises.</p> <p>Members of the Sub-Committee were initially addressed by Ms Le Fevre, representing the Applicant. She stated that the premises was owned and operated by the Derissy family and they had turned around what had previously been a problem premises. There was a loyal, local clientele. Dar Marrakesh was a food and shisha led not alcohol led establishment. The Applicant had agreed with the Police that there was no longer any need for the toughened drinking glasses condition which had been on a previous licence although not on the existing one because there were no recent instances of crime and disorder.</p>

Ms Le Fevre made the point that she understood that it was the use of the outside area for late night refreshment in the rear garden area which was contentious for some residents. However, there had been no representations from the residents of Westmacott House, which was believed to be the nearest residential accommodation to the garden area. There was no application to extend alcohol at Dar Marrakesh. There was also restricted use of the inside area, including the limiting of recorded music to 23:30. It was her submission that the only potential risks that the Sub-Committee could take into account were public nuisance from the outside area and the conduct of people dispersing from the premises.

Ms Le Fevre advised that Temporary Event Notices for the sale of alcohol until 02:00, including in the garden area, had not caused any issues. There were conditions on the existing licence which promoted the licensing objectives such as there being no entry to the premises one hour before the end of all licensable activities and no noise or vibration would be permitted to emanate from the premises so as to cause a nuisance to nearby property. It was also proposed that there would be at least one SIA doorman after 20:00 hours. The Applicant had agreed all three of Environmental Health's proposed conditions which limited the number of people excluding staff in the garden area to 60, required a member of the management to supervise patrons in the rear garden after 23:00 and ensured that a direct telephone number of a premises manager was made publically available. Typically there would be five to six staff in the garden area.

Included within the papers were the reports of Mr Saunders, an experienced acoustician from Vanguardia Consulting and Mr Davies, a former senior Police Officer who had carried out a review of the premises and the surrounding area. Ms Le Fevre referred to Mr Saunders' evidence. He had measured the ambient background noise levels and then the average and maximum noise levels in the garden area and had reached the conclusion that noise levels from the garden area would be imperceptible to the nearest residents. Mr Saunders explained how human noise had been accounted for in his report. He had had regard for the World Health Organisation guidelines on community noise. LAEQ was used to evaluate more or less continuous environmental noises or those with individual events with randomly variant noise levels. It was a way of accounting for the equal energy of sound levels as they rise and fall. He had based his assessment on that and also what was referred to in the guidelines as a small number of discreet events. There would occasionally be a laugh or raised voice and to account for the very short term higher peak Mr Saunders had used the measure L_{Amax} . He had taken the maximum noise level and corrected it at the distance that it had to travel to the nearest noise sensitive receptor. He had found that it was more than 20 decibels lower than the existing ambient maximum noise level which could be caused by someone slamming a car door, shouting in the street or sounding a car horn. Mr Saunders confirmed that it was in his view unlikely that the noise from the garden would be perceptible against such a high ambient noise level. A sound such as language would naturally draw people's attention to it and make it more perceptible. Mr Saunders had produced what he stated to be an objective method (international standard 9921 2003) to calculate how perceptible speech would be against the background level. In all calculations whether the voice was male or female, the speech

intelligibility was either bad or poor because the speech level and ambient noise levels were already quite close together. Overall the speech noise levels would be less disturbing than if they were against a lower ambient background.

Ms Le Fevre referred to the dispersal policy including a SIA door supervisor being located at the Edgware Road entrance in order to ensure customers departing via either Edgware Road or Boscobel Street were supervised at all times after 8pm. Also, customers would be encouraged to leave via taxi or mini-cab which would be pre-booked inside the premises, collecting from Edgware Road and staff would be aware of night bus times, stops and routes and local underground trains. She also stated that attempts had been made to communicate with those who had submitted the twelve representations objecting to the application. Two responses had been received to the Applicant's communications. Mr Schoerner had informed the Applicant that he had no issues specifically with how the premises was operating under the existing licence and Mr Khan who maintained his representation due to the level of traffic, takeaways, restaurants along the same road. He had concerns about the shisha operation would impact on the locality.

Ms Le Fevre made the case that none of the five written representations in Hatton Street had expressed concerns about how Dar Marrakesh was currently operating. Key concerns were the way people parked in the area and their behaviour in the proximity of the cars. She disputed that there would be the issues raised by Farrells regarding the safety of female employees leaving late in the evening as Dar Marrakesh did not attract that type of clientele. There were two representations from residents of Boscobel Street, Mr Smith and Mr Hussain. It was her client's position that there was not shouting and fighting in the street. If this had been the position the Police would have been unlikely to have withdrawn their representation. In response to Mr Smith's written submission, Ms Le Fevre stated that complaints had not been made directly to the premises but when issues were raised they were quickly dealt with by management. In terms of the noise complaints submitted by Environmental Health she accepted that if very loud music had been played on 8 March 2014 or the garden was being used until 01:47 that was unacceptable. If her client had been made aware of this it would have been investigated. The hours for recorded music had in any event been reduced. She also made the point in response to Mr Woffenden's comments that in terms of loud music being played in cars and parking in the back streets of Hatton Row it was difficult to say whether the issues related to Dar Marrakesh or other establishments such as the takeaway premises in what was a busy thoroughfare. Proper management control measures had been implemented at the premises.

The Sub-Committee asked Ms Le Fevre why her client had applied for Temporary Event Notices with alcohol until 02:00 and not in this case. Mr Derissy replied that this had been for parties and celebrations such as the anniversary of the family running the premises. Alcohol was not as important to the operation as the food and shisha aspects and this was why alcohol had not been applied for until later.

The Sub-Committee next heard from Mr Drayan for Environmental Health. He advised that Environmental Health shared the Police's view that Dar Marrakesh

was not a problem premises and therefore they did not object to the requirement for toughened drinking glasses being removed. There had been issues at the premises which had occurred whilst the Derissy family had been in situ. During 2011 the premises were the subject of numerous nuisance complaints as a result of noise breakout from the internal and external areas, including the playing of amplified music and patrons talking and shouting. Some of these occurrences had been reported to have been up to 01:00 hours. The management had requested information from licensing officers regarding how they should operate the premises and the situation had greatly improved since 2011. There had been issues relating to the Health Act, in particular the design of the smoking shelter. Licensing inspectors and the Police had visited the premises and on those occasions when complaints had been made to the Noise Team these had been communicated to the Applicants.

Mr Drayan addressed Members on the aspect of the application to extend the use of the garden area to 02:00. He referred to the fact that Vanguardia had found there appeared to be no perceptible impact from the garden being used until this hour. He expressed the view that if the traffic noise was so loud that it could eliminate the human voice being heard by residents this would be fine. However, in this case the noise of 60 people talking and occasionally shouting was comparable to the ambient traffic noise. He believed Mr Saunders had removed 15db in terms of a reduction to an open window and he believed that 10db was appropriate which meant the human voice in the garden and the ambient traffic sound levels in the vicinity were comparable. He also believed Mr Saunders had only measured the distance from the garden to Westmacott House. Due to the human voice and ambient traffic noise levels being comparable, the psychological effect of the human voice was relevant. If the human voice was heard after 23:00 that would affect residents' ability to sleep. Mr Drayan advised that 02:00 in the garden was in his opinion too late an hour to be granted. He added that the external area did however have a canopy that was of solid construction and provided better sound attenuation than the previous canvas type material when there had been noise complaints. If the Sub-Committee was minded to grant the application, he recommended that the terminal hour for the external garden was no later than Core Hours. He stated that whilst Edgware Road is a busy road, there was a reduction in traffic after a certain point in time which would make the human voice more perceptible.

It was clarified by Mr Saunders that he had carried out testing throughout the night. He added there was a small drop off in ambient noise after midnight. He was able to produce more detailed data on request.

The Sub-Committee asked the Applicants how they would practically comply with the condition which required no rubbish including bottles to be removed between 23:00 and 07:00 if the hours were extended. Ms Le Fevre responded that part of the function of the restriction of the use of the inside of the premises for entertainment would mean that the area became available for the storage of waste after 23:00.

Mr Smith, a local resident of Boscobel Street for thirty five years, addressed the Sub-Committee. He depended on lodgers for income. The first question that potential lodgers asked him was, because of the proximity to Edgware Road, is it

noisy in the flat? Up until four or five years ago he was able to inform them that there was a pub which could be noisy up until 23:00 or 23:30 on Fridays and Saturdays. That had not been the case since the premises had become Dar Marrakesh, with the exception of the last three or four months whilst the current application was being taken forward. There had recently been a complete change in behaviour of those connected with the premises which gave an entirely false impression of the last four or five years. Mr Smith stated that his lodgers' windows were ten or eleven metres from the premises. The people next door were only a metre or so further away. Whilst he was the only person in the vicinity who had made a representation he was aware that everyone in the area had had problems with the noise generated from Dar Marrakesh. He believed that this was also the case for residents of Westmacott House and Mole House. He believed that a reason why more had not made representations was that a majority had English as a second language.

Mr Smith informed the Sub-Committee that he had the evening prior to the hearing counted the number of cars which had travelled down Boscobel Street between 01:00 and 02:00. There had been none whatsoever and that was typical of his experience of the thirty years up until 2011. Despite the high level of traffic and ambient noise on Edgware Road during the early evening, it becomes very quiet after 11:00 or 12:00. He did not hear the traffic on Edgware Road from his premises apart from the occasional lorry when a low rumble could be heard. There was no street noise until 2011. That had been the case again since the application had been in the offing apart from a few incidents. He had written to Mr Timms in response to Mr Timms' request for his observations that on 6 March 2015 Dar Marrakesh had not closed until 01:00 which was over an hour later than its licence. Some patrons had then left at 01:15, got into cars, executed three point turns and drove off. A group of nine men slowly left the premises and congregated on the pavement on Boscobel Street between 01:20 and 01:35 having extremely loud discussions, laughter and arguments. Several of them then re-entered the pub and re-emerged two or three times. Two of them then crossed Edgware Road before returning. At 01:40 they were all reunited and then scuffles broke out between the entire group of men. The scuffles may well have been good natured but they were nevertheless noisy. They finally dispersed at 01:45 over an hour and a half after the permitted terminal hour for the existing premises licence.

Mr Smith added that what had taken place on 6 March 2015 was standard behaviour for the four years from 2011 to early 2015. The premises never attempted to vacate until an hour after the permitted closing times. When Dar Marrakesh first opened this had even been set out on the website. Although this had been removed from the website it had not affected the management's behaviour. There had been frequent 'lock-ins' when people had been in the premises up until 04:00 hours. It was not just patrons but bar staff who had contributed to the noise. There was belly dancing at the premises and even after the patrons had gone, the musicians and dancers stayed behind for an hour or more drinking and talking to the bar staff. They would then leave at 02:00 or 03:00 loading their cars up with their instruments and were audibly laughing and talking loudly whilst they went back into the premises and came out again. Mr Smith made the point that for three years he had a lodger, Ms Piancek who had now left. She would frequently open the window and ask

people from the premises to be quieter. On many occasions she had received verbal abuse as a result. Ms Piancek's sleep had frequently been disturbed until 02:00 or 03:00 in the morning and she had to get up early.

Mr Smith referred to the Applicant's disbelief regarding the written comments from one of the objectors regarding him seeing drunken fighting in the street. Mr Smith informed Members that he had seen this take place lots of times. Groups of young people tried to gain entry to Dar Marrakesh at a late hour. For most of the four years from 2011 to early 2015 there had been no difficulty in them gaining late entry. The condition requiring that there would be no entry to the premises one hour before the end of all licensable activities had generally not been observed. When it was observed it resulted in the patrons banging on the premises door loudly. He did appreciate that door staff would potentially be able to enforce against that behaviour but he had little confidence in the management keeping to the terms of the conditions on the licence or respecting the wellbeing of residents.

Mr Smith spoke about the impact from the garden. Up until January 2015 there were often instances of patrons drinking, celebrating and singing 'Happy Birthday' in this external area until 01:00. Since January this behaviour had stopped at 20:00 or 20:30. It was Mr Smith's belief that the behaviour had been modified to ensure favourable reports of the premises. He informed those present that he could clearly hear voices of patrons in the garden and these could be heard through double glazed windows. The voices were not in any way conflicted by ambient traffic noise in Boscobel Street or Edgware Road. Once residents were above the level of the surrounding wall, (from the first floor up) the back garden was very noisy. The noise experienced by residents did not just relate to the garden area but from patrons dispersing from the premises. He believed that the vast majority of people who went to Dar Marrakesh arrived in cars and parked in Boscobel Street, Hatton Street or Venables Street which was residential parking. If these people were unable to park they would go round and round the streets until they found somewhere to park. Recently it had been couples attending the premises whereas previously prior to January most attendees had been large groups of people. Those dispersing had tended to have loud conversations or occasionally arguments on surrounding streets including Boscobel Street. Door staff would only be able to control such behaviour a few feet from the entrance to Dar Marrakesh. Mr Smith added that the movement of rubbish had always occurred after the premises had been closed. Ms Piancek had often been disturbed by this at 02:30 in the morning. She had telephoned the Police on a number of occasions but they did not respond unless there was violence involved. He and his lodgers had not always contacted the Noise Team as it took 45 minutes for them to respond and this was often in the middle of the night. It was likely that those causing the nuisance would have dispersed by the time the Noise Team was on site. The amount of complaints was not representative of the level of nuisance experienced by residents. Mr Smith's final points were that Boscobel Street had always been a residential street but had been treated as an extension of Edgware Road. Most pub gardens tended to close at 22:00 and the garden at Dar Marrakesh should not remain open until 02:00. If the application was permitted, there was the potential for the two takeaways in the area to request extensions. Boscobel Street should be allowed to be a quiet, residential street.

The application should be refused, except for the nature of the drinking glasses which was not of concern.

Ms Le Fevre responded to some of the point raised. She stated that Mr Saunders had actually measured the noise levels from the nearest sensitive premises which were in Boscobel Street. The correct measurements and calculations had been made in keeping with WHO guidance. Staff procedures and training had been subject to independent evaluation. She commended the report of Mr Davies who had spent the full evening at the premises and the surrounding area on 13 March 2015 and 10 April 2015. He had identified some areas where improvements could be made in the management of the premises and these had been adopted and formed part of the implemented management plan. He had made it clear that the Applicants were competent and very capable of managing Dar Marrakesh. Ms Le Fevre advised that the premises had been trading until their normal hours. Management could not dictate who came to the premises over several months. It was regretted by Ms Le Fevre and Mr Derissy that management had not been aware of Mr Smith's concerns from 2011 to 2015. Whilst Boscobel Street was a residential street, there had been a significant commercial intrusion including by two takeaway premises, one of which had been trading illicitly into the early hours. It was a busy area throughout the night with high ambient noise levels on Boscobel Street and Edgware Road. Overall, there had been three noise complaints in four years and no intervention by the Noise Team since 2011. Her clients could only address any matters brought to their attention.

Mr Smith did respond to suggestions that he should have raised objections with management of the premises. He stated that he had not been minded to do so as Ms Piancek had said she had been verbally abused when raising her concerns with staff. He also made a separate point that whilst Delta Pizza had operated beyond 23:00 they had done so discretely and not caused noise because they were conscious of acting illegally.

The Sub-Committee heard from Mr Davies. He advised that he had observed hundreds of licensed establishments over the years. He was impressed by the management of Mr Derissy and together they had agreed a strategy for the premises which they both believed was working in order to prevent further issues. The advice he had provided related to good management, leadership and training of staff. He had confidence the staff would adhere to the conditions on the licence. Mr Derissy was a former special constable in the Metropolitan Police and Mr Davies was satisfied that he and his brother had the capability to implement Mr Davies' recommendations.

The Sub-Committee noted that the policy for applications for hours outside the core hours were considered on their merits, subject to other relevant policies and with particular regard to the demonstration of compliance with relevant criteria in policies CD1, PS1, PN1 associated with the likelihood of the effect of the grant of a licence for later or earlier hours on crime and disorder, public safety and public nuisance. In terms of external areas such as outside gardens, the general practice of Licensing Sub-Committees was to permit a terminal hour of 23:00 or earlier in the evening depending largely on the residential nature of the locality. In this case whilst the front of the premises is adjacent to Edgware

Road, the external garden is located in a residential area. This was increasingly so as one went further down Boscobel Street.

The Sub-Committee considered from the evidence provided that the licensing objective that was most pertinent was the prevention of public nuisance, particularly in relation to the garden area and the arrival and departure of patrons. Members had not found the representations of the Applicant sufficiently compelling to warrant an extension of hours as applied for. Mr Smith had described in considerable detail how he and his lodgers had been experiencing noise nuisance into the early hours of the morning from 2011 to early 2015, including from patrons in the garden and those leaving the premises. There were also written objections from other residents who believed that customers currently created sufficient nuisance to adversely impact on them. Mr Smith had also described how he could clearly hear noise from the garden which appeared to contradict Mr Saunders' evidence that human voices from this location would be imperceptible to residents above the local ambient noise level. This supported Mr Drayan's view that as a result of the human voice and ambient traffic noise levels being comparable, the psychological effect of the human voice was relevant. If the human voice was heard after 23:00 that would affect residents' ability to sleep. This would be accentuated as the ambient noise levels reduced.

From the evidence received from Mr Smith it had been shown in terms of the track record of the Applicants that the conditions on the existing premises licence had not always been complied with from 2011 to early 2015. The Sub-Committee considered that the Applicants' management plan and dispersal policy and Mr Davies' advice if consistently implemented would assist the general operation of the premises. Whilst Mr Smith had stated that there had been some improvement in behaviour relating to the premises since January 2015 which he believed was due to the forthcoming application, he had referred at length to a disturbance from patrons dispersing on 6 March 2015. This was an evening when the premises had been permitted to operate under a Temporary Event Notice for the sale of alcohol until 02:00 in the main bar and beer garden. This contradicted to some extent the representations of the Applicants that there had not been any problems arising from recent Temporary Event Notices. It was also questionable whether management could consistently control the outside area or those dispersing to neighbouring streets so that no noise nuisance was emitted.

For the reasons above, the Sub-Committee refused the application except for the aspect to remove the condition that toughened drinking glasses shall be used in the premises. The Sub-Committee took into account in removing this condition that neither the Police nor Environmental Health were of the view that there were now any specific issues with disorder at Dar Marrakesh.

The Sub-Committee recommended that the Applicants take the opportunity to maintain a dialogue with neighbouring residents so the establishment was run in such a way as not to cause a nuisance to them.

2.	Opening Hours
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	<p><u>From</u></p> <p>Monday to Thursday: 09:00 to 23:30 Friday to Saturday: 09:00 to 00:00 Sunday 09:00 to 23:00</p>	<p><u>To</u></p> <p>Monday to Thursday: 09:00 to <u>00:00</u> Friday to Saturday: 09:00 to <u>02:00</u> Sunday 09:00 to <u>00:00</u></p>
	<p>Amendments to application advised at hearing:</p> <p>None.</p>	
	<p>Decision (including reasons if different from those set out in report):</p> <p>This aspect of the application was refused (see reasons for decision in Section 1).</p>	
3.	Removal of two licence conditions	
	<ul style="list-style-type: none"> To remove condition 26 - "the beer garden is to be cleared of patrons after 23.00". To remove the condition on the licence which states: "Toughened drinking glasses shall be used in the premises". This condition should be attached to the existing licence 14/08715/LIPVM but has been omitted, in error since 10/09914/LIPT. 	
	<p>Amendments to application advised at hearing:</p> <p>None.</p>	
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee refused the aspect of the application to remove condition 26 on the existing licence that 'the beer garden is to be cleared of patrons after 23:00' and granted the removal of the condition on the existing licence that 'toughened drinking glasses shall be used in the premises'. See reasons for decision in Section 1.</p>	

4 TOP DOG EATS, 48 FRITH STREET, W1

LICENSING SUB-COMMITTEE No. 1

Thursday 14th May 2015

Membership: Councillor Tim Mitchell (Chairman), Councillor Melvyn Caplan and Councillor Louise Hyams

Legal Adviser: Barry Panto
 Policy Adviser: Chris Wroe
 Committee Officers: Jonathan Deacon

Relevant Representations: Metropolitan Police.

Present: Mr Alun Thomas (Solicitor, representing the Applicant), Mr Matt Hermer (Applicant Company) and PC Chris Marriott (Metropolitan Police).

Top Dog Eats, 48 Frith Street, W1 15/01790/LIPV	
1.	Amendment to condition
	<p>To vary the existing premises licence so as to amend condition 10 (iii) which reads:</p> <p>10 (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.</p> <p><i>To read:</i></p> <p><i>10 (iii) which provide food in the form of substantial table meals that are prepared on the premises and consumed at the table using non disposable crockery.</i></p>
	<p>Amendments to application advised at hearing:</p> <p>Mr Thomas during the hearing on behalf of his client offered to amend the condition so that food would be provided by waiter or waitress after 23:00 hours (see below).</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>This is an application to amend a condition on the existing premises licence. Mr Thomas, representing the Applicant, explained that his client was seeking to amend one aspect of the Council's model restaurant condition which currently required substantial table meals to be served by waiter or waitress service. It was envisaged that the premises would be a hot dog restaurant on three floors and that customers would go to the counter, choose the food and take it back on a tray to the table. Mr Thomas disputed that the offer was fast food. There were organic hot dogs which were prepared in front of customers. Any alcohol sold (one lager and one bitter were available) would continue to be served to customers at tables.</p> <p>Mr Thomas referred to policy RNT2 in the Council's Statement of Licensing Policy as Top Dog Eats is in the West End Stress Area and made the case that</p>

there were some aspects of this policy that were more important than others. He believed serving food at a counter and removing the requirement for it to be served at a table was potentially irrelevant because the sale of food was not a licensable activity. The removal of waiter/waitress service for food did not prevent the premises being a restaurant or make it alcohol led. Environmental Health had withdrawn their representation and the Police were requesting the view of the Sub-Committee. He believed there were other applications for premises known as Bunnychow and Shake Shack where food did not have to be served at tables.

The Sub-Committee heard from PC Marriott who stated that the Metropolitan Police maintained their representation as the application was contrary to policy in the West End Stress Area as a result of the amendment to the condition. It therefore needed to be demonstrated by the Applicant why the application was an exception to policy. He stated that whilst the sale of hot food before 23:00 was not licensable, the conditions governed the application as a whole.

Mr Panto referred to the Bunnychow decision which had been included in the papers by the Applicant. This did differ from the current application as the terminal hour had been 23:00 for the sale of alcohol as opposed to 48 Frith Street operating until Core Hours including midnight on Friday and Saturday. The sale of hot food after 23.00 was a licensable activity. Councillor Caplan, who had been the Chairman for the Bunnychow hearing, also commented that Bunnychow had had a maximum capacity of 20 whereas Top Dog Eats had a capacity of 90 people in the West End Stress Area. Mr Wroe made the point that the Council's policy for fast food premises in the Stress Area was not only concerned with takeaway but also those premises which provided fast food on a counter or self-seating basis.

The Sub-Committee was minded to refuse the application as it was a change from a restaurant to a fast food premises in the West End Stress Area (RNT2 to FFP2) and was contrary to policy. It would be a fast food premises where food would be provided on a counter or self-seating basis until Core Hours and would keep up to 90 people in the West End Stress Area. Members did not consider that an exception to the Council's policy had been made by the Applicant. Mr Thomas, having become aware that the Sub-Committee was minded to refuse the application, offered an amendment to what had been proposed originally so that food would be served by waiter or waitress after 23:00 hours or 'perhaps slightly earlier'. Although this offer from Mr Thomas had been made very late in the proceedings, the Sub-Committee was prepared to grant the application but only in part, deciding that it would compromise on the proposal and would grant the application so as to allow food and soft drinks to be served from the counter up until 20:00 hours. This would minimise the potential for customers to remain in the Stress Area and add to cumulative impact. Together with the conditions on the licence this would reduce the likelihood for the licensable objectives to be undermined. The decision to limit the operation until 20:00 was consistent with policy proposals in the Council's consultation on the review of the Statement of Licensing Policy.

Conditions attached to the Licence

Mandatory Conditions

1. No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4.
 - (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
 - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
6.
 - (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
 - (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
 - (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
 - (a) a holographic mark, or
 - (b) an ultraviolet feature.
7. The responsible person must ensure that—
 - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml;
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
 - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

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

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

price.

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

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

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

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

Where -

(i) P is the permitted price,

(ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

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

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence, or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

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

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

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

8(iv). (1) Sub-paragraph 8(iv)(2) below applies where the permitted price given by Paragraph 8(ii)(b) above on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Additional Conditions

9. The premises shall only operate as a 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, supplied, or consumed on the premises otherwise than to 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 (9) customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal and (b) alcohol may be supplied to and/or consumed prior to their meal by customers in the basement up to a maximum, at any one time, of 16 persons dining at the premises

10. Notwithstanding condition 9 (iii), food and soft drinks may be served from the counter before 20:00 hours.
11. The maximum number of persons accommodated at any one time (excluding staff) shall not exceed
- Basement 18 persons
 - Ground Floor 42 persons
 - First Floor 30 persons
12. After 22:00 hours the entrance door shall be kept closed except for immediate access and egress of persons or at anytime that regulated entertainment is provided.
13. 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.
14. Clearly legible notices shall be displayed at all exits from the premises requesting patrons to respect the needs of local residents and to leave the premises and area quietly.
15. Patrons permitted to temporarily leave and then re-enter the premises, eg to smoke, shall not be permitted to take drinks or glass containers with them.
16. No rubbish, including bottles, shall be moved, removed or placed in outside areas between 23.00 and 08.00 hours.
17. No deliveries to the premises shall take place between 23.00 and 08.00 hours.
18. 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.

19. There shall be no striptease or nudity, and all persons shall be decently attired at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue licence.
20. 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.
21. A record shall be kept detailing all refused sales of alcohol. The record shall include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the Premises by the police or an authorised officer of the City Council at all times whilst the Premises are open.
22. Children under the age of 14 will not be permitted to remain in the premises after 21:00 hours
23. No noise shall emanate from the Premises nor vibration be transmitted through the structure of the Premises which gives rise to a public nuisance:
24. Loudspeakers shall not be located in the entrance lobby or outside the building of which the Premises form part.
25. Hours for licensable activities and opening may be extended from the end of trade on New Year's Eve to the beginning of trade on New Year's Day.
26. The variation of the Premises Licence 14/03927/LIPN to include the following works:
 - ground floor: minor changes to back -of-house areas
 - installation of counter/till area

will have no effect until the premises have been assessed as satisfactory by the Environmental Health Consultation Team and this condition has been removed from the Licence.

5 NORRIS NEWS, 115 LUPUS STREET, SW1

LICENSING SUB-COMMITTEE No. 1

Thursday 14th May 2015

Membership: Councillor Tim Mitchell (Chairman), Councillor Melvyn Caplan and Councillor Louise Hyams

Legal Adviser: Barry Panto
Policy Adviser: Chris Wroe
Committee Officers: Jonathan Deacon

Relevant Representations: Licensing Inspectorate (Applicant) and Environmental Health.

Present: Mr Gareth Cleary (City Inspector, on behalf of the Licensing Inspectorate),
Mr Anil Drayan (Environmental Health) and Mr Shusilkumar Bhavsar
(owner of Norris News)

**Norris News, 115 Lupus Street, SW1
15/01135/LIREVP**

An application submitted by the Licensing Inspectorate for a review of the premises licence for Norris News in Lupus Street was received on 17 February 2015 on the grounds of the prevention of crime and disorder and the protection of children from harm.

Guidance issued under section 182 of the Licensing Act 2003 (para 11.2) states that at any stage following the grant of a premises licence, a responsible authority, such as the Police or the Environmental Health Service, or any other person who can seek a review, may ask the Licensing Authority to review the premises licence because of a matter arising at the premises in connection with any of the four licensing objectives.

As such, in accordance with section 52(2) of the above-mentioned Act, the Licensing Authority must hold a hearing to consider the application and any relevant representations.

The premises currently benefits from a premises licence (13/05276/LIPVM) that permits:

Sale by retail of alcohol (off sales)

Monday to Saturday: 08:00 to 23:00

Sunday: 10:00 to 22:30

A history of visits, observations and complaints has been provided by the applicant. On 13 November 2014, Customs and Excise seized 886.56 litres of beer and 36 litres of wine from the premises on the basis that no excise duty had been paid on the goods. This is an offence under s170 Customs and Excise Management Act 1979 and s144 Licensing Act 2003.

This incident, in conjunction with other recent historical breaches, leads the applicant to believe that the premises are unable to promote the licensing objectives. The named owner of the business at the time of the visit by Customs and Excise on 13 November 2014 was Mr Shusilkumar Bhavsar. However, the holder of the Premises Licence and Designated Premises Supervisor is Mr Prashant Patel. On 8 December 2014, a letter from Mr Gareth Cleary of the Licensing Inspectorate was sent to Mr

Shusilkumar Bhavsar regarding the Customs and Excise visit and inviting Mr Bhavsar to an interview under caution or to submit a response in writing. On 20 January 2015, similar letters were sent to Mr Prashant Patel. In subsequent emails dated 2 January 2015 and 5 February 2015, Mr Bhavsar accepts liability for the incident. No response has been provided to the letters of Mr Cleary from Mr Patel.

The Environmental Health Service, as a responsible authority, supports the review application on the grounds of the prevention of crime and disorder and the protection of children from harm.

The Sub-Committee initially heard from Mr Cleary who briefly referred to the reasons for the review being submitted, notably that Customs and Excise had visited the premises and had seized the alcohol on the basis that they believed on the balance of probabilities that no excise duty had been paid on the goods. The business owner, Mr Bhavsar, had not produced the invoices to demonstrate that the excise duty had been paid when requested by HMRC. Not paying excise duty was an offence under Section 144 of the Licensing Act 2003. Mr Drayan confirmed that Environmental Health supported the review application.

The Sub-Committee asked Mr Bhavsar to explain how the business operates. Mr Bhavsar replied that he had previously been a travel agent and had bought the business from Mr Patel in February 2014. He had received the stock valuation from Mr Patel but had not received the invoices for the goods. The alcohol that had been confiscated by HMRC in November 2014 had been purchased prior to February 2014 and had a one year expiry period. Mr Bhavsar added that he had not been advised by Mr Patel of unpaid duty. Mr Patel was still the Licence Holder and also the Designated Premises Supervisor for Norris News. He was described by Mr Bhavsar as being at the premises occasionally.

The Sub-Committee asked Mr Cleary about the history of the premises. Mr Cleary stated that there was no history of violence or disorder. The papers did include a test purchase when alcohol had been sold to two fifteen year old Police Cadets in November 2012. Mr Cleary advised Members that there had been discussions between Mr Patel and the Licensing Service regarding Mr Patel standing down as DPS. Mr Bhavsar had removed all the alcohol from the shop. Mr Patel did not run any other premises in Westminster but did operate one in Stamford Hill, Hackney.

Mr Bhavsar confirmed in response to questions from the Sub-Committee that he had not been selling alcohol at the premises since March 2015, he had now obtained his personal licence and that he was the only owner of Norris News. He had expected Mr Patel as a friend to be amenable to the premises licence being transferred to Mr Bhavsar. It was intended that Mr Patel would remain as DPS until the business arrangement was concluded including any transfer of the premises licence. Mr Bhavsar indicated to the Sub-Committee at the hearing that Mr Patel had delayed discussions on a potential transfer of the licence and that he wished this had been done at an earlier stage. It was explained to Mr Bhavsar that it was up to him to submit the transfer application and he was asked whether he had looked to do so and if not, why not. Mr Bhavsar stated that he had been advised in a telephone call with a Council member of staff to wait until after the review application. It was confirmed that no application had been received to date for a transfer of the premises

licence.

Members of the Sub-Committee considered that they had heard no evidence from the current owner to refute what had been stated by HMRC or the Licensing Inspectorate in terms of excise duty not being paid on the goods that had been seized. He appeared to be somewhat naïve in terms of his business relationship with Mr Patel. In any event, however, Mr Patel was the holder of the premises licence and he had made no attempt to respond to or address any of the concerns raised as part of the review application. The Sub-Committee therefore decided to revoke the premises licence.