



CITY OF WESTMINSTER

# MINUTES

## Licensing Sub-Committee (4)

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (4)** Committee held on **Thursday 4th February, 2016**, Rooms 5, 6 & 7 - 17th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6 QP.

**Members Present:** Councillors Jean Paul Floru (Chairman), Jan Prendergast and Murad Gassanly

#### 1 MEMBERSHIP

There were no changes to the membership.

#### 2 DECLARATIONS OF INTEREST

There were no declarations of interests.

#### 3 NEW CAVENDISH CLUB, 44 GREAT CUMBERLAND PLACE, W1

#### LICENSING SUB-COMMITTEE No. 4

*Thursday 4th February 2016*

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Jan Prendergast and Councillor Murad Gassanly

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Tristan Fieldsend

Presenting Officer: Steve Rowe

Relevant Representations: Environmental Health, Marylebone Association and 2 local residents.

Present: Mr Craig Bayliss (Solicitor, Representing the Applicant), Mr Andrew Richardson (Applicant), Mr Dave Nevitt (Environmental Health), Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project, representing Marylebone Association), Michael Bolt (Marylebone Association) and Heather Acton (local resident).

**New Cavendish Club, 44 Great Cumberland Place, W1  
15/11137/LIPV**

<b>1.</b>	<b>Performance of Live Music and Recorded Music</b>	
	<u>Current</u> Basement, Ground and 1 <sup>st</sup> Floor	<u>Proposed</u> To add 1 <sup>st</sup> Floor Terrace
	Amendments to application advised at hearing:  None	
	Decision (including reasons if different from those set out in report):  The Sub-Committee granted the revised application, subject to conditions as set out below (see reasons for decision in Section 4).	
<b>2.</b>	<b>Late Night Refreshment</b>	
	<u>Current</u> Basement, Ground and 1 <sup>st</sup> Floor	<u>Proposed</u> To add 1 <sup>st</sup> Floor Terrace
	Amendments to application advised at hearing:  None	
	Decision (including reasons if different from those set out in report):  The Sub-Committee granted the revised application, subject to conditions as set out below (see reasons for decision in Section 4).	
<b>3.</b>	<b>Sale by Retail of Alcohol</b>	
	<u>Current</u> Basement, Ground and 1 <sup>st</sup> Floor	<u>Proposed</u> To add 1 <sup>st</sup> Floor Terrace
	Amendments to application advised at hearing:  None	
	Decision (including reasons if different from those set out in report):  The Sub-Committee granted the revised application, subject to conditions as set out below (see reasons for decision in Section 4).	

<b>4.</b>	<b>Opening Hours</b>				
	<table border="0" style="width: 100%;"> <tr> <td style="text-align: center; width: 50%;"><u>Current</u></td> <td style="text-align: center; width: 50%;"><u>Proposed</u></td> </tr> <tr> <td style="text-align: center;">Basement, Ground and 1<sup>st</sup> Floor</td> <td style="text-align: center;">To add 1<sup>st</sup> Floor Terrace</td> </tr> </table>	<u>Current</u>	<u>Proposed</u>	Basement, Ground and 1 <sup>st</sup> Floor	To add 1 <sup>st</sup> Floor Terrace
<u>Current</u>	<u>Proposed</u>				
Basement, Ground and 1 <sup>st</sup> Floor	To add 1 <sup>st</sup> Floor Terrace				
	<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 considered an application by Quintillion Restaurants Ltd for a variation of a premises licence in respect of the New Cavendish Club.</p> <p>The Licensing Officer provided an outline of the application to the Sub-Committee.</p> <p>All parties were invited to make representations to the Sub-Committee in relation to the application. The parties responded to members' questions and were given an opportunity to ask questions of each other.</p> <p>The Sub-Committee's Legal Advisor clarified the position of Heather Acton who was objecting to the application as a local resident and not in her capacity as a councillor. Heather Acton declared that she had a disclosable pecuniary interest in the matter as she lived in the property that was situated immediately next to the premises concerned. As the Sub-Committee would retire to make its decision the applicant confirmed that they were satisfied for Heather Acton to remain in the meeting during the public debate so that she could give evidence in support of her representation and answer questions. This was also permitted by Standing Order 69.</p> <p>Mr Bayliss, representing the applicant, explained that the building was currently derelict and Quintillion Restaurants Ltd wanted to invest significant sums of money into renovating it and turning it into a private members club with no access to the general public.</p> <p>The primary reason for requesting a variation of a premises licence was to clarify an error on Condition 18 which should have referred to the first and not ground floor terrace. The applicant also proposed two extra conditions requiring the first floor terrace to be vacated by 22:00 with the sale of alcohol on the terrace by waiter waitress service only. The Sub-Committee noted that these conditions would introduce restrictions on the use of the terrace which currently did not exist.</p> <p>Environmental Health raised concerns over the proximity of residents to the application as it was an area of high residential use. Several residences</p>				

overlooked the terrace and these properties would be affected by the extra noise generated by patrons using the terrace. Further clarity was requested regarding the number of patrons having access to the terrace, designated smoking areas, noise mitigation measures and the operational activities involved with cleaning the terrace.

Mr Bayliss confirmed that it was being proposed by the applicant to utilise a variety of noise prevention measures to address key resident concerns. These included erecting substantial screening, noise absorbent materials, planting plus the addition of proposed extra conditions. Smoking would also be restricted to a designated ground floor area and it was expected that the cleaning of the terrace would be completed by 22:15.

Mr Brown, from Westminster Citizens Advice Bureau and representing the Marylebone Association, advised that the residents' main concerns were over the increased intensity of use and the associated problems with noise and smoking.

Mr Bolt advised that the Marylebone Association now amended its original representation and advised that it rejected the application in its entirety due to the high residential intensity of the area and the effect the application would have on residents.

Heather Acton confirmed that discussions had taken place with the applicant over concerns the impact of the application would have on residents, of particular concern was the extra noise generated by patrons using the terrace. Heather Acton confirmed that the renovation of the building was welcomed however requested that if the application be granted conditions limiting the use of the terrace be imposed.

Mr Bayliss highlighted the applicant's successful track record in running members only clubs which contained open terrace areas and the steps undertaken to ensure any impact on local residents was minimised to an acceptable level. Clarification that the smoking area would be located on the ground floor, noise abatement measures would be introduced and ensuring the terrace was vacated by 22:00 provided for a suitable compromise.

The Sub-Committee considered the application and considered that as the terrace was in an area of high residential use conditions limiting the use of the terrace to Fridays and Saturdays, requiring it to be vacated by 7pm and only permitting ten people, excluding staff, from using the terrace at any one time would limit the impact on nearby residents. It was noted that Heather Acton had conceded that it might be acceptable to use the terrace up until 22.00 on Friday and Saturday but the decision was taken to reflect the concern of all local residents who might be affected. The terrace was situated in the middle of a residential block and was not considered suitable for licensable activities at all. Consumption of alcohol on that terrace would also be likely to cause a nuisance to local residents but it was decided to make a small concession for consumption on Friday and Saturday until 7 pm.

The Sub-Committee therefore agreed the variation, subject to the modification

<p>of Condition 18 to read “Licensable activities are not permitted on any external terrace” and the introduction of the following additional conditions:</p> <ul style="list-style-type: none"> <li>i) Any external terrace areas may only be used for the consumption of alcohol on Fridays and Saturdays;</li> <li>ii) Any external terrace areas shall be vacated by 7pm save for persons using the area to smoke;</li> <li>iii) No more than ten persons, excluding staff, shall be permitted on the first floor terrace at any one time;</li> <li>iv) There shall be no access to any external terrace before 10:00 Monday to Sunday; and</li> <li>v) Model Condition 82.</li> </ul>	
<p><b>5. Conditions Being Varied, Added or Removed</b></p>	
<p>1. Condition 18 of the Premises Licence</p>	<p>Remove (it provides that licensable activities are not permitted on the ground floor terrace and the applicant states that such a terrace does not exist).</p>
<p>2. To add a new condition</p>	<p>The 1<sup>st</sup> Floor Terrace shall be vacated by 22:00</p>
<p>3. To add a new condition</p>	<p>The supply of alcohol on the terrace shall be by waiter waitress service only</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>The Sub-Committee granted the revised application, subject to conditions as set out below (see reasons for decision in Section 4). Condition 18 was amended rather than being removed. It was decided that the first floor terrace had to be vacated by 7pm save for persons using the area to smoke. It was agreed that the supply of alcohol for consumption on the terrace had to be by waiter or waitress service only.</p>	

<p><b>Conditions attached to the Licence</b></p>	
<p><b><u>Mandatory Conditions</u></b></p>	
<p>1.</p>	<p>No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.</p>
<p>2.</p>	<p>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.</p>

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 Attached After a Hearing by the Licensing Authority**

9. Licensable activities may not be provided other than to:

- I. Members (and their bone fide guests) of the New Cavendish Club as defined in the New Cavendish Club Rules. Any changes to these rules must be notified to the Police and Licensing Authority.
- II. Persons attending pre-booked private events, a record of which will be kept on site for a minimum period of 31 days after the event, and made available on request to authorised officers from the Police and Council. The record shall include the details of the organiser, type of event, number of people, timings and date.



10. Regulated Entertainment shall only be permitted in the areas listed in condition 11 of this licence.
11. The number of persons permitted on the premises at any one time (excluding staff) shall not exceed 320 persons (excluding Staff). With no more than the number listed below in each room;  
  
The Portman Room - 35 persons  
The Bar (including Lounge) - 60 persons  
The Library - 25 persons  
Silence Room - 10 persons  
The Cumberland Room - 60 persons  
Sample Suite - 40 persons  
The Centenary Suite - 90 persons
12. Arrangements will be made to ensure that any capacity limit set for the premises can be properly monitored. Information regarding the capacity should be given to an authorised officer on request.
13. Substantial food and non-intoxicating beverages shall be available throughout the permitted hours in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
14. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
15. With the exception of residents and their bona fide guests, no alcohol shall be consumed more than 30 minutes after the permitted hours for the supply of alcohol.
16. The provision of alcohol shall be ancillary to food between 07:00 and 10:00 hours for non-residents.
17. Licensable activities are not permitted on any external terrace.
18. No drinks shall be consumed outside the premises nor glasses/bottles removed from the premises by patrons when leaving, save for off sales in sealed containers, and patrons using the terrace.
19. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
20. All windows and external doors to areas where regulated entertainment is permitted shall be kept closed at any time when regulated entertainment takes place, except for the immediate access and egress of persons.
21. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
22. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
23. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.

24. No deliveries shall be made to the premises between 23:00 and 08:00 hours.
25. The licence holder shall enter into an agreement with a hackney carriage and/or private carriage firm to provide transport for customers, with contact numbers made readily available to customers who will be encouraged to use such services.
26. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
27. No rubbish, including bottles, shall be moved, removed or placed in outside areas between 2300 hours and 0800 hours.
28. The pavement from the building line to the kerb edge immediately outside the premises, including gutter / channel at its junction with the kerb edge, shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.
29. A sound limiting device located in a separate and remote lockable cabinet from the volume control shall be fitted to any musical amplification system and set at a level determined by and to the satisfaction of an authorised officer of the Environmental Health Service 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 officer from the Environmental Health Service. The keys securing the noise limiter cabinet shall be held by the licence holder or authorised manager only, and shall not be accessed by any other person. The limiter shall not be altered without prior agreement with the Environmental Health Service.
30. The approved arrangements at the premises, including means of escape provisions, emergency warning and emergency equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.
31. 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.
32. All exit doors shall be available at all material times without the use of a key, code, card or similar means.
33. All emergency doors will be maintained effectively self-closing, and not held open other than by an approved device.
34. The edge of the treads of steps and stairways shall be maintained so as to be conspicuous.
35. Only hangings, curtains, upholstery and temporary decorations, complying with the relevant British (or where appropriate European) Standard shall be used. Where necessary these shall be periodically tested for flame resistance and re-treated as necessary.
36. Curtains and hangings shall be arranged so as not to obstruct safety signs other emergency equipment.
37. Any special effects or mechanical installations shall be arranged and stored so as to minimise any risk to the safety of those using the premises. The following special

effects will only be used on 7 days prior notice being given to Westminster City Council Consultation Team where consent has not previously been given:

- a. dry ice and cryogenic fog;
- b. smoke machines and fog generators;
- c. pyrotechnics including fire works;
- d. firearms;
- e. lasers;
- f. explosives and highly flammable substances;
- g. real flame;
- h. strobe lighting.

38. No person shall give at the premises any exhibition, demonstration or performance of hypnotism, mesmerism or any similar act or process which produces or is intended to produce in any other person any form of induced sleep or trance in which susceptibility of the mind of that person to suggestion or direction is increased or intended to be increased.

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

39. 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 regards crime and disorder
- (d) any incidents of disorder
- (e) seizures of drugs or offensive weapons
- (f) any refusal of the sale of alcohol
- (g) any visit by a relevant authority or emergency service.

40. The certificates listed below shall be submitted to Westminster City Council Consultation Team upon written request:

- a. Any emergency lighting battery or system
- b. Any electrical installation
- c. Any fire alarm system.

41. A log shall be kept detailing all refused sales of alcohol. The log should include the date and time of the refused sale and the name of the member of staff who refused the sale. The log 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 is open.

42. The premises shall install and maintain a comprehensive 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.

43. 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.

44. No entertainment, performance, service, or exhibition involving nudity or sexual stimulation which would come within the definition of a sex establishment in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Greater London Council (General Powers) Act 1986 (whether or not locally adopted), shall be provided.
45. There shall be no striptease or nudity, and all persons shall be decently attired at all times, except in the guest bedrooms.
46. A proof of age scheme, such as 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. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents in the vicinity.
48. As soon as possible, and in any event within 1 month from the grant of this licence, the premises shall join the local pubwatch, clubwatch or other local crime reduction scheme approved by the police, and local radio scheme if available.
49. The hours for licensable activities may be extended from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.
50. Any external terrace areas may only be used for the consumption of alcohol on Fridays and Saturdays;
51. The supply of alcohol for consumption on the terrace must be by waiter or waitress service only;
52. Any external terrace areas shall be vacated by 7pm save for persons using the area to smoke;
53. No more than ten persons, excluding staff, shall be permitted on the first floor terrace at any one time;
54. There shall be no access to any external terrace before 10:00 Monday to Sunday;
55. The variation of this premises licence (14/05076/LIPT) will have no effect 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.

**4 SHACKFUYU, BASEMENT AND GROUND FLOOR, 14 OLD COMPTON STREET, W1**

**LICENSING SUB-COMMITTEE No. 4**  
*Thursday 4th February 2016*

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Jan Prendergast and Councillor Murad Gassanly

Legal Adviser: Barry Panto  
 Policy Adviser: Chris Wroe  
 Committee Officer: Tristan Fieldsend  
 Presenting Officer: Steve Rowe

Relevant Representations: Environmental Health and 1 local resident.

Present: Mr Jack Spiegler (Solicitor, Representing the Applicant), Ms Dinah Meister (Applicant) and Mr Ian Watson (Environmental Health).

<b>Shackfuyu, Basement and Ground Floor, 14 Old Compton Street, London W1 15/11692/LIPV</b>					
<b>1.</b>	<b>Playing of Recorded Music - Unrestricted</b>				
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<u>Current</u>	<u>Proposed</u>				
Ground Floor and Basement	Increase in licensable area in the Basement. Change of layout and introduction of bar on ground floor.				
	Amendments to application advised at hearing: None				
	Decision (including reasons if different from those set out in report):  The Sub-Committee granted the variation.				
<b>2.</b>	<b>Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit</b>				
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	Amendments to application advised at hearing:				
	None				
	Decision (including reasons if different from those set out in report):  The Sub-Committee granted the variation.				

<b>3.</b>	<b>Late Night Refreshment</b>				
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	Amendments to application advised at hearing:				
	None				
	Decision (including reasons if different from those set out in report):				
	The Sub-Committee granted the variation.				
<b>4.</b>	<b>Sales by Retail of Alcohol</b>				
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	Amendments to application advised at hearing:				
	None				
	Decision (including reasons if different from those set out in report):				
	The Sub-Committee granted the variation.				
<b>5.</b>	<b>Opening Hours</b>				
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	Amendments to application advised at hearing:				
	None				

	Decision (including reasons if different from those set out in report):
	The Sub-Committee granted the variation.
<b>6.</b>	<b>Layout Alteration</b>
	<p>The application proposes changes to the premises layout, including:</p> <p><b>Basement:</b></p> <ol style="list-style-type: none"> <li>1. Replacement of bar area with dining room;</li> <li>2. General improvements to back-of-house areas and kitchen.</li> </ol> <p><b>Ground Floor:</b></p> <ol style="list-style-type: none"> <li>1. Introducing of dining counter and bar (previously located in basement).</li> <li>2. Changes to seating layout.</li> <li>3. Removal of pizza oven.</li> </ol> <p>The primary proposal relates to the relocation of the basement bar to the ground floor as a new dining counter and bar.</p>
	Amendments to application advised at hearing:
	None
	Decision (including reasons if different from those set out in report):
	<p>The Licensing Officer provided an outline of the application to the Sub-Committee for a variation of a premises licence. The premises would continue to operate as a Shackfuyu restaurant and the application did not involve any changes to the licensable activities or the permitted hours or the conditions.</p> <p>Mr Spiegler, the applicant's representative, explained that the use of the dining counter and bar was primarily for dining; however patrons would also be able to use it for drinking alcohol whilst waiting to be seated at their table. The sale and consumption of alcohol had to be ancillary to a table meal and had to be by waiter or waitress service. No change was being proposed to the capacity in the basement.</p> <p>Environmental Health confirmed that following an inspection of the premises they had no public safety concerns.</p> <p>The Sub-Committee considered that as Environmental Health had visited the site and were satisfied that there no public safety issues the variation of a premises licence be granted. In reaching this decision, the members had regard to the one objection that had been received and noted the response to that objection from Mr Spiegler which confirmed that the premises would not be used as a bar.</p>

## Conditions attached to the Licence

### Mandatory Conditions

2. 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 Related to the Sale of Alcohol**

9. Alcohol may be sold or supplied:
- (a) On weekdays, other than Christmas Day, Good Friday or New Year's Eve from 10:00 to 00:00.
  - (b) On Sundays, other than Christmas Day or New Year's Eve, and on Good Friday: 12:00 to 23:30.
  - (c) On Christmas Day: 12:00 to 22:30;
  - (d) On New Year's Eve, except on a Sunday, 10:00 to 23:00.
  - (e) On New Year's Eve on a Sunday, 12:00 to 22:30.
  - (f) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).

NOTE - The above restrictions do not prohibit:

- (a) during the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
- (b) during the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking table meals there if the alcohol was supplied for consumption as ancillary to the meals;
- (c) the sale or supply of alcohol to or the consumption of alcohol by any person residing in the licensed premises;
- (d) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
- (e) the sale of alcohol to a trader or registered club for the purposes of the trade or club;
- (f) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;
- (g) the taking of alcohol from the premises by a person residing there;
- (h) the supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied;
- (i) the supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

In this condition, any reference to a person residing in the premises shall be construed as including a person not residing there but carrying on or in charge of the business on the premises.

10. Alcohol shall not be sold or supplied unless the premises have been structurally and bona fide used, or intended to be used, for the purposes of habitually providing the customary main meal at midday or in the evening, or both, for the accommodation of persons frequenting the premises.

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

**Conditions Consistent with the Operating Schedule**

12. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
13. The supply of alcohol shall be by waiter or waitress service only.
14. 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.
15. The supply of alcohol at the premises shall only be to a person seated taking a table meal there and for consumption by such a person as ancillary to their meal.
16. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
17. All tables and chairs shall be removed from the outside area by 23.00 each day.

**Conditions Attached after a Hearing by the Licensing Authority**

18. Draught sales of alcohol shall be limited to a single Japanese beer.
19. Customers waiting for a table will be asked to wait in the bar area.
20. 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.
21. All extractor fans shall be switched off at 23:00 hours.
22. The bar area shall only be used as a waiting area for customers waiting to be seated in the restaurant. Alcohol shall only be served to customers in this area who will be bona fide taking a substantial table meal in the restaurant.
23. The bar is not allowed to have a name separate from the restaurant name.
24. The bar is only for customers waiting for their tables and not to be used as a separate space (e.g. not by customers not eating on the premises).
25. Greek Court shall not be used for storage, deliveries or refuse and the exit door to Greek Court shall not be used except in an emergency.
26. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry

and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.

27. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when request.
28. 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 concerning crime and disorder
  - (d) any incidents of disorder
  - (e) any faults in the CCTV system
  - (f) any visit by a relevant authority or emergency service
29. The number of persons accommodated at any one time in the Basement shall not exceed 25 persons (excluding staff). The capacities are based on the drawings reference number 01/B-05.03.15
30. There shall be no takeaway of food or drink at any time.

## **5 WEST 9 FOOD & STORES, BASEMENT AND GROUND FLOOR, 350 HARROW ROAD, W9**

LICENSING SUB-COMMITTEE No. 4  
Thursday 4th February 2016

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Jan Prendergast and Councillor Murad Gassanly

Legal Adviser: Barry Panto  
Policy Adviser: Chris Wroe  
Committee Officer: Tristan Fieldsend  
Presenting Officer: Mr Ola Owojori

Representations: None

Present: Mr Jon Payne (Solicitor, Representing the Licensee), Mr N. Anadankumariah (Licensee), Mr N. Muhunthakumar (Designated Premises

Supervisor), Ms Maria Johnson (Licensing Authority) and Mr Paul Owers (Her Majesty's Revenue and Customs).

West 9 Food & Stores, Basement and Ground Floor, 350 Harrow Road, London  
15/01317/LIREVP

**West 9 Food & Stores, Basement and Ground Floor, 350 Harrow Road, London  
15/01317/LIREVP**

An application by the Licensing Authority for a review of a premises licence was submitted on 24 February 2015 on the grounds of Prevention of Crime and Disorder. The application was based on an operation carried out by HMRC on 18 September 2014. A substantial quantity of alcohol was seized from the premises pursuant to section 139 of the Customs and Excise Management Act 1979 when receipts were not produced to show that the correct duty had been paid. No appeal had been lodged against the seizure of the alcohol but the licensee had submitted numerous invoices and receipts to the licensing authority.

**Decision:**

The Sub-Committee carefully considered all of the material received from the parties involved. The Sub-Committee also heard submissions and evidence at the hearing prior to Members retiring to reach a decision.

The Chairman confirmed that the review related to an operation by Her Majesty's Revenue & Customs (HMRC) where a substantial quantity of alcohol had been seized as no Excise Duty had appeared to have been paid on the goods when receipts could not be provided at that time.

Mr Owers of HMRC informed the Sub-Committee that there were different elements to the seizure. The first one involved the seizure of spirits from the premises. A number of bottles seized were 375ml in size which was not a UK approved size. It was confirmed that the approved size for sale in the UK was 350ml. Bottles of whiskey had also been seized as it was discovered their rear labels were counterfeit. Bottles of vodka had also been seized with counterfeit tax stamps. The members were also made aware that another West 9 Store had also been subjected to an operation and was discovered to be in possession of a roll of counterfeit labels. It was noted that the fine for possession of one counterfeit label was £250.

Another element to the application centred on the seizure of beers and wine from the premises as invoices relating to their procurement could not be produced at the time. Mr Owers confirmed that approximately three hours later invoices for the purchase of the alcohol had been faxed to the HMRC office. It was explained that these had not been accepted as one invoice related to a different West 9 Store, which was a separate legal entity, and the remaining invoices were for alcohol purchased using day passes. Mr Owers informed the Sub-Committee that the purchasing of alcohol using a day pass was highly unusual as an off licence would be expected to have accounts with alcohol suppliers.

The applicant circulated to the Sub-Committee original copies of the invoices relating to the purchasing of the alcohol.

In response to a question from the Sub-Committee it was confirmed that the operation had taken place on 18 September 2014 and not 19 September 2014 as stated in the report.

Mr Payne, representing the licensee, stated that the inspection had taken place in September 2014 so had taken place a significant period of time ago. During that time Mr Payne had received an email from the Licensing Authority explaining that the case was being withdrawn as no evidence had been produced by HMRC. The Licensing Officer confirmed the email had been sent, however the review had been proceeded with on the basis of legal advice that once a review had commenced it could not be withdrawn. The Sub-Committee agreed that the meeting should proceed.

Detailed discussions between all the parties took place regarding whether HMRC received electronic copies of the invoices relating to the purchase of the seized alcohol. Mr Payne informed the Sub-Committee that the bundle of invoices had been sent electronically on a number of occasions to the Licensing Authority and HMRC. An email from a Licensing Officer on 4 June 2015 confirmed that the bundle had been received and the documents downloaded. Emails containing the invoices had also been sent to HMRC in various different formats along with a CD sent on 1 June 2015 via first class post. Mr Payne explained that significant efforts had been made to send the bundle of invoices to both the Licensing Authority and HMRC. The Licensing Officer stated that the email containing the invoices sent by the licensee had been received. However, although some of the documents could be accessed not all of them could be downloaded. Mr Payne stated that as he had received an email confirming they had been downloaded, posted a CD containing the invoices to HMRC and received notification from the Licensing Authority that the application was being withdrawn it had been assumed there had been no issues forwarding on the emails. Mr Payne did confirm that it was a difficult situation to cross check the invoices with the alcohol seized as HMRC had only stated the amounts of alcohol seized and not specifically which brands.

Mr Payne advised that an extra condition may be added to the licence that it be a requirement that invoices relating to the purchase of alcoholic products be kept on the premises for a period of twelve months. This would provide a more rigorous record keeping system and provide improved clarity on which suppliers were selling illegal alcohol. In response to a question Mr Payne stated that it was very difficult to spot counterfeit labels or different measurement sizes due to the number of alcoholic products on the market. The alcohol had been purchased in good faith but it was impossible to identify where the alcohol had come from. Further questions clarified that the West 9 stores were separate legal entities and the roll of counterfeit labels had been found at a different premises.

As a substantial amount of alcohol had been seized during the inspection the Sub-Committee was interested in why the licensee had not submitted an appeal for its return. Mr Payne explained that it was a difficult process for the licence holder to prove duty had been paid on alcohol purchased. The cost of submitting an appeal

was also seen as prohibitive and a business decision had been made in not submitting an appeal. Mr Owers responded that there were two different appeal methods. The first one was a Notice of Claim which needed to be submitted within a calendar month and went before the Magistrates Court. The second was a Restoration Request and depending on the circumstances goods could be returned within 45 days at no cost to the licence holder.

Mr Payne stated that the licensee had bought the alcohol in good faith and invoices could be provided for the purchasing of the alcohol. Further inspections from HRMC had revealed no issues and Trading Standards had also visited the premises on 18 September 2014 and no counterfeit goods had been identified. In order to put in place processes to prevent such an occurrence happening again it was suggested an additional condition be attached to the licence requiring the licence holder to retain invoices on the premises relating to the purchasing of alcohol for a period of twelve months.

It was noted that the review first came before the Sub-Committee on 30 April 2015 and had been deferred pending further information. Uncertainty over several matters including whether invoices for goods had been circulated to the relevant parties, what goods the invoices related to and whether the Licensing Authority had withdrawn its application had all resulted in delays in bringing the review back to the Sub-Committee. The Sub-Committee expressed deep concern over the situation but based on the balance of probabilities and due to the lack of clarity with respect to the application decided not to revoke the licence. In order to ensure there was a greater clarity with regards to record keeping an additional condition was applied requiring the licensee to keep all original invoices relating to alcohol, on the premises, for a period of twelve months.

The Meeting ended at 12.48 pm

**CHAIRMAN:** \_\_\_\_\_

**DATE** \_\_\_\_\_