



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (3)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (3)** Committee held on **Thursday 19th May, 2016**, Rooms 5, 6 & 7 - 17th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6 QP.

Members Present: Councillors Melvyn Caplan (Chairman), Nick Evans and Rita Begum

1 MEMBERSHIP

There were no changes to the Membership.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 CHUTNEY MARY, 72-73 ST JAMES'S STREET, SW1

LICENSING SUB-COMMITTEE No. 3

Thursday 19th May 2016

Membership: Councillor Melvyn Caplan (Chairman), Councillor Rita Begum and Councillor Nick Evans

Legal Adviser: Horatio Chance

Policy Adviser: Chris Wroe

Committee Officer: Tristan Fieldsend

Presenting Officer: Heidi Lawrence

Relevant Representations: Environmental Health and 11 local residents and the St James's Conservation Trust.

Present: Mr Craig Baylis (Solicitor, Representing the Applicant), Mr Ranjit Mathrani (Applicant), Mr Ian Watson (Environmental Health), Mr Gary Grant (Counsel, representing Mr Nicholas Turner) and Mr Nicholas Turner (local resident).

Chutney Mary, 72-73 St James's Street, London, SW1A 1PH 16/01879/LIPV	
1.	Condition proposed to be varied so as to permit the sale of alcohol until 20:00 without food on the premises
	Proposed Variation
	<p>Notwithstanding condition 19, alcohol may be supplied to customers without food provided that</p> <ul style="list-style-type: none"> a) Such supply shall only be to persons seated and served by waiter/waitress service. b) Such supply shall cease at 20:00. c) Such supply shall be limited to 30 customers to be seated in the area hatched black and shown on plan number 3346/LIC2.22 <p>The availability of alcohol without food shall not be promoted or advertised otherwise than on menus and price lists within the premises.</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 considered an application by MW Eat Limited for a variation of a premises licence in respect of Chutney Mary.</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>Mr Baylis, representing the applicant, informed the Sub-Committee that the current owner was an experienced restaurateur and had taken over the premises in September 2014. Previously, the premises had operated as a restaurant with a bar element. The Sub-Committee noted that that the applicant did not want the premises to become a bar but would remain as a restaurant where patrons currently spent £70-80 per head. The proposed bar area would have tables and chairs, there would be no vertical drinking and it would be table service only.</p> <p>It was recognised and accepted by the applicant that breaches of the licence had occurred in the past as alcohol had been served without a substantial meal. It was submitted that this was due to a misunderstanding on the part of the applicant in terms of his understanding of the licence and once the breaches had been discovered constructive talks had taken place between the applicant, Environmental Health and the Licensing Inspectorate to ensure it wouldn't</p>

happen again. In order to comply with the conditions a menu had been introduced to the area containing the bar requiring a minimum spend of £7 on food.

The Sub-Committee was advised that it was not a problem premises and there was no evidence allowing alcohol to be served without food until 20:00 would cause late night disruption. The Sub-Committee was advised that residents' concerns over noise nuisance had been investigated and subsequently new fans had been installed. Issues surrounding staff smoking had also been resolved and there was an on-going dialogue with residents to ensure any concerns they had in this respect were addressed.

In response to a question Mr Bayliss confirmed that although conditions on the licence had been breached it had not resulted in any potential difficulties or problems and a minimum spend on food had been subsequently introduced. If the variation was granted the Sub-Committee was informed that in order to ensure there was no alcohol served after 20:00 without food in the bar area, waiting staff would be required to inform customers by 19:30, at the latest, of these requirements.

Mr Mathrani explained that he owned eleven restaurants, all of which were fully compliant with their licences. The fact Mary Chutney had breached its conditions was a source of embarrassment and it had arisen as the licence had not been scrutinised closely enough. It was submitted that once the error had been realised a minimum spend on food had been introduced.

A question was raised regarding the noise complaints relating to glass and bottle collections received by the Council's Noise Team. Mr Mathrani confirmed that very strict orders had been issued to staff to ensure they adhered to the premises noise policy. Steps had been taken to prevent such instances occurring again, however human mistakes were sometimes made and immediate action was taken when they were. Mr Mathrani explained that the staff were very sensitive to residents' needs.

During the course of the discussion the Licensing Policy Adviser provided clarification on Policy 2.4.21 from the City Council's Statement of Licensing Policy ("SLP") with regards to this particular application. It was explained that it was not entirely relevant to the application as it dealt with occasions where a premises wanted to sell alcohol ancillary to food within a Cumulative Impact Area. Where the sale was not likely to add to the cumulative impact, in the Council's view, the presumption against awarding the licence could be removed. The Sub-Committee was advised that this part of the policy was not directly relevant to the application.

Environmental Health advised the Sub-Committee that the premises was located directly below a residential apartment block and noise and odour complaints had been received. In relation to the noise report produced by the residents it had been assessed by the Council's technical noise team and it concluded there was likely to be a noise nuisance from the plant equipment. With regards to the odour complaints these would require further investigation. It was noted that the applicant had recently upgraded the fans to minimise these issues.

Environmental Health noted that the conditions on the licence had been breached and the bar area located in the premises would be a prominent feature. The Sub-Committee was advised that the current licence did not prevent customers taking drinks outside the premises and if it was minded to grant the application it may be appropriate to impose Model Condition 57, stopping patrons taking drinks outside.

Mr Gary Grant, representing a local resident Mr Nicholas Turner and 73 St James's Street RTM Company Limited, addressed the Sub-Committee. He informed the members that the residents had no issue with restaurants operating at the premises subject to them not abusing their position or operating the business without care to residents. Previously there had been very few complaints regarding previous operators on the site. However, since Chutney Mary had been operating at the premises more complaints had been made since September 2014 than had been received in the previous forty years. These complaints centred on odours, noise from rubbish collection and noise created by staff members. It was explained that these issues were all relevant as the Sub-Committee was being asked to liberalise the premises licence by allowing the applicant to sell alcohol without food until 20:00. As such they needed to be certain they had confidence in the operator to promote the licensing objectives. The operator had admitted technical breaches of the licence conditions in the previous nine months had occurred and the Sub-Committee had to decide whether this constituted good management and promoted the licensing objectives.

Attention was drawn to a previous application on the premises which was refused in December 2006 as the location was a highly residential area. It was explained that Policy 2.4.21 of the SLP was not relevant as the premises was not located in a Cumulative Impact Area. The application had to be judged on its merits and introducing a bar area would involve a greater number of customers drinking alcohol which would have the potential to cause increased noise disturbance to residents.

The suggestion that an experienced restaurateur, such as the applicant, would fail to properly scrutinise the licence was not accurate. The applicant must have been aware of the alcohol conditions attached to the licence which included alcohol being ancillary to food. To deny they breached the conditions intentionally was misleading and residents were rightly concerned as they had bought alcohol on the premises without being served food on three separate occasions. It was a fact that they had breached the conditions on numerous occasions and they were now asking for further concessions. The residents had no confidence that the applicant could operate the business in line with the conditions and the licensing objectives and requested that the application be refused.

Mr Craig Baylis highlighted that this was a moderate application. Breaches of the conditions had occurred but these issues had subsequently been resolved following discussions with Environmental Health. It was confirmed that the £7 minimum charge for food had been introduced once the breaches had been identified.

In response to a question over why the Sub-Committee should have enough confidence in the operator to accept the variation in the premises licence Mr Baylis explained that the applicant had never abused the licence. The vast majority of customers at the restaurant dined at the restaurant and paid an average of £70 per meal. It was explained that the bar area was a minor additional feature and there were no plans to turn the premises solely into a bar. Only minor breaches to the licence had occurred and these had not caused any failures to the licensing objectives.

Mr Mathrani stated that he ran eleven restaurants and unfortunately this premises had accidentally breached its conditions. The Sub-Committee could have confidence in the operation as he had managed restaurants for over twenty-five years and during this time had maintained good relationships with the licensing authorities. It was explained that the total income derived from alcohol sales at the premises was low but granting the variation would allow them to offer an extra facility to residents.

Mr Nicholas Turner, a local resident, stated that since Chutney Mary had been in operation numerous issues regarding noise and odours had arisen. Mr Turner advised the Sub-Committee that several unsuccessful efforts had been made to engage with the operator and discussions had only taken place when legal processes had been initiated.

Mr Mathrani informed the Sub-Committee that he did not accept the residents' comments as he had regularly communicated with them regarding the acoustics of the restaurant and the installation of the new fans. Mr Mathrani had met Mr Turner on several occasions and had responded and engaged with residents on many different levels.

The Sub-Committee was of the opinion that the application to vary the premises licence and permit the sale of alcohol for consumption without food on the premises until 20:00 was a fundamental change to the use of the premises. It was recognised that whilst there were restrictions to the bar area, including service until 20:00 and a maximum capacity of thirty seated customers, the premises was nonetheless, located in a highly residential area. The Sub-Committee expressed concern that this had the potential to increase noise and disturbance for local residents'.

It was expected by the Sub-Committee that every licenced premises should be well managed and it was imperative that there was confidence in operators upholding the licensing objectives and their licence conditions. Due to the recurring breaches of the existing conditions of the licence, as evidenced by credible evidence supplied by local residents and as admitted by the applicant in the oral submissions presented,, the Sub-Committee expressed the view that it did not have confidence in the current management being able to promote the licensing objectives. Based on the evidence it was felt that attaching further conditions at this stage to the licence would be inappropriate as the applicant was struggling to uphold the current conditions and there was no guarantee that any additional conditions the Sub-Committee might have considered imposing would in fact be complied with.

The Sub-Committee stated that for it to reconsider its decision the applicant would have to demonstrate a significant period of compliance with the conditions on the licence. Improved engagement with residents was also required in order to resolve any outstanding noise and odour issues.

Due to the reasons stated above the Sub-Committee did not have confidence that the variation to the premises licence would promote the licensing objectives and therefore agreed that the application should be refused.

With the agreement of all parties the Sub-Committee modified the existing conditions as there were a number of errors and duplications on the existing licence. The following conditions were amended or removed to update and avoid duplication on the licence:

- Removal of Condition 15 from the premises licence;
- Removal of Condition 16 from the premises licence;
- Removal of Condition 17 from the premises licence;
- Removal of Condition 18 from the premises licence;
- Condition 11 be amended to read “The number of persons permitted in the premises at any one time (excluding staff) shall not exceed: Overall capacity 150 persons
Basement Private Room 1-40
Basement Private Room 2 – 20”;
- Removal of Condition 26 from the premises licence; and
- Condition 19 be amended to delete the following sentence
“Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal”.

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 subparagraph 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.

Annex 2 – Conditions consistent with the operating Schedule

9. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.

10. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.

11. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed: Overall capacity 150 persons

- Basement Private Room 1-40
- Basement Private Room 2 – 20

12. 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 storage arrangements by close of business.

13. No waste or recyclable materials, including bottles, shall be moved, removed or placed in outside area between 23:00 hours and 07:00 hours the following day.

14. 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 driving licence, passport or proof of age card with the PASS hologram.

15. The premises shall only operate as a restaurant (i) in which customers are shown to their table, (ii) where the supply of alcohol is by waiter or waitress service only, (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery, (iv) which do not provide any take away service of food or drink for immediate consumption, (v) which do not provide any take away service of food or drink after 23:00, and (vi) where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals. Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.

Conditions Attached After a Hearing by the Licensing Authority

16. The premises will maintain a comprehensive CCTV system that ensures all areas of the licensed premises are monitored including all entry and exit points, and the street environment and which enable frontal identification in any light condition. All cameras shall continually record whilst the premises are open to the public and the video recordings shall be kept available for a minimum of 31 days with time and date stamping. Tape recordings shall be made available to an authorised officer or a police officer with facilities for viewing. The recordings for the preceding two days shall be made available immediately on request. Recordings outside this period shall be made available on 24 hours notice. (Subject to the Data Protection Act 1998).

17. The supply of alcohol shall be ancillary to food.

18. Suitable beverages other than alcohol (including drinking water) shall be available during the permitted hours.

19. All external doors shall be kept closed after 21:00 except for immediate access and egress.

20. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.

4 BASEMENT AND GROUND FLOOR, 115 WESTBOURNE GROVE, W2

LICENSING SUB-COMMITTEE No. 3

Thursday 19th May 2016

Membership: Councillor Melvyn Caplan (Chairman), Councillor Rita Begum and Councillor Nick Evans

Legal Adviser: Horatio Chance

Policy Adviser: Chris Wroe

Committee Officer: Tristan Fieldsend

**Basement And Ground Floor, 115 Westbourne Grove, W2
16/01914/LIPN**

The application was Granted under Delegated Authority as all representations had been withdrawn.