



CITY OF WESTMINSTER

# MINUTES

## Licensing Sub-Committee (2)

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (2)** held on **Thursday 30th June, 2016**, Rooms 5, 6 & 7 - 17th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6 QP.

**Members Present:** Councillors Nickie Aiken (Chairman), Jan Prendergast and Aziz Toki.

#### 1 MEMBERSHIP

1.1 There were no changes to the membership.

#### 2 DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

#### 1 STARBUCKS, ORION HOUSE, 5 UPPER ST MARTIN'S LANE, WC2

### LICENSING SUB-COMMITTEE No. 2

*Thursday 30<sup>th</sup> June 2016*

Membership: Councillor Nickie Aiken (Chairman), Councillor Jan Prendergast and Councillor Aziz Toki.

Legal Adviser: Barry Panto  
Policy Officer: Chris Wroe  
Committee Officer: Toby Howes  
Presenting Officer: David Sycamore

Relevant Representations: A local resident.

Present: Mr Craig Baylis (Solicitor, representing the Applicant Company), Ms Maria Harris (District Manager, Applicant Company) and Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project, representing local resident Mr Gary Hayes).

**Starbucks, Orion House, 5 Upper St Martin's Lane WC2  
16/03314/LIPV**

**1. Sale by Retail of Alcohol (On Sales)**

From

To

Monday to Sunday: 16:00 to 21:00

Monday to Sunday: 16:00 to 21:30

**Amendments to application advised at hearing:**

None.

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

This was an application to vary the premises licence by adding conditions to permit the supply of alcohol to customers without it being ancillary to a meal in the hatched area for up to 20 persons as set out in plans until 20:00 and to extend the terminal hour for the supply of alcohol ancillary to a substantial meal to 21:30. Mr Baylis, the Solicitor representing the Applicant Company, began by confirming that the premises had been granted a premises licence on 3<sup>rd</sup> September 2015 and operated as a Starbucks 'Reserve' brand coffee shop. The Reserve brand was the first of its type to open in the UK and specialised in providing fine quality coffees. Mr Baylis explained that customers were greeted by staff at the premises' entrance and then led to a table, where their food and drink was brought to them by waiting staff. Members heard that the Reserve brand had been launched in the USA as there had been demand from some customers to be able to consume alcohol in the coffee shops. Mr Baylis stated that the Orion House premises had operated for 9 months with a premises licence that permitted supply of alcohol without any problems. The Applicant Company had submitted a variation to take the opportunity of the Council's relaxation in its revised Statement of Licensing Policy that had taken effect on 7 January 2016 for premises wishing to supply alcohol that were neither pubs, bars or restaurants as defined by the Council's policy. Mr Baylis added that alcohol sales on the premises were, however, low.

Mr Baylis then addressed the representation submitted by the local resident. In respect of concerns raised in the representation on deliveries and collections, Mr Baylis stated that all deliveries took place between 15:00 to 18:00 hours, whilst all collections took place after 08:00. He suggested that the local resident had confused the premises deliveries and collections with those of The Ivy restaurant nearby. On behalf of the Applicant Company, Mr Baylis indicated that they would be content to reduce the capacity of the number of people permitted to consume alcohol without food in the hatched area as set out in the plan from 20 to 10 persons. He added that the alcohol offer was not advertised by the Applicant Company and only a small number of customers bought alcohol products. Mr Baylis confirmed that the Applicant Company wished to pursue

their proposal to extend the supply of alcohol that is ancillary to food from 21:00 to 21:30.

Ms Harris, District Manager for the Applicant Company, added that she had witnessed The Ivy restaurant making glass collections at around 06:00 and also late at night and she believed that this was the source of noise that the local resident had expressed his concerns about.

Mr Brown, Solicitor, Citizens Advice Bureau Licensing Project and representing the local resident, Mr Hayes who had made a representation, then addressed the Sub-Committee. Mr Brown stated that he had spoken with Mr Hayes to clarify his views and he referred Members to his additional statement on behalf of Mr Hayes that had been circulated to the Sub-Committee and the Applicant Company. He explained that Mr Hayes' concerns remained those on noise generated by noise from deliveries and in consuming alcohol in a coffee bar. Mr Brown stated that he would pass details of the premises' delivery and collection times to Mr Hayes. Mr Hayes had concerns about other existing licensed premises in the area that in his view already added to cumulative impact in a cumulative impact area. Mr Brown queried whether policies 2.4.17 to 2.4.22 in the Council's Statement of Licensing Policy applied as he felt that the application was, in effect, for bar use in a restaurant, in which case the relevant policy set out at paragraph 2.5.3 should apply. He expressed concerns that the premises was changing from a coffee shop to a more alcohol led establishment and indicated that a capacity of 20 persons consuming alcohol without food for a premises with a total capacity of 60 persons was high, although he acknowledged the Applicant Company's submission at the hearing that they were amending this aspect of the application to a maximum of 10 persons.

Mr Brown stated that if the supply of alcohol without food was to be permitted, then a terminal time for such consumption should be set. He sought clarification that the start time for supply of alcohol without food was 16:00, the same time for when alcohol supplied that was ancillary to a meal commenced. He felt that further justification was required from the Applicant Company for its proposal to extend the terminal hour for the supply of alcohol ancillary to meal from 21:00 to 21:30.

At this point, Mr Wroe, Policy Officer, addressed the Sub-Committee. Mr Wroe advised that the policy test that should be applied was whether or not the application would add to cumulative impact in the CIA, or otherwise undermine the licensing objectives. Mr Wroe advised that policies 2.4.17 to 2.4.22 in the Council's Statement of Licensing Policy were intended to clarify circumstances where the supply of alcohol in premises which were not either bars or restaurants would be considered unlikely to add to cumulative impact. The clarification had developed in response to applications for a range of premises where the operators sought to offer customers at those premises alcohol with, and ancillary to, other existing unlicensed activities at the premises. In the case of this application paragraph 2.5.3 of the policy was relevant as the proposals were for a bar area within a cafe/restaurant albeit that the bar use was ancillary to the premises overall use as a cafe. Mr Wroe also advised however that whether or not paragraphs 2.4.17 to 2.4.22 directly applied to this application it was open to the applicant to demonstrate that the proposals did not add to

cumulative impact or otherwise undermine the licensing objectives.

Mr Baylis in acknowledging Mr Wroe's advice stated that as the premises did not sell much alcohol it was unlikely to add to cumulative impact. In addition, the Applicant Company had agreed to Environmental Health's requested that the supply of alcohol shall be ancillary to the premises operating as a coffee shop and there shall be no self-service of alcohol. Further to a query from Members about the possibility of changing the nature of the premises, Mr Baylis emphasised that the premises would remain a coffee shop and there was no intention for it to become a bar.

Ms Harris informed Members that the premises used different brewing methods to standard Starbucks coffee shops and the coffee sold on the premises was of fine quality and considerably more expensive, appealing to committed coffee enthusiasts. The food offer at the premises included the usual range of food available at Starbucks and also other options such as scrambled eggs in the morning and pizza 'sliders' in the evening. The alcohol offer was intended to provide something extra for customers and the wine sold at the premises was of fine quality from Washington State and commanded a high price.

Mr Wroe sought confirmation that the Applicant Company would be happy to determine a terminal hour for those consuming alcohol without food.

Mr Panto, Legal Adviser to the Sub-Committee, in noting that alcohol sales on the premises were low, enquired about the reasons for the Applicant Company's proposals in the application and would there be attempts to promote the alcohol offer to increase sales, which may be of concern as the premises was in a cumulative impact area. He also asked whether the hatched area on the plans where people could consume alcohol without food would also be used for those who were eating as well as consuming alcohol, and if so, how would staff be able to discriminate between those who were just drinking and those who were drinking and eating when it came to enforcing the terminal hour for those consuming alcohol only.

In reply, Mr Baylis stated that the Applicant Company had submitted proposals to permit supply of alcohol that was not ancillary to a meal as the changes to the Statement of Licensing Policy in respect of paragraphs 2.4.17 to 2.4.22 appeared to suit this type of premises, whilst also offering the opportunity to offer more for its customers. He confirmed that the Applicant Company would be happy for a terminal hour for consumption of alcohol that was not ancillary to a meal to be set. Mr Baylis also advised that the hatched area highlighted in the plans where customers would be seated to consume alcohol only would also include customers who were consuming alcohol with a meal. He stated that it would be for the management to determine how they ensured that those who were only consuming alcohol in this area would cease consumption earlier than those who were also having a meal, however staff would be aware of what customers had ordered when recording details of these on their iPads when the orders were taken.

Ms Harris added that there were screens available for staff to check what customers had consumed and how long they had been on the premises.

Customers would also have the alcohol policy of the premises explained to them when they ordered alcohol.

The Sub-Committee granted the application in part. The Sub-Committee granted the extension of supply of alcohol ancillary to food from 16:00 to 21:30 Monday to Sunday as it considered that it would not add to cumulative impact, nor would it undermine the licensing objectives (prevention of crime and disorder, prevention of public nuisance, public safety, and protection of children from harm). Accordingly, the Sub-Committee also agreed that the terminal hour for the consumption of alcohol ancillary to food be extended to 22:00 Monday to Sunday to provide 30 minutes drinking up time as permitted on the current premises licence.

The Sub-Committee, however, refused proposals to supply alcohol without food consumption in the seated hatched area as set out in the plans as it considered that policies 2.4.17 to 2.4.22 in the Council's Statement of Licensing Policy did not apply to this application and considered that these proposals would add to cumulative impact in the CIA. They agreed with Mr Brown's interpretation of the policy and considered that paragraph 2.5.3 of the policy was relevant. The key paragraphs were 2.4.20 and 2.4.21. The concessions identified in these paragraphs were only intended to apply when the sale of alcohol to 20.00 was ancillary to some other activity apart from restaurant use (where the restaurant policy applied). The concessions were not intended to apply to any activity that was drink led. The policy was to refuse such applications unless the applicant could satisfy the authority that the sale and consumption of alcohol would not add to cumulative impact. The supply and consumption of alcohol would only be considered ancillary if it were to a customer whose main reason for attending the premises was to receive some other service. An example might be a hairdressers, where alcohol supplied to customers having significant treatments would be considered ancillary under this part of the policy, but where a small separate bar area within the salon, open to persons whether having treatments or not, would not.

Members were concerned about the provision of a bar type operation at the front of the premises with easy access from the street. They did not think that such a proposal could work so as to require those who were drinking alcohol without food to cease drinking the alcohol before those patrons who were drinking alcohol as an ancillary activity to having a substantial table meal. That reflected the way that the applicant was proposing to operate the premises if the application was granted. However, the conclusion would have been exactly the same even if that area was used in its entirety for patrons who were not having food. Although Mr Baylis had indicated that alcohol sales were very low at the premises, it was obviously the intention of this application to increase those sales by offering a drink led provision. That was not considered to be appropriate at these premises. It was considered that a drink led proposal to 20.00 would add to cumulative impact even though Mt Baylis had agreed to limit the capacity for those purposes to 10 customers.

The members did not have any concern about extending the existing operation by 30 minutes as the existing operation had not caused any problems and was unlikely to add to cumulative impact. It was acceptable for patrons to be able to

	<p>consume alcohol until 22.00 provided that was ancillary to a substantial table meal. However, a drink led proposal was of much greater concern and the members had to be confident that it would not add to cumulative impact. It had to be recognised that, once granted, it would not be possible to reverse such a decision as the nature of cumulative impact was that it occurred within the Cumulative Impact Area and was not something that could be evidenced from an inspection of the premises. The members were of the view that the decision was a balanced and proportionate one in the circumstances and concluded that the applicant had not been able to demonstrate that the proposal to sell alcohol without a meal until 20.00 would not add to cumulative impact. In taking account the representation made by the local resident, the Chairman advised that residents should approach the Council's Noise Team or their ward councillors if concerns about noise from licenced premises in the area persisted.</p>
<p><b>2.</b></p>	<p><b>Conditions to be added or varied</b></p>
	<p>Two additional conditions were proposed by the applicant as follows:</p> <p>27. Notwithstanding Condition 16, alcohol may be supplied to customers without food provided that;</p> <ul style="list-style-type: none"> <li>a. Such supply shall only be to persons seated and served by waiter/waitress</li> <li>b. Such supply shall cease at 20:00</li> <li>c. Such supply shall be limited to 20 customers on the ground floor to be seated in the areas hatched black and shown on plan number.</li> </ul> <p>28. The availability of alcohol without food shall not be promoted or advertised otherwise than on menus and price lists within the premises.</p> <p>The applicant also proposed to amend condition 26 so as to provide for the consumption of alcohol to cease at 22.00.</p>
	<p><b>Amendments to application advised at hearing:</b></p> <p>Permit supply of alcohol to customers without it being ancillary to a meal in the hatched area reduced to up to 10 persons.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The members refused the insertion of proposed conditions 27 and 28 but granted the variation to condition 26 (see reasons for decision in Section 1).</p> <p>It was noted from the report that two further conditions that had been proposed by the Environmental Health Service had been agreed by the applicant. However, it was not considered to be appropriate to insert those further conditions having regard to the overall decision that had been reached.</p>

## 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 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.
10. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
11. Substantial food and non-intoxicating beverages, including drinking water shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
12. A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
13. A record shall be kept detailing all refused sales of alcohol. The record should 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 is open.
14. 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 ejection of patrons
  - c. any complaints received
  - d. any incidents of disorder
  - e. seizures of drugs or offensive weapons
  - f. any faults in the CCTV system
  - g. any visit by a relevant authority or emergency service.
15. All bottled beers to be opened and decanted into drinking vessels by members of staff at the point of supply.
16. The premises shall only operate as a cafe:

- (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 alcohol
- (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.

17. During the period when licensable activities are undertaken, the number of persons permitted at the premises at any one time shall not exceed 60 persons (including staff).
18. Save for in any permitted external area, patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall not be permitted to take drinks or glass containers with them.
19. All outside tables and chairs shall be removed or rendered unusable after 23.00.
20. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
21. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 21:00 hours and 08:00 hours on the following day.
22. No collections of waste or recycling materials (including bottles) from the premises shall take place between 21:00 hours and 08:00 hours on the following day.
23. No deliveries to the premises shall take place between 21.00 and 08.00 on the following day.
24. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.
25. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
26. The consumption of alcohol on the premises shall cease at 22:00.

The Meeting ended at 11.22 am.

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

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