



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 28th July, 2016**, Rooms 5, 6 & 7 - 17th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6 QP.

**Members Present:** Councillors Jean Paul Floru (Chairman), Susie Burbridge and Louise Hyams

#### 1 MEMBERSHIP

There were no changes to the Membership.

#### 2 DECLARATIONS OF INTEREST

Councillor Louise Hyams declared that Victoria News, 87 Victoria Street is located within the Ward she represents, St James's Ward.

#### 3 FITZROVIA CHAPEL, 2 PEARSON SQUARE W1

##### LICENSING SUB-COMMITTEE No. 4

*Thursday 28th July 2016*

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Susie Burbridge and Councillor Louise Hyams

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

Presenting Officer: Ola Owojori

Relevant Representations: Environmental Health, 1 Residents' Association and 7 local residents.

Present: Mr Thomas O'Maoileoin (Solicitor, representing the Applicant), Ms Wendy Shillam and Ms Carolyn Keen (Trustees, The Fitzrovia Chapel Foundation), Mr Dave Nevitt (Environmental Health) and Mr Linus Rees (Director and Trustee, Fitzrovia Neighbourhood Association).

<b>Fitzrovia Chapel, 2 Pearson Square, W1 16/05187/LIPN</b>	
<b>1.</b>	<b>Plays, Films, Live Music, Recorded Music, Performance of Dance and Anything of a similar description to Live music, Recorded Music or Performance of Dance</b>
	Monday to Saturday: 10:00 to 23:00 Sunday: 10:00 to 22:30 Sundays before Bank Holidays: 10:00 to 23:00
	Amendments to application advised at hearing:  None.
	Decision (including reasons if different from those set out in report):  The Sub-Committee initially heard from Mr O'Maoileoin, representing the Applicant. He stated that Fitzrovia Chapel had been attached to Middlesex Hospital but the Hospital had moved and the building the Hospital had been located in had been demolished. The Chapel building had not been used for many years. Mr O'Maoileoin referred to the representations, commenting that he appreciated the concerns of those who used the Chapel for reflection. However, their concerns were not relevant to the licensing objectives as accepted by Fitzrovia Neighbourhood Association.  Mr O'Maoileoin explained that the Applicant did not want to undertake any activities which would reflect poorly on the former chapel. Included within the report were the types of uses that might be considered to be appropriate and those that would not be considered to be appropriate. Mr O'Maoileoin made the point that there would be no discos or nightclub activities. Uses would include daytime meetings, lunches and dinners, performances of the spoken word, chamber music, dance and musical recitals. The proposed hours for licensable activities would be within the Council's Core Hours policy except for a request for a 10:00 hours start on Sundays (same commencement time as the rest of the week) for most of the licensable activities as it was appropriate that the venue would be available for the community. It was proposed that alcohol would not be sold before 12:00.  Mr O'Maoileoin informed the Sub-Committee that pre-application advice had been sought from Mr Nevitt on behalf of Environmental Health. Conditions had since been agreed with Environmental Health. His clients had carried out an extensive consultation with local residents and stakeholders, including ward councillors who it was felt were supportive.  In terms of the policy implications, Mr O'Maoileoin expressed the view that his clients had addressed any issues relating to the policies that were applicable to the Chapel being a combined use premises. The policy on music and dancing

was more relevant to a disco or nightclub premises. Conditions such as no noise being permitted to emanate from the premises were likely to address any concerns in this area. The premises would not be similar to a pub or bar. Alcohol sold would be limited with off sales being in sealed containers only (the Applicant was content that a condition to this effect was attached to the premises licence). At stalls when events took place there would be a small amount of organic wines or beers on offer. A maximum capacity had been discussed with Environmental Health of 120 people standing at a function and 80 seated. There would be some films shown and it was accepted that the film mandatory condition would be attached. It was also noted that most of the entertainment sought in the application was now deregulated in any event.

Mr O'Maoileoin addressed the Sub-Committee on Mr Rees' representation on behalf of Fitzrovia Neighbourhood Association. Mr Rees had recommended four proposed conditions and Mr O'Maoileoin advised that his clients were content for all of them to be attached to the premises licence if the Sub-Committee was minded to grant. His only caveat was that whilst patrons could be directed to enter and leave via Mortimer Street, the Applicant could not ensure that they would enter or leave via Mortimer Street. The other conditions that the Applicant was content to agree to was that there would be no advertisement or advice encouraging on street parking outside the hours of control, smokers would only be directed to the designated smoking area within Pearson Square and no deliveries would take place before 10:00 on a Sunday.

In response to questions from the Sub-Committee, Mr O'Maoileoin and Ms Shillam were able to clarify that it was not intended that patrons would be able to stand outside with a drink, that the stalls used during events would be inside the premises and that events were needed to ensure that the running of the Chapel was sustainable. Ms Shillam provided the information that there had been a £3m refurbishment of the venue and in order that it was financially viable there needed to be one event per week. The venue was available to the community.

The Sub-Committee heard from Mr Nevitt on behalf of Environmental Health. He advised Members that the Chapel had been restored and refurbished and met all the necessary public safety requirements including in terms of escape routes and signage. The Applicant intended to introduce more lavatories in order that the proposed capacity of 120 could be accommodated. Mr Nevitt was content that the venue had good acoustic integrity and was confident there would be no issues with noise breakout. No windows would be opened. He had maintained his representation primarily due to residents' concerns. He made the point that Pearson Square is pedestrianised and is very quiet due to lack of traffic. Consideration needed to be given to the dispersal of patrons at a later hour. Mr Nevitt believed that it was appropriate to direct them to Mortimer Street and signage or personal direction from staff was likely to help. Surrounding the venue was a residential development. He confirmed that he had agreed a number of conditions with the Applicant in the event that the Sub-Committee was minded to grant the application.

Mr Rees addressed the Sub-Committee. He stated that he could appreciate the concerns of staff of the former hospital who believed it was inappropriate to have licensable activities in the Chapel. This was not though relevant to the licensing

objectives. He made the point that the Chapel had been restored as part of the Pearson Square / Fitzroy Place development and as part of the S106 planning agreement it had been agreed this would be for community use. Mr Rees believed there was the potential for public nuisance from the Applicant's proposed use of the Chapel. His particular concern was the coming and going of patrons in a residential area, including nearly 300 flats in Fitzroy Place and 40 social flats next to the Riding House exit. If people were dropped off by taxis it would be to the surrounding streets like Riding House Street and Nassau Street. The preferred route for patrons to enter and leave the premises was via Mortimer Street although Mr Rees believed that it would not be possible to control which direction patrons took to and from the premises.

Mr Rees referred to a leaflet produced by the Applicant which he stated advertised local street parking arrangements. He was asking for patrons to arrive by public transport. He also expressed the view that the maximum capacity of 120 people would add to the cumulative impact of licensable activity around the public square and would adversely affect the increasingly residential area. He made the point that there could be events seven days a week. Mr Rees requested that the application was refused but he understood the need for the Chapel to be financially sustainable. In the event that the Sub-Committee was minded to grant the application, he was proposing the four conditions which Mr O'Maoileoin had informed the Sub-Committee was acceptable to the Applicant. Mr Rees added that he had been advised by managers of the estate that smokers should be directed to the pavement in Mortimer Street. There had been a designated smoking area in Pearson Square but this was no longer the case.

Mr O'Maoileoin responded to points made by Mr Rees. Firstly, he wished to make the Sub-Committee aware that there was onsite security for Pearson Square which was twenty four hours a day and seven days a week. He also clarified that his client had consulted Mr Rees on the leaflet and had made the required changes to it removing references to street parking based on Mr Rees' recommendations.

The Sub-Committee, having heard and read the representations, granted the application. Members considered that the licensing objectives would be promoted for a number of reasons. The Chapel had been refurbished and had met with Environmental Health's approval in terms of good acoustic integrity and public safety requirements. The Applicant was seeking hours for events that were within the Council's Core Hours policy and had agreed conditions proposed by Environmental Health. The Applicant was amenable to the four conditions Mr Rees had requested were attached to the premises licence if the Sub-Committee was minded to grant. The conditions that the Sub-Committee decided were enforceable and attached to the licence were that patrons would be directed to and from Mortimer Street for all events and at all times, patrons would be discouraged from using cars to attend events and that there would be no deliveries before 10:00 on Sundays. It was agreed that patrons permitted to temporarily leave and then re-enter the premises to smoke would be restricted to a designated smoking area shown on an amended plan provided by the licence holder. Members of the Sub-Committee were also re-assured that there is onsite security for Pearson Square which is twenty four hours a day and seven

	<p>days a week.</p> <p>Members of the Sub-Committee considered that the nature of the events that the Applicant was seeking to hold appeared to be appropriate and that those involved with the Chapel appeared to be committed to preventing public nuisance to local residents. It was also noted from the papers that the Chapel had never been consecrated and its use had always been secular in nature. The Sub-Committee however advised the parties present that if it was found that the licensing objectives were not promoted, there was the potential for the premises licence to be reviewed.</p>						
<b>2.</b>	<b>Sale by Retail of Alcohol (On &amp; Off)</b>						
	<table> <tr> <td>Monday to Saturday:</td> <td>10:00 to 23:00</td> </tr> <tr> <td>Sunday:</td> <td>12:00 to 22:30</td> </tr> <tr> <td>Sundays before Bank Holidays:</td> <td>10:00 to 23:00</td> </tr> </table>	Monday to Saturday:	10:00 to 23:00	Sunday:	12:00 to 22:30	Sundays before Bank Holidays:	10:00 to 23:00
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	<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 application, subject to conditions as set out below (see reasons for decision in Section 1).</p>						
<b>3.</b>	<b>Opening Hours</b>						
	<table> <tr> <td>Monday to Saturday:</td> <td>07:30 to 23:30</td> </tr> <tr> <td>Sunday:</td> <td>07:30 to 23:00</td> </tr> <tr> <td>Sundays before Bank Holidays:</td> <td>07:30 to 23:30</td> </tr> </table>	Monday to Saturday:	07:30 to 23:30	Sunday:	07:30 to 23:00	Sundays before Bank Holidays:	07:30 to 23:30
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Sunday:	07:30 to 23:00						
Sundays before Bank Holidays:	07:30 to 23:30						
	<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>Granted, subject to conditions as set out below.</p>						

<b>Conditions attached to the Licence</b>
<b><u>Mandatory Conditions</u></b>

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

6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
- (a) a holographic mark, or
  - (b) an ultraviolet feature.

7. The responsible person must ensure that—

- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
  - (i) beer or cider: ½ pint;
  - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
  - (iii) still wine in a glass: 125 ml;
- (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
- (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

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

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

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

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

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

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

Where -

- (i) P is the permitted price,
  - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
  - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -
- (i) the holder of the premises licence,
  - (ii) the designated premises supervisor (if any) in respect of such a licence, or
  - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

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

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

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

9. Admission of children to the premises must be restricted in accordance with the film classification recommended by the British Board of Film Classification or recommended by this licensing authority as appropriate.



### **Additional Conditions**

10. The authorised person on duty will know where the CCTV cameras are located and how to contact the operators. This is will form part of the induction process for all paid and unpaid staff.
11. This premises 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.
12. The staff member will know who has access to the images via the on site security office of the Estate management. Any requests for CCTV images, either through viewing or footage recording will comply with the Data Protection Act.
13. 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.
14. All windows and external doors shall be kept closed after 21:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.
15. Whilst open for licensable activities notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
16. A direct telephone number for the duty 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 and businesses in the vicinity.
17. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 08.00 hours on the following day.
18. No licensable activities shall take place at the premises until the capacity of the premises has been determined by the Environmental Health Consultation Team and the licensing authority has replaced this condition on the licence with a condition detailing the capacity so determined. The capacity excluding staff shall not exceed 120 persons.
19. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 hours and 08.00 hours on the following day.
20. 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.
21. No deliveries to the premises shall take place between 23.00 hours and 08.00 hours on the following day.

22. The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the building to encourage and secure access for community uses to the premises through liaison between the local community, the landlord and the tenant; to publicise and market facilities at the premises for community uses; and to ensure the future maintenance and upkeep of the premises.
23. 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) all seizures of drugs or offensive weapons
  - (f) any faults in the CCTV system
  - (g) any refusal of the sale of alcohol
  - (h) any visit by a relevant authority or emergency service.
24. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
25. Patrons will be directed to and from Mortimer Street for all events and at all times.
26. Patrons will be discouraged from using cars to attend events.
27. There shall be no deliveries before 10:00 on Sundays.
28. Patrons permitted to temporarily leave and then re-enter the premises to smoke shall be restricted to a designated smoking area shown on an amended plan provided by the licence holder.

#### **4 COTE, UNIT 7, 98 WESTBOURNE GROVE W2**

##### **LICENSING SUB-COMMITTEE No. 4**

*Thursday 28th July 2016*

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Susie Burbridge and Councillor Louise Hyams

Legal Adviser: Barry Panto  
 Policy Adviser: Chris Wroe  
 Committee Officer: Jonathan Deacon  
 Presenting Officer: Ola Owojori

Relevant Representations: 4 Residents' Associations and 1 local resident.

Present: Ms Bo-Eun Jung (Counsel, representing the Applicant), Mr Kevin Jackaman (Instructing Solicitor on behalf of the Applicant), Mr Robin Bridge (Area Manager), Mr Steve Seager (Property Director), Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project, representing local residents), Mr John Zamit (South East Bayswater Residents' Association) and Ms Sally Sampson (The Hereford Road Association and on behalf of Hereford Mansions Residents Association),

<b>Cote, Unit 7, 98 Westbourne Grove, W2 16/05066/LIPV</b>	
<b>1.</b>	<b>To add the sale of alcohol for consumption off the premises</b>
	<p>Monday to Thursday: 10:00 to 23:30  Friday to Saturday: 10:00 to 00:00  Sunday: 12:00 to 23:00  Sundays before Bank Holidays: 12:00 to 23:30</p>
	<p>Amendments to application advised at hearing:</p> <p>The Applicant had agreed a condition with the Police prior to the hearing that 'there shall be no off sales of alcohol after 23:00 Monday to Saturday and 22:30 on Sundays'. The Police had subsequently withdrawn their representation. Following discussions with local residents, the terminal hour for off-sales on Bank Holidays would also be 22:30.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>This was a variation application where the Applicants were seeking the ability to sell alcohol for consumption off the premises. Ms Jung, representing the Applicant, confirmed that the concept was that off-sales in sealed bottles would be ancillary to a take away meal and they would only be ordered via the Deliveroo app or website. The food and drink order supplied by Cote would be taken by a delivery person working on behalf of Deliveroo from the restaurant to customers' addresses. Off-sales would not be purchased by customers at the restaurant itself.</p> <p>Ms Jung emphasised that Cote is a very successful, responsible business with over 90 premises across the country and the restaurant at Westbourne Grove was very popular. Food would be delivered by Deliveroo from Cote whether the off-sales aspect of the application was granted or not. She also made the point that most of Deliveroo's delivery people made their journeys via bicycles as the delivery destinations were within a two mile radius of Cote restaurant. The intention was to commence off-sales on 15 August if the application was granted. Ms Jung referred to the off-sales comprising a limited range of wines and beers. A bottle of wine would cost between £16 and £34 and beer would cost approximately £4 a bottle.</p>

Ms Jung informed Members that there was a limited time for Deliveroo to deliver to external customers and they would have to leave the premises as soon as the order was ready. The alcohol would not be consumed on the streets. She commented that there are currently four branches of Cote which provide off-sales and the alcohol was a small percentage of the sales. She was of the view that there would not be a significant impact on the Queensway/Bayswater Cumulative Impact Area which she believed was reflected in the withdrawal of Environmental Health's and the Police's representations.

Ms Jung also looked to address concerns regarding the potential for underage sales of alcohol. She stated that Deliveroo had robust procedures and training. A condition was being proposed which had been discussed with residents prior to the hearing that online menus would state that alcohol was not for sale to customers under the age of 18. By placing an order for alcoholic products, the customers were declaring that they were 18 or over. Identification would be requested from anyone who appeared to look under the age of 25. Ms Jung added that there would be a refund if this could not be provided.

Ms Jung referred to the other conditions agreed with the Police and discussed with the residents prior to the hearing. A condition agreed with the Police was that 'there shall be no off sales of alcohol after 23:00 Monday to Saturday and 22:30 on Sundays'. Following discussions with the residents, the terminal hour for off-sales on Bank Holidays would also be 22:30. A condition was also proposed that no beers stronger than 5.5% would be sold for delivery.

Ms Jung made the additional point that the Applicant had limited control over those not employed by Cote. She stressed that there should not be a condition that the Applicant controlled the actions of the delivery people of other companies. In response to a question from the Sub-Committee as to whether it would be possible for all deliveries to take place by bicycle rather than motor vehicles such as motorbikes in order to minimise public nuisance, she replied that whilst the majority of deliveries would be via bicycle, it was not possible for Cote to control this. Members made Ms Jung and her clients aware that in general residents in the borough did have concerns regarding noise being created by delivery companies.

The Sub-Committee requested clarification on what entrance at Cote the Deliveroo drivers would use to pick up the deliveries. Members were informed that the entrance that was scheduled to be used would be the main one on the corner of Westbourne Grove and Hereford Road. An alternative entrance would involve the delivery people going through a residents' entrance which it was felt would cause too much disruption to the residents. The transport used by Deliveroo would be parked outside for a limited period of time. Bicycles were likely to be parked on the pavement in the vicinity of the tree. The Cote manager would see the delivery person outside and give them the customer's order. The aim would be that the delivery person would not be outside for more than a minute or so.

Mr Brown addressed the Members of the Sub-Committee. He stated that local residents had two specific issues. Firstly there were the logistics of the delivery collections referred to in the representations. There had been incidents noted

there of noise from delivery companies. Secondly there were concerns relating to age verification when the alcohol was delivered. It was accepted that Cote was a good company but the delivery of alcohol was provided by a third party company who themselves are served by third party delivery people. It was very difficult for Cote to have any control over this situation. Mr Brown confirmed that conditions had been discussed in the event that the Sub-Committee was minded to grant the application including the wording on online menus that alcohol will not be sold to those under the age of 18 and that there would be no off sales after specific times including 22:30 on Bank Holidays.

Ms Sampson explained that she was speaking in her capacity as Co-Chairman of the Hereford Road Association which had over 100 members and as a Director of Hereford Mansions Residents Association where there were 17 flats. There was a mix of families, sheltered housing and older people in the neighbourhood. She stated that residents needed their sleep and it was clear that the Hereford Road area was getting noisier. Ms Sampson commented that she went to Cote a lot and it was a very good restaurant but there were concerns relating to the current application. The locality had a lot of noise from traffic including motorbikes and talking during deliveries. She was keen to preserve some tranquility in Hereford Road.

Mr Zamit, Chairman, South East Bayswater Residents' Association, stated that he agreed that Cote was well run. He made the point however that there was always the potential that the Applicant could sell the premises given the high rent. It was 98 Westbourne Grove which would be licensed if the application was granted not Cote or Deliveroo. Another company could end up having the ability to deliver alcohol externally. He believed it was necessary to attach strict conditions when alcohol could be delivered with food. Mr Zamit expressed concerns that to the north of the premises there was a dedicated loading bay and this could be used as a congregation area for delivery companies, particularly those riding motorcycles. He had seen an increasing use of motorcycles by delivery companies. He was also concerned about alcohol possibly being accessible to those under the age of 18.

In response to the concerns raised by residents and the question of the Sub-Committee as to whether the Applicant could as a customer of Deliveroo influence the behaviour of Deliveroo drivers, Ms Jung explained that the most Cote could do (currently Cote was trialling delivering via Deliveroo at four premises) was speak to Deliveroo to encourage the delivery people not to congregate in the loading bay area and also use bicycles where possible. Mr Bridge stated that the company would be open to trying to influence Deliveroo's delivery methods in the future in the event the partnership expanded as envisaged.

Mr Brown recommended that in the event the Sub-Committee was minded to grant, a condition should be attached that the Applicant should use best endeavours to encourage those delivering not to congregate. If the Applicant/ licence holder used due diligence and another party caused issues the Applicant / licence holder would not be prosecuted.

Ms Jung advised Mr Panto prior to the Sub-Committee taking a decision that her

	<p>client was minded to withdraw the application should Members wish to impose a condition that the Applicant be made responsible for the actions of Deliveroo delivery people. Members made it known that their key concern was the use of motorcycles causing public nuisance. They explored with the Applicant whether a 'best endeavours' condition would be acceptable. It was appreciated by the Sub-Committee that the Applicant did not want potential criminal liability for the actions of Deliveroo delivery people. Ms Jung responded that her client would accept a 'reasonable endeavours' condition. Mr Brown informed the Sub-Committee that this wording was acceptable to local residents.</p> <p>In granting the application, the Sub-Committee attached an additional condition that 'the Licence Holder shall use reasonable endeavours to ensure that -</p> <ul style="list-style-type: none"> <li>(a) delivery drivers do not congregate in the vicinity of the premises, obstruct the highway or cause noise or other nuisance outside the premises.</li> <li>(b) the use of bicycles for deliveries is encouraged'.</li> </ul> <p>The Sub-Committee considered that the conditions, including those agreed with the Police and discussed with the residents, would promote the licensing objectives.</p>
<b>2.</b>	<b>To add condition</b>
	<p>'Sales of alcohol for consumption off the premises shall be in sealed containers only and supplied with and ancillary to a takeaway meal'.</p>
	<p>Amendments to application advised at hearing:</p> <p>The Applicant had agreed to amend the proposed condition at the request of Metropolitan Police to 'Sales of alcohol for consumption off the premises shall be in sealed containers only and supplied with and ancillary to a take away meal for delivery only'. The Police and Environmental Health withdrew their representations following the Applicant's agreement of this proposed amendment.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below (see reasons for decision in Section 1).</p>

<b>Conditions attached to the Licence</b>
<b><u>Mandatory Conditions</u></b>

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. Staff shall be trained not to serve alcohol to customers under the influence of alcohol.

10. The number of persons accommodated at the premises shall be:
  - a. Ground Floor – 90 persons excluding staff
  - b. Basement – 60 person excluding staff
11. Suitable beverages other than Alcohol (including drinking water) shall be equally available during hours when licensable activity takes place.
12. The supply of alcohol for consumption on the premises shall only be to persons taking table meals there and consumption by such a person as ancillary to their meal.
13. Alcohol served in the bar shall only be to patrons waiting to be seated in the Restaurant area.
14. The supply of alcohol for consumption on the premises shall only be by waiter or waitress service to persons seated at tables.
15. The premises will maintain a comprehensive CCTV system that ensures that all areas of the licensed premises are monitored which enable frontal identification of every person entering in any light condition. All cameras shall continually record whilst the premises are open to the public and the recordings shall be kept available for a minimum of 31 days with time and date stamping. Recordings shall be made available to an authorised officer or a Police Officer together with facilities for viewing. The recordings for the preceding 31 days shall be made available immediately on request. Recordings outside this period shall be made available on request (Subject to the Data Protection Act 1998).
16. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
17. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
18. No rubbish including bottles will be moved, removed or placed in outside areas between 2300 hours and 0800hours.
19. A refuse store of sufficient size shall be provided.
20. There shall be no off sales of alcohol after 23:00 Monday to Saturday and 22:30 on Sundays and Bank Holidays.
21. Sales of alcohol for consumption off the premises shall be in sealed containers only and supplied with and ancillary to a takeaway meal for delivery only.
22. All online menus will display the following message to prevent underage sales of alcohol:

‘Alcohol is not for sale to people under the age of 18. By placing an order for

alcohol products on this site, you are declaring that you are 18 years of age or over. Identification will be requested from anyone looking under the age of 25'.

23. No beers stronger than 5.5% shall be sold for delivery.

24. The Licence Holder shall use reasonable endeavours to ensure that -

- (a) delivery drivers do not congregate in the vicinity of the premises, obstruct the highway or cause noise or other nuisance outside the premises.
- (b) the use of bicycles for deliveries is encouraged.

## **5 VICTORIA NEWS, 87 VICTORIA STREET SW1**

### **LICENSING SUB-COMMITTEE No. 4**

*Thursday 28th July 2016*

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Susie Burbridge and Councillor Louise Hyams

Legal Adviser: Barry Panto  
Policy Adviser: Chris Wroe  
Committee Officer: Jonathan Deacon  
Presenting Officer: Ola Owojori

Relevant Representations: Environmental Health, Metropolitan Police and 1 local resident.

Present: Professor Roy Light (Counsel, representing the Applicants), Mr Richard Baker (Agent, on behalf of the Applicants), Mr Jas and Ms Parm Randhawa (Applicants), Mr Maxwell Koduah (Environmental Health) and PC Michael Day (Metropolitan Police)

Declaration: Councillor Louise Hyams declared that Victoria News is located within the Ward she represents, St James's Ward.

<b>Victoria News, 87 Victoria Street, SW1 16/04130/LIPN</b>	
<b>1.</b>	<b>Late Night Refreshment (Indoors)</b>
	Monday to Sunday: 23:00 to 05:00
	Amendments to application advised at hearing:  None.

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

The Sub-Committee initially heard from Professor Light, representing the Applicant. He was asked whether he had any objection to Councillor Hyams sitting at the hearing as the Council's Rules of Procedure states that Members will 'not normally' consider applications in their own ward. There is nothing in law which prevents a ward councillor from considering an application in his or her own ward. Professor Light replied that he had no objection to Councillor Hyams sitting.

Professor Light stated that the Applicant Company is Victorian News Ltd and his clients had purchased the shop which was being operated as a convenience store approximately six months ago. The Applicants intended to refurbish the premises after the Sub-Committee took a decision on the current application. Professor Light referred to the representations. He did not believe that Environmental Health and Metropolitan Police had concerns regarding the proposed hours for off sales of alcohol. He made the point that the local resident, Ms Freeman, who had objected to the application lived approximately a third of a mile away. He expressed the view that Ms Freeman had been unclear about the application as she had included in her representation that 'the sale of alcohol for consumption both on and off the premises is going to be carried out every day with Monday to Saturday operations stretching to 5.00am'. Professor Light requested that little weight was given to Ms Freeman's representation as the sale of alcohol would only be for consumption off the premises within the Council's Core Hours policy.

Professor Light explained that in addition to no specific concerns being expressed by the Responsible Authorities regarding the proposed hours for off sales, there should not be significant concerns regarding his clients operating in the Victoria area where there was a known street drinking problem as the Applicants had experience of operating in challenging areas such as in Islington and no issues had arisen. There were also a number of proposed conditions with the current application to prevent street drinking. He added that street drinkers would not be served.

The Sub-Committee asked the Applicants how they intended to prevent street drinkers accessing alcohol. Mr Randhawa replied that he would be working closely with the Police. The street drinkers were not the clientele he was seeking to attract and there would not be a low price point. No single cans or bottles and no super-strength alcohol would be sold.

In addition Professor Light informed Members that the shop would have eight CCTV cameras and the Designated Premises Supervisor and Personal Licence Holder would be training staff. Alcohol would be kept well away from the door. Late Night Refreshment was requested so that the Applicants would be able to provide a microwave facility and hot drinks until 05:00. This would particularly cater for shift workers and cab drivers.

PC Day stated that the Police's representation was to support the Council's Core Hours policy. Mr Koduah stated that conditions had been proposed by Environmental Health in order to address potential risks relating to the application. These included limiting the sales area for the provision of late night refreshment to no more than 15% of the sales area and it being ancillary to the main function of the premises as a convenience store. The provision of late night refreshment would be limited to hot drinks and food items that would be warmed by microwave. There would be no primary cooking at the premises. He believed that the conditions proposed by Environmental Health and agreed by the Applicant would prevent problems arising both for the current operation and if the store was sold. Environmental Health had taken into account that the area was becoming increasingly residential. The sale of alcohol was limited within Core Hours and Victoria News is not located in a cumulative impact area. There would be no super-strength sales of alcohol. Only 12 customers could enter the premises at any one time.

The Sub-Committee asked PC Day whether he had any concerns regarding alcohol being sold from 08:00 in an area known for street drinking problems. He replied that the operators would not sell single cans or bottles. The Police would work with the Applicants to help train the staff so that they understood the potential risks and demographic of the local area. PC Day made the point that he was fully aware of the street drinking problem, including in Strutton Ground. However, there was no evidence to believe that there would be problems at the premises at this stage. There had not been problems at the premises to date. He believed that the store was sufficiently far away from Victoria Bus and Underground Stations not to be deemed an immediate risk to the area if alcohol was sold there.

Professor Light was given the opportunity to respond to some of the comments that had been made. He stated that the responsible customers of the shop would far outweigh the small number of street drinkers. The Police had provided no evidence that the proposed hours for off-sales should be curtailed. Appropriate and proportionate conditions had been proposed and all staff would receive the necessary training. He recommended that the Sub-Committee did not speculate about potential problems at the premises that had not been identified in the representations. Mr Baker added that specific alcohol would not be stocked unless agreed with Police.

The Sub-Committee granted the application. Members considered that the Applicant had agreed a number of conditions with the Responsible Authorities which promoted the licensing objectives. These included no sales of single cans or bottles, there being a number of CCTV cameras onsite and also till prompts to verify the age of customers. There had been no evidence provided by the Police or Environmental Health to indicate that there would be issues if the licensable activities were granted to the hours applied for. Off sales of alcohol would be within the Council's Core Hours policy. The Police and the Applicants had indicated that they would work closely together to ensure that the licensing objectives were promoted. Staff training appeared to be taken seriously and the Applicant was committed to having a minimum of two staff on duty between 23:00 and 05:00 when late night refreshment sales were taking place. In the

	event that the staff at the shop did not comply with the conditions and promote the licensing objectives there would be the opportunity to review the premises licence. There was no presumption against the application given that Victoria News is located outside the Council's designated cumulative impact areas.
<b>2.</b>	<b>Sale by retail of alcohol (Off)</b>
	Monday to Saturday: 08:00 to 23:00 Sunday: 10:00 to 22:30
	Amendments to application advised at hearing:  None.
	Decision (including reasons if different from those set out in report):  Granted, subject to conditions as set out below (see reasons for decision in Section 1).
<b>3.</b>	<b>Opening Hours</b>
	Monday to Sunday: 00:00 to 00:00
	Amendments to application advised at hearing:  None.
	Decision (including reasons if different from those set out in report):  Granted, subject to conditions as set out below.

### **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 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.
- 5(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.
- 5(ii) For the purposes of the condition set out in paragraph 5(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.

5(iii). Where the permitted price given by Paragraph 5(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.

- 5(iv). (1) Sub-paragraph 5(iv)(2) below applies where the permitted price given by Paragraph 5(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**

- 6. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster police licensing team.
- 7. The entrance will be covered with CCTV enabling frontal identification of every person entering the premises in any light condition.
- 8. The CCTV system will record during all hours of licensable activity and recordings will be made with date and time stamping and kept for 31 days. Recordings will be made available to the police upon reasonable request which will be provided without undue delay by an authorised staff member and no later than 24 hours after initial request.
- 9. No miniature spirit bottles below 10cl are to be stocked.
- 10. No single cans or bottles of beer, lager or cider will be sold.
- 11. Appropriate written staff alcohol sales training will be satisfactorily completed prior to any staff member being permitted to sell alcohol.
- 12. Staff alcohol sales training documents to be available for inspection upon reasonable request to authorised officers of a responsible authority.
- 13. An incident log will be maintained at the premises noting the date and time of any incidents of crime or disorder occurring in the premises or occurring immediately outside the premises which are then reported to the store staff.
- 14. A refusal log will be maintained at the premises and available at all times the business is open for inspection by the responsible authorities recording the



refusal of age related products. The record will include date & time of the refused sale, and the name of the staff member refusing.

15. There will be a minimum of two staff on duty between 23.00 and 05.00 hours. The staff will not permit customers to loiter either in the shop or outside the premises consuming hot food/beverages. There will also be prominent signage displayed with appropriate wording requesting customers to not to make a noise when leaving the premises and respect local residents – In addition to this notice or a separate notice further wording can be added prohibiting consumption of hot food and drink on the premises by customers as a legal condition of the premises licence.
16. Additional external CCTV cameras can be fitted covering the immediate area in from of the main entrance to alert staff should any customer(s) start to consume hot food/beverages with a few feet of the store between the LNR hours. Staff would respond by politely requesting the people to move away from the shop.
17. A litter bin would also be provided close to the store entrance to reduce any potential litter finding its way to the street.
18. The provision of late night refreshment shall be no more than 15% of the sales area at any one time and shall be ancillary to the main function of the premises as a convenience store
19. The provision of late night refreshment shall be limited to hot drinks and food items that shall be warmed by microwave
20. There shall be no primary cooking at the premises
21. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises
22. All tills shall automatically prompt staff to ask for age verification identification when presented with an alcohol sale
23. No super-strength beer, lagers, ciders or spirit mixtures of 5.5% ABV (alcohol by volume) or above shall be sold at the premises, except for premium beers and ciders supplied in glass bottles
24. No more than 15% of the sales area shall be used at any one time for the sale, exposure for sale, or display of alcohol
25. Outside of the hours authorised for the sale of alcohol and whilst the premises are open to the public, the licence holder shall ensure that all alcohol within the premises (including alcohol behind the counter) is secured in a locked store room or behind locked grilles, locked screens or locked cabinet doors so as to prevent access to the alcohol by both customers and staff
26. There shall be no self-service of spirits on the premises, save for spirit mixtures less than 5.5% ABV

27. 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
28. Prominent signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises, where alcohol is on public display, and at the point of sale
29. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 12 persons
30. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
31. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly
32. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times
33. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 08.00 hours on the following day
34. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 hours and 07.00 hours on the following day.
35. No deliveries except for newspapers and magazines to the premises shall take place between 23.00 hours and 08.00 hours on the following day
36. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business
37. No fumes, steam or odours shall be emitted from the licensed premises so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated
38. No licensable activities shall take place at the premises until the premises have been assessed as satisfactory by the Environmental Health Consultation Team and at which time this condition has shall be removed from the Licence by the Licensing Authority.

**6 BLUSH, BASEMENT, 37 DUKE STREET W1**

**LICENSING SUB-COMMITTEE No. 4**

*Thursday 28th July 2016*

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Susie Burbridge and Councillor Louise Hyams

Legal Adviser: Barry Panto  
Policy Adviser: Chris Wroe  
Committee Officer: Jonathan Deacon  
Presenting Officer: Ola Owojori

Relevant Representations: 1 local resident.

Present: Mr Craig Baylis (Solicitor, representing the Applicant)

<b>Blush, Basement, 37 Duke Street, W1 16/03487/LIPV</b>					
<b>1.</b>	<b>Proposed variation to condition</b>				
	<table border="1"><thead><tr><th><u>Current Condition 34</u></th><th><u>Proposed variation</u></th></tr></thead><tbody><tr><td>All customers entering the premises after 21:00 will have their ID scanned on entry save for a for a maximum number of 10 guests per night who may be admitted at the managers discretion without ID being scanned and recorded, and that a legible record of these people's names shall be retained on the premises for inspection by the licensing authority and police for a period of 31 days. The name of the manager authorising the entrance without scanning will also be recorded. The details recorded by the ID scanner system shall be made available to the Police upon request.</td><td><p>In relation to entry to the premises</p><p>a) all customers entering the premises after 21:00 will have their ID scanned on entry (save for the exceptions set out below). The details by the ID scanner system shall be made available to the Police upon request. The exceptions are;</p><p>i. Those attending bona fide private events</p><p>ii. A maximum number of 10 guests per night who may be admitted at the manager's discretion without ID being scanned and recorded.</p><p>In both cases a legible record of these people's name shall be retained on the premises for inspection by the licensing authority and police for a period of 31 days. The name of the manager authorising the entrance without scanning will also be recorded.</p><p>b) Notwithstanding paragraph (a) above, bona fide members of the</p></td></tr></tbody></table>	<u>Current Condition 34</u>	<u>Proposed variation</u>	All customers entering the premises after 21:00 will have their ID scanned on entry save for a for a maximum number of 10 guests per night who may be admitted at the managers discretion without ID being scanned and recorded, and that a legible record of these people's names shall be retained on the premises for inspection by the licensing authority and police for a period of 31 days. The name of the manager authorising the entrance without scanning will also be recorded. The details recorded by the ID scanner system shall be made available to the Police upon request.	<p>In relation to entry to the premises</p> <p>a) all customers entering the premises after 21:00 will have their ID scanned on entry (save for the exceptions set out below). The details by the ID scanner system shall be made available to the Police upon request. The exceptions are;</p> <p>i. Those attending bona fide private events</p> <p>ii. A maximum number of 10 guests per night who may be admitted at the manager's discretion without ID being scanned and recorded.</p> <p>In both cases a legible record of these people's name shall be retained on the premises for inspection by the licensing authority and police for a period of 31 days. The name of the manager authorising the entrance without scanning will also be recorded.</p> <p>b) Notwithstanding paragraph (a) above, bona fide members of the</p>
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	<p>Club will not be required to have their ID scanned on entry subject to the following</p> <ul style="list-style-type: none"> <li>i. A list of the names and addresses of members of the Club shall be kept on the premises at all times. The list shall be produce on demand for inspection by the police or an authorised officer of the Council.</li> <li>ii. Members will show ID upon being granted 'membership' and this will be recorded and checked/verified periodically (period to be agreed with police).</li> <li>iii. Members will sign in on each visit to the premises and there will be a legible log showing all members attending on any day the premises is open.</li> <li>iv. All records are to be comprehensive and clearly legible.</li> </ul> <p>c) Notwithstanding paragraph (a) above, each member will be allowed up to 2 guests who will not be required to have their ID scanned on entry subject to the following;</p> <ul style="list-style-type: none"> <li>i. The guest(s) must be known to the member and the member must be present.</li> <li>ii. Members will sign in each guest at the time of the visit to the premises.</li> <li>iii. There will be a legible log showing all members' guests who are attending on any day the premises is open.</li> <li>iv. The log will show the full names of the member and guest(s).</li> <li>v. Club Rules to be established and maintained and such rules should be available at the premises for inspection by the Licensing Authority and Police.</li> </ul>
	<p>Amendments to application advised at hearing:</p>

	<p>The Applicant and the Police agreed a revised proposed condition prior to the hearing which was attached to the premises licence by the Sub-Committee (see condition 34 in the list of conditions below).</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>This was an application to replace a condition on the existing premises licence (condition 34) the effect of which would be to allow more patrons to enter the premises without the need to have their ID scanned at the nightclub. The Applicant was not seeking to amend licensable activities or hours.</p> <p>Representations objecting to the application had been received from Metropolitan Police and a local resident. The Police and the Applicant had, following discussions, agreed a revised proposed condition and the Police withdrew their representation. The representation of the local resident stated that planning permission should not be granted without an undertaking from the owners of the nightclub to prevent noise emanating from the premises and ensure that patrons leaving the club did not disturb neighbours in the early hours of the morning. The Applicant had in response to the local resident's representation proposed two additional conditions that notices would be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly and also that door staff would remind patrons leaving the premises of the residential nature of the area and to keep noise to a minimum.</p> <p>The Sub-Committee at the hearing considered that the proposed condition agreed between the Applicant and the Police promoted the licensing objectives and granted the application. Members gave little weight to the resident's representation as it was primarily related to the planning permission. Moreover, the concern expressed by the resident (noise from the club or patrons leaving the club) was a concern about public nuisance and therefore had very little relevance to the proposed variation which only gave rise to concerns about potential crime and disorder. However, the two conditions proposed by the Applicant in order to address the resident's concerns were attached to the premises licence.</p> <p>Mr Baylis, representing the Applicant, asked that his thanks to PC Lewis be recorded formally as PC Lewis had been particularly helpful in giving his time during the process to reach a position where the proposed condition was acceptable to the two parties and the Police's concerns were addressed.</p>

<b>Conditions attached to the Licence</b>	
<b><u>Mandatory Conditions</u></b>	
1.	No supply of alcohol may be made at a time when there is no designated

premises supervisor in respect of this licence.

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

6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either -
- (a) a holographic mark, or
  - (b) an ultraviolet feature.

7. The responsible person must ensure that –

- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures -
- (i) beer or cider: ½ pint;
  - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
  - (iii) still wine in a glass: 125 ml;
- (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
- (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

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

- 8 (i) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- (ii) For the purposes of the condition set out in paragraph 8(i) above -
- (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;

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

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

Where -

- (i) P is the permitted price,
- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
- (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

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

- (i) the holder of the premises licence,
- (ii) the designated premises supervisor (if any) in respect of such a licence, or
- (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

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

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

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

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

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

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



### **Additional Conditions**

10. This licence is subject to all the former Rules of Management for Places of Public Entertainment licensed by Westminster City Council, in force from 4 September 1998 and incorporating amendments agreed by the Council on 25 October 1999, 30 June 2000, 16 January 2001 and 1 October 2001
11. On New Year's Eve the premises can remain open for the purpose of providing regulated entertainment from the time when the provision of regulated entertainment must otherwise cease on New Year's Eve to the time when regulated entertainment can commence on New Year's Day (or until midnight on New Year's Eve where no regulated entertainment takes place on New Year's Day).
12. Notwithstanding the provisions of Rule of Management No. 6 the premises may remain open for the purposes of this licence from 11pm on each of the days Monday to Saturday to 6am on the day following and from 11pm on Sunday to 3am on the day following
13. The number of persons accommodated at any one time (excluding staff) shall not exceed 90.
14. Substantial food and suitable beverages other than intoxicating liquor (including drinking water) shall be available during the whole of the permitted hours in all parts of the premises where intoxicating liquor is sold or supplied.
15. On any evening where the premises or part of the premises are open for music and dancing and a S.77 certificate is in operation, intoxicating liquor shall not be sold or supplied to persons entering the premises after 11.00pm other than to;
  - a) persons who have paid a minimum admission fee of at least £3.00 Monday to Thursday and £5.00 Friday and Saturday for music and dancing or entertainment, such charge not be credited against consumables;
  - b) Artistes or persons employed at the premises;
  - c) persons attending a private function at the premises.
16. No striptease, no nudity and all persons on the premises to be decently attired.
17. No gaming otherwise than by machines authorised under part III, Gaming Act, 1968.
18. There shall be no payment made by or on behalf of the licensees to any person for bringing customers to the premises.
19. The maximum number of persons, including staff, to be present in the licensed premises shall not exceed the number specified from time to time by the proper officer of the London Fire and Civil Defence Authority. The number currently specified is 110 persons.

20. With the exception of the bar area, the area coloured pink on the deposited plan shall be permanently laid out to tables and chairs to a minimum capacity of 90 covers.
21. (a) Subject to the following paragraphs, the permitted hours on Mondays to Saturdays shall commence at 10.00 (12:00 on Christmas Day and Good Friday) and extend until 03.00 on the morning following except that:
- (i). the permitted hours shall end at 00.00 midnight on any day on which music and dancing is not provided after midnight; and
  - (ii). on any day that music and dancing end between 00.00 midnight and 03.00, the permitted hours shall end when the music and dancing end
- (b) In relation to the morning on which summer time begins, paragraph (a) ` of this condition shall have effect-
- (i). with the substitution of references to 04.00 for references to 03.00
- (c) Except on Sundays immediately before bank holidays (apart from Easter Sunday), the permitted hours on Sundays shall extend until 00.30 on the morning following, except that-
- (i). the permitted hours shall end at 00.00 midnight on any Sunday on which music and dancing is not provided after midnight;
  - (ii). where music and dancing end between 00.00 midnight on any Sunday and 00.30, the permitted hours on that Sunday shall end when the music and dancing end
- (d) On Sundays immediately before bank holidays (other than Easter Sunday), the permitted hours shall extend until 03.00 on the morning, except that-
- (i). the permitted hours shall end at 00.00 midnight on any Sunday on which music and dancing is not provided after 00.00 midnight;
  - (ii). where music and dancing end (or, in the case of casino premises, gaming ends) between 00.00 midnight on any Sunday and 03.00, the permitted hours on that Sunday shall end when the music and dancing end
  - (iii). The terminal hour for late night refreshment shall extend to 30 minutes after the end of permitted hours for the sale of alcohol set out in d(i) and (ii) above.
- (e) The sale of alcohol must be ancillary to the use of the premises for music and dancing and substantial refreshment.
- (f) The permitted hours on New Year's Eve will extend to the start of permitted hours on the following day, or if there are no permitted hours on 1 January, to 00.00 on New Year's Eve.

NOTE - The above restrictions do not prohibit:

- (a) during the first thirty minutes after the above hours the consumption of the alcohol on the premises;
- (b) 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;
- (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.

22. No person under fourteen shall be in the bar of the licensed premises during the permitted hours unless one of the following applies:

- (a) He is the child of the holder of the premises licence.
- (b) He resides in the premises, but is not employed there.
- (c) He is in the bar solely for the purpose of passing to or from some part of the premises which is not a bar and to or from which there is no other convenient means of access or egress.
- (d) The bar is in railway refreshment rooms or other premises constructed, fitted and intended to be used bona fide for any purpose to which the holding of the licence is ancillary.

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

23. If any entertainment is provided for children or if an entertainment is provided at which the majority of persons attending are children, then, if the number of children attending the entertainment exceeds 100, it shall be the duty of the holder of this premises licence / club premises certificate:

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

24. The terminal hour for late night refreshment on New Year's Eve is extended to 05:00 on New Year's Day.
25. 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.
26. 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.
27. There shall be a personal licence holder on duty on the premises at all times when the premises are authorised to sell alcohol.
28. 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.
29. 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) all seizures of drugs or offensive weapons
  - (f) any faults in the CCTV system or searching equipment or scanning equipment
  - (g) any refusal of the sale of alcohol
  - (h) any visit by a relevant authority or emergency service.
30. All management at the premises shall undergo crime scene management training given by Westminster City Council. All SIA staff shall be given training

from management on current licensing issues twice yearly including input of premises licence conditions.

31. All staff training records will be properly maintained by way of a log or record and will be available for inspection on request of Police or other responsible authority. These records will include dates of first aid/crime scene/licensing training and an outline of roles and responsibilities of each staff member working at the premises during licensable hours Including SIA staff.
32. 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.
33. The premises licence holder shall ensure that any patrons queuing/smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.
34. (a) All customers entering the premises will have their ID scanned on entry. The details recorded by the ID scanner system. The ID scanner system shall be made available to Police or Licensing Authority upon request; with the exception of the following:  
A maximum of 10 guests per night who may be admitted at Manager's discretion if their details are recorded through the ID scanner system. A legible record of these people's names shall be retained on the premises for inspection by the Licensing Authority and Police for 31 days.
- (b) Notwithstanding paragraph (a) above, bona fide members of the Club will not be required to have their ID scanned on entry subject to the following:
  - (i) a list of the names and current addresses of members of the club shall be kept on the premises at all times. The list shall be produced on demand for the inspection of Police or the Licensing Authority.
  - (ii) Members will show their ID upon being granted membership and this will be recorded and checked on an annual basis with a current portrait photo of the member attached.
  - (iii) Members will sign in on each visit to the premises and there will be a legible log showing all members attending on any day the premises is open.
  - (iv) All records are to be comprehensive and clearly legible.
- (c) Notwithstanding paragraph (a) above each member will be allowed up to 2 guests who will not be required to have their ID scanned on entry subject to the following:
  - (i) The guest must be previously known to the member and the member shall be present on the premises.
  - (ii) Members will sign in each guest at the time of the visit to the premises and must remain on the premises while the guest remains. The guest must present legitimate ID before being signed in.
  - (iii) There will be a legible log showing all members' guests attending on

any day, the premises is open.

(iv) The log will show the full names of the members and guests and shall be retained on the premises for inspection by the Licensing Authority and Police for 31 days.

(d) Club rules to be established and maintained and each such rule should be available at the premises for inspection by the Licensing Authority and Police.

(e) (i) Clubscan and the current records contained will be used as the current membership file

(ii) Any new members will have their details entered on the Clubscan equipment for future reference.

35. A minimum of three (3) SIA licensed door supervisors shall be on duty when the premises are open on Sunday to Wednesday.

36. A minimum of four (4) SIA licensed door supervisors shall be on duty when the premises are open on Thursday, Friday & Saturday.

37. At least (2) SIA licensed door supervisors shall be on duty at the entrance of the premises at all times whilst it is open for business.

38. On Sunday to Wednesday, the last entry to the premises will be 2.45am and the premises will close at 4.00am, when all persons be off premises.

39. On Thursday, Friday & Saturday there shall be no admittance or re-admittance to the premises after 0430 save for those persons leaving the premises temporarily to smoke.

40. All door supervisors engaged outside the entrance to the premises and ground floor reception area, or supervising or controlling queues, shall wear high visibility yellow jackets or tabards.

41. In the event that a serious assault is committed on or immediately outside the premises (or appears to have been committed) to the managements knowledge, the management will immediately ensure that:

(a) The police (and where appropriate, the London Ambulance service) are called without delay, using telephone number 999;

(b) All measures that are reasonable practicable are taken to apprehend any suspects pending the arrival of the Police;

(c) As is reasonably practicable, the crime scene is preserved so as to enable a full forensic investigation to be carried out by the Police; and

(d) Such other measures are taken (as appropriate) to fully protect the safety of all persons present on the premises.

42. No taxi drivers, minicab drivers or chauffeurs shall be permitted to enter the

premises at any time.

43. All SIA door supervisors working at the premises will be employed by an external independent SIA contractor.
44. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
45. Doorstaff shall remind patrons leaving the premises of the residential nature of the area and to keep noise to a minimum.