



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (5)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (5)** Committee held on **Thursday 11th August, 2016**, Rooms 5, 6 & 7 - 17th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6 QP.

Members Present: Councillors Angela Harvey (Chairman), Peter Freeman and Shamim Talukder

1 MEMBERSHIP

There were no changes to the Membership.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 BURGER & LOBSTER, W LONDON LEICESTER SQUARE, 10 WARDOUR STREET, W1

LICENSING SUB-COMMITTEE No. 5 *Thursday 11th August 2016*

Membership: Councillor Angela Harvey (Chairman), Councillor Peter Freeman and Councillor Shamim Talukder

Legal Adviser: Barry Panto
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon
Presenting Officer: Darren O'Leary

Relevant Representations: Metropolitan Police.

Present: Ms Sarah Le Fevre (Counsel, representing the Applicant), Mr James Warrillow (Operations Director, Applicant Company), Mr Thomas O'Maoileoin (Solicitor, on behalf of the Applicant) and PC Bryan Lewis (Metropolitan Police)

**Burger & Lobster, W London Leicester Square, 10 Wardour Street, W1
16/03578/LIPN**

1. Late Night Refreshment (Indoors & Outdoors)

Monday to Sunday: 23:00 to 01:00

Amendments to application advised at hearing:

None.

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

The Sub-Committee initially heard from Ms Le Fevre, representing the Applicant. She referred Members of the Sub-Committee to the written 'skeleton argument' that she had provided on behalf of her client and was included in the report. She emphasised that the premises are part of the W Hotel (Burger & Lobster is located in the mezzanine and ground floor areas where Spice Market had previously traded) and are currently licensed under the licence held by W Leicester Square Ltd (15/101063/LIPVM) for the Hotel. Burger and Lobster had been trading there for the past five weeks without any issues having been raised. Ms Le Fevre also provided the background information that Burger and Lobster is a food driven chain with a number of premises in the UK (including London) and the US.

Ms Le Fevre stated that she had anticipated that Members might have some concerns about a secondary licence at the premises. A condition was being offered that 'the applicant will accept a condition that the premises licence, if granted, will not be transferred to or traded by any legal or natural person saving B&L and/or any genuine successor/ancillary company'. She made the case for the application being an exception to policy in the West End Cumulative Impact Area, including that the existing licence for the Hotel was able to open to the public 24 hours a day, the primary function of the premises was as a restaurant and there were notable differences in some of the licensable activities and hours being sought in comparison to the Hotel licence, including regulated entertainment not being applied for.

In response to the Sub-Committee regarding potential outside use of tables and chairs, Ms Le Fevre and Mr O'Maoileoin replied that they had previously been located outside but there were none there currently. It was the intention of the Applicant to submit a revised application for a 'tables and chairs' licence (which required planning consent) for Lisle Street and Wardour Street with 27 tables and 56 chairs. This would be until 23:00 which had been the same as for Spice Market. The original application for the 'tables and chairs' licence submitted by the Applicant which had included windbreakers and more tables and chairs than would be sought in the revised application was likely to be withdrawn.

The Sub-Committee was addressed by PC Lewis, on behalf of the Police who were maintaining their representation objecting to the application. He referred to

the application seeking hours later than Core Hours for a new premises licence in the West End Cumulative Impact Area. He commented that Burger & Lobster is located in the sensitive Leicester Square area which requires a specialist Police team to patrol it. He appreciated that W Hotel had an existing premises licence for the mezzanine/ground floor areas but this had been managed by the Hotel. The Police had concerns that the premises would be advertised and promoted to a whole new set of customers. PC Lewis was not concerned by the operation of the restaurant but he did have concerns regarding alcohol being consumed without the requirement for food at the bar and for private functions. He was keen that the outside consumption of alcohol was not permitted after 01:00. It was also his experience that Burger and Lobster premises tended to close earlier than 01:00.

The Sub-Committee asked the Applicant and the Police a number of questions. The Applicant was asked about the corporate relationship with W Hotel and also whether this premises had a later terminal hour than other Burger and Lobster restaurants. Ms Le Fevre replied that Burger and Lobster held a lease for the premises, would run and manage the premises and had a good working relationship with W Hotel. There were two separate management teams and corporate structures. The duty manager at Burger and Lobster regularly attended W Hotel staff meetings. Mr Warrillow added that there were Burger and Lobster premises which were able to operate until 01:00 including at Threadneedle Street and in Manchester.

The Sub-Committee enquired about the entrances to the Burger and Lobster premises. Mr Warrillow advised that there would be three staff who would greet customers at the main entrance on the corner of Lisle Street and Wardour Street. He stated that customers did make bookings for the premises but the majority did not. The Sub-Committee asked what the Applicant's view was in respect of a condition on the existing W Hotel premises licence being attached to the licence for the current application in the event it was granted. The condition was that 'after midnight and before 06:00 hours, entry to the restaurant shall only be via the W Hotel lobby entrance on Wardour Street'. The reason for this was because the existing licence included a requirement for at least one SIA registered door supervisor to be employed at the entrance to the hotel at all times and there was no proposal within the new application to have such a door supervisor employed at the entrance to the new restaurant. Ms Le Fevre responded that the Applicant would like some flexibility so that the Wardour Street entrance could be used until 01:00 when it was proposed to close the premises.

PC Lewis asked whether it was intended that a SIA qualified door supervisor would oversee the Wardour Street entrance. Ms Le Fevre replied that W Hotel did employ security staff. The Sub-Committee asked PC Lewis for his view on the time when he believed a SIA door supervisor should operate at the Wardour Street entrance to the restaurant. He recommended a start time for the door supervisor of no later than 18:00 based on the location being an exceptionally busy area. Ms Le Fevre made the point that it was already possible as a result of the existing W Hotel premises licence to enter from the alternative Wardour Street entrance until midnight. Her client was content to offer a condition that from midnight until 01:00 when the premises would close there would be a SIA

door supervisor at the alternative Wardour Street entrance. She expressed the view that if a time any earlier than this was imposed by the Sub-Committee it would be disproportionate.

The bar area was discussed. Ms Le Fevre confirmed in respect of the bar area that the Applicant was seeking the flexibility for up to 50 customers to drink there without it being ancillary to a meal as was permitted on the existing W Hotel premises licence. The vast majority would come to the premises to eat a meal. She was confident that 50 customers could comfortably be located there without it being overcrowded. Mr O'Maoileoin also confirmed that the holding bar is the same size as when the premises had been Spice Market. It was agreed by the Applicant that there was a need to submit new plans to set out where the holding bar is located.

In respect of private functions, Mr Warrillow provided the information that they were always booked in advance and were managed by Burger & Lobster's management team. The private functions would be carefully planned, including the area used for the function. Mr Warrillow added that it was very rare that the whole premises would be booked for the private function. In the event this did take place Burger and Lobster would not permit the function to only be provided with alcohol and without food. It was envisaged that some of the smaller functions would be alcohol only but the restaurant would continue to operate. He confirmed that the alcohol led functions would only be to a maximum of 50 people. PC Lewis expressed his concerns regarding patrons consuming alcohol at the functions and dispersing into a sensitive area. Ms Le Fevre placed emphasis on the fact that the existing W Hotel premises licence permitted the private functions.

Further questions asked by the Sub-Committee included whether there was any scope for there to be only one licence covering the Burger & Lobster premises on the mezzanine and ground floors. Mr O'Maoileoin informed Members that he had had discussions with the legal representative for W Hotel, Andrew Wong and it was believed that in the event the current application was granted, W Hotel were content to submit a minor variation so that their licence would no longer take effect in the area where the Burger & Lobster premises was located.

Mr Wroe made the point that the highway had been designated in the plans as part of the premises. The Licensing Authority tended to discourage this because 'tables and chairs' licences required separate planning consent. Mr O'Maoileoin responded that he was content for condition 12 of the proposed set of conditions to be amended so that alcohol sold to customers in any outside areas would be deemed off-sales. It was agreed that the red line on the revised plans would exclude the outside areas.

Members of the Sub-Committee decided to grant the proposed hours for the licensable activities. They considered that the existing premises licence for W London Hotel already permitted most of what was being sought by the Applicant. As stated by Ms Le Fevre in her written and oral submissions the existing licence for the Hotel was able to open to the public 24 hours a day and there were notable reductions in some of the licensable activities and hours being sought in comparison to the Hotel licence. Regulated entertainment was not

being applied for which was permitted on the Hotel licence. The existing W Hotel licence also permitted consumption of alcohol at the bar for up to 50 people and pre-booked private functions.

Members took into account the Police's concerns related to the Leicester Square area and the fact that the Burger & Lobster premises is located in the West End Cumulative Impact Area. They stipulated in the decision that tables and chairs must be removed by 23:00 in any of the outside areas applied for (Mr O'Maoileoin had indicated that he would be applying for tables and chairs outside until 23:00) and that in keeping with the discussion with the Applicant, the private pre-booked functions which were not ancillary to a table meal would be to a maximum of 50 people. This was a greater restriction than appeared on the existing licence where no such limit had been imposed and this was therefore another reason to conclude that the granting of the application would not add to cumulative impact.

This was a relaxation of the restaurant condition and Members noted that those leaving the functions would be dispersing into Leicester Square even if it could be argued that there was no adding to cumulative impact because pre-booked private functions were permitted on the W Hotel licence.

Members noted that the Sub-Committee in 2009 had found it necessary as part of their decision making for the W Hotel application that after midnight and before 06:00 hours, entry to the premises would only be via the W Hotel lobby entrance on Wardour Street. Given the sensitivity of the location, Members were not minded to extend the time when the main entrance to the new restaurant in Wardour Street could be accessed even in the event that a SIA trained door supervisor was monitoring it. They therefore attached a similar condition to the Burger & Lobster licence that was included on the W Hotel licence so as to require entrance to the restaurant between midnight and 1 am to be via the hotel entrance on Wardour Street. It was not considered to be appropriate to require any additional door supervisors to be employed at the main entrance to the restaurant prior to midnight.

A condition was also attached in keeping with the Applicant's and W Hotel's agreement that W Hotel would submit a minor variation so that there would only be the one licence for the premises area. The Applicant had agreed to submit new plans which would feature the holding bar, street names and the removal of the red line on the highway outside the premises. An amended condition 12 set out that off sales would be restricted to alcohol consumed by seated customers and served by waiter or waitress in an area appropriately authorised for the use of tables and chairs on the highway and taking a substantial table meal there or in sealed containers only.

2. Sale by retail of alcohol (On and Off sales)

Monday to Sunday: 08:00 to 01:00

Amendments to application advised at hearing:

- (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
- (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
- (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
- (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
- (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—

- (a) a holographic mark, or
- (b) an ultraviolet feature.

7. The responsible person must ensure that—

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

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

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

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

- (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
- (b) "permitted price" is the price found by applying the formula -

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

Where -

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

(c) "relevant person" means, in relation to premises in respect of which

there is in force a premises licence -

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

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

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

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

Additional Conditions

9. The premises shall be laid out as a restaurant except when there is a pre booked private or corporate function.

10. With the exception of the holding bar area, the supply of alcohol in the restaurant shall be by waiter or waitress only.

11. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.

12. The sale and supply of alcohol for consumption off the premises shall be:

- a) restricted to alcohol consumed by persons who are seated in an area appropriately authorised for the use of tables and chairs on the highway and bona fide taking a substantial table meal there, and where the consumption of alcohol by such persons is ancillary to taking such a meal, and where the supply of alcohol is by waiter or waitress service only; or
- b) in sealed containers only.

13. The sale of alcohol in the restaurant shall be to persons seated at tables and

as ancillary to table meals except:-

(a) to persons in the holding bar area where there shall be no more than 50 persons

(b) to persons attending a pre-booked private or corporate function where there shall be no more than 50 persons.

14. 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 entire 31 day period.
15. 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.
16. The pavement from the building line to the kerb edge immediately outside the premises, including gutter/channel at its junction with the kerb edge, shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.
17. All refuse will be stored internally prior to collection.
18. There shall be a personal licence holder on duty on the premises at all times when the premises are authorised to sell alcohol.
19. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and to leave the premises and the area quietly.
20. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
21. No unauthorised advertisements of any kind (including placard, poster, sticker, flyer, picture, letter, sign or other mark) is inscribed or affixed upon the surface of the highway, or upon any building, structure, works, street furniture, tree or any other property, or is distributed to the public, that advertises or promotes the establishment, its premises, or any of its events, facilities, goods or services.
22. There shall be no payment made by or on behalf of the licence holder to any person for bringing customers to the premises directly off the street.
23. A proof of age scheme, such as Challenge 21, shall be operated at the premises where a customer wishes to purchase alcohol and the only

acceptable forms of identification are recognised photographic identification cards, such as a driving licence or passport.

24. The number of persons permitted at any one time in the areas specified below (excluding staff) shall not exceed:
- Restaurant Ground Floor: 130 persons
 - Restaurant Mezzanine: 140 persons
25. All tables and chairs shall be removed from all the outside areas by 23.00 each day.
26. After midnight entry to the premises shall only be via the W Hotel lobby entrance on Wardour Street.
27. No licensable activities can take place pursuant to this licence until licence 15/10163/LIPVM has been amended so as to remove from that licence those parts of the ground floor and mezzanine floor that will be covered by this licence and this condition has been removed by the licensing authority

4 QUEEN'S ICE BOWL, 17 QUEENSWAY, W2

LICENSING SUB-COMMITTEE No. 5

Thursday 11th August 2016

Membership: Councillor Angela Harvey (Chairman), Councillor Peter Freeman and Councillor Shamim Talukder

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

Queen's Ice Bowl, 17 Queensway, W2 16/05320/LIPV

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

5 40 CHEPSTOW ROAD, W2

LICENSING SUB-COMMITTEE No. 5

Thursday 11th August 2016

Membership: Councillor Angela Harvey (Chairman), Councillor Peter Freeman and Councillor Shamim Talukder

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon
Presenting Officer: Yolanda Wade

Objections: Metropolitan Police and Environmental Health.

Present: Premises User, Owner of premises, PC Toby Janes (Metropolitan Police)
and Mr Dave Nevitt (Environmental Health)

**40 Chepstow Road, W2 – Temporary Event Notice
16/07785/LITENN**

Proposed licensable activities: The sale by retail of alcohol (On and Off sales) and late night refreshment.

Times during the proposed event period when it is proposed to carry on licensable activities: 08:00 to 00:00 on 27 August 2016, 08:00 to 00:00 on 28 August 2016 and 08:00 to 00:00 on 29 August 2016.

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

A Temporary Event Notice ('TEN') was submitted seeking on and off sales of alcohol and the provision of late night refreshment from 08:00 to midnight on 27, 28 and 29 August. The Premises User and his partner, the premises owner, advised the Sub-Committee during the hearing that they would like to modify the TEN as they wished to sell alcohol, soft drinks and water (the alcohol would include rum punch and cans of beer) from midday until 20:00 on Sunday 28 August and Monday 29 August when the Notting Hill Carnival was taking place. They were no longer seeking on and off sales on Saturday 27 August. These items would be sold on the raised patio area outside the house (but inside the railings) to a maximum of 8 to 10 people at any one time rather than the 100 sought in the original notice. The Premises User informed the Sub-Committee that they had sold alcohol during the Carnival in 2015.

PC Janes addressed the Sub-Committee. He stated that the Police were objecting to the TEN on the grounds that the Notice undermined the prevention of crime and disorder licensing objective. The Police particularly had concerns regarding alcohol being sold from residential premises during the Carnival. PC Janes commented that there had been an increase in crime year on year which was directly related to the Carnival and the sale of alcohol at this location would exacerbate the situation. No undertakings had been agreed between the Police and the Premises User. He did not understand why the TEN submitted by the Premises User in 2015 had not come before the Sub-Committee as his records had shown that the Police had objected. There was no clear evidence that the licensing objectives had been undermined as a result of the sale of alcohol at 40 Chepstow Road in 2015 but then it was not known exactly where the patrons purchasing alcohol went afterwards. PC Janes made the point that whilst the Premises User's amended hours were now more in keeping with the licensed premises in the Notting Hill area during the Carnival, they tended to close at

19:00 rather than 20:00.

In response to questions from the Sub-Committee, the Premises User replied that he had not been informed of the Police's objection to the TEN in 2015. He explained that the sale of alcohol would be for consumption off the premises only and late night refreshment would not be required. The indoor areas would not be used to sell alcohol to the public, only to mix the drinks such as the rum punch. He was well aware that alcohol must not be sold to those under 18 and anyone who looked to be less than 21 years of age would be asked to show identification.

Mr Nevitt on behalf of Environmental Health referred to 40 Chepstow Road being on the procession route of the Notting Hill Carnival. He had objected to the proposed hours and licensable activities set out in the TEN. He was also concerned about the maximum number of attendees sought. There would be large numbers on the route and Mr Nevitt believed that the crowds had the potential to block the street. He added there were no public toilets at this location so a restriction from a maximum of 100 people at any one time to a maximum of 8 to 10 was a useful amendment. Mr Nevitt recommended that if this was to be a regular event the Premises User should provide more information on the arrangements. It would be useful to have a floor plan. He also recommended that the licensable activities conclude at 19:00 in the event that the event was able to proceed in line with licensed premises. Mr Nevitt was of the view that the impact had been much reduced following the Premises User's proposed modification of the TEN. It would now very much depend on how the Premises User managed the event.

The Sub-Committee asked Mr Panto to set out the options in the light of the Premises User's proposed modification of the hours, licensable activities and capacity from what had been included in the original Notice. Mr Panto advised that under the legislation the TEN could only be modified if all the objectors agreed to it. In the event that there continued to be objections, the Sub-Committee would be required to consider the proposals in the original TEN unless the Premises User decided to withdraw it and then chose to submit an amended Notice.

The Sub-Committee adjourned in order to give the Premises User, the Police and Environmental Health the opportunity to discuss their respective positions in relation to the TEN. Following the adjournment, PC Janes confirmed that the Police maintained their objection to the Notice. As matters currently stood, it was not possible for the TEN to be modified at the hearing. If the matter was to proceed, the only options available were to allow the event to proceed in accordance with the TEN as originally submitted or to give a counter notice which would prevent the event from taking place at all.

It was noted that under the relevant legislation the Premises User was required to give ten clear working days' notice of an event taking place. Therefore should the Premises User decide to withdraw the TEN and submit a revised Notice with the updated proposals there would still be sufficient time for the matter to be determined prior to the Carnival. The Premises User decided that rather than the Sub-Committee taking a decision on the proposed hours and licensable

activities sought in the original TEN, he would withdraw it and submit a revised Notice to the Licensing Authority.

6 40 LEAMINGTON ROAD VILLAS, W11

LICENSING SUB-COMMITTEE No. 5

Thursday 11th August 2016

Membership: Councillor Angela Harvey (Chairman), Councillor Peter Freeman and Councillor Shamim Talukder

Legal Adviser: Barry Panto
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon
Presenting Officer: Yolanda Wade

Objections: Metropolitan Police and Environmental Health.

Present: Mrs Mabel Akabah (Premises User) and Ms Angella Akabah (Daughter of Mrs Mabel Akabah), PC Toby Janes (Metropolitan Police) and Mr Dave Nevitt (Environmental Health)

40 Leamington Road Villas, W11 – Temporary Event Notice 16/07781/LITENP

Proposed licensable activities: The sale by retail of alcohol (On & Off sales)

Times during the proposed event period when it is proposed to carry on licensable activities: 12:00 to 19:00 on 28 August 2016 and 12:00 to 19:00 on 29 August 2016

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

The Sub-Committee heard from Ms Angella Akabah on behalf of her mother, Mrs Mabel Akabah, the Premises User and joint owner of 40 Leamington Road Villas. She stated that it was the family's intention to sell beer, soft drinks and water in a stall located in front of the house at 40 Leamington Road Villas on 28 and 29 August 2016 when the Notting Hill Carnival takes place. She had advised in her written submission that the public can 'only gain access to the area serving alcohol from the front of the house as there are walls at either side of the property'.

Angella Akabah informed Members that the family had sold alcohol during the Carnival in 2014. In response to a question from the Sub-Committee, she explained that as in 2014 a Challenge 25 proof of age scheme would be in place if the Sub-Committee was minded to permit the Temporary Event Notice ('TEN'). She holds a personal licence to sell alcohol and the family had not sought to sell alcohol during the Carnival in 2015 as she had not been in the area at the time. Angella Akabah had set out in her written submission that 'beverage stocks will

be kept inside the property and brought out to the table as required to ensure there are not large amounts of drinks on display outside the property at any one time. The team managing the sale of beverages will be in front of and behind the table. Those at the front will be able to manage an orderly queue and check the suitability & indeed 'state' of customers wishing to be served (i.e. age verification & state of intoxication)'.

The Members of the Sub-Committee noted that 6 assurances had been offered in an email from Angella Akabah dated 10 August 2016. Whilst these were not enforceable and not part of the formal notice they did nevertheless set out how the event would be run and would therefore be taken into consideration.

1 - A personal license holder (Angella Akabah) will be present and on the premises at all times during the hours permitted to supply alcohol.

2 - A 'Challenge 25' proof of age scheme will be operated at the premises and the only acceptable forms of ID will be recognised photographic identification documentation such as driving license, passport etc.

3 - There will be no consumption of alcohol on the premises.

4 - Cans of beer will be the only alcohol on sale - no bottles or glass containers will be on sale for reasons of public safety.

5 - Fully & immediate co-operation with Police or other authorised authority will be observed at all times to ensure & promote Public Order

6 - All enterprise will be terminated immediately on the order of the Police or other authorised authority in the event of proper instruction or in the event of or anticipation of Public Disorder or other event which might lead to a Breach of the Peace or other anti-social behaviour.

PC Janes addressed the Sub-Committee. He made the point that the Police were objecting to the TEN on the grounds that the Notice undermined the prevention of crime and disorder licensing objective. He referred to the fact that undertakings had been offered by the Premises User, including that a personal licence holder would be on the premises at all times (Angella Akabah) and a Challenge 25 proof of age scheme would be in place. However, the Carnival was one of the biggest events the Police had to manage with an expected 1.5m likely to attend the 2016 event. PC Janes stated that there had been an increase in crime year on year which was directly related to the Carnival and the volume of people attending the event. He believed the sound system events for Sir Lloyd and Channel One were likely to attract huge numbers of people which would create such a large crowd that it would be almost impossible to move from one area to another. PC Janes was concerned this would be difficult to police and that the intoxication of those attending would exacerbate the situation. He added that selling alcohol was likely to encourage people to remain in the area and make it even more difficult to manoeuvre crowds and administer first aid. The lack of public toilets in the area meant that urination occurred. PC Janes was also concerned that if the licensable activities set out in the TEN were permitted to proceed there could be a number of similar requests. PC Janes

had produced four reports of alleged crimes at the Carnival in 2014 and two reports of alleged crimes in 2015. These were noted but not considered to be of much assistance in connection with the matter under consideration.

Mr Nevitt on behalf of Environmental Health referred to the undertakings of the Premises User but explained that he was fundamentally opposed to the proposed sale of alcohol proceeding. The Carnival procession route did not go through Leamington Road Villas but there were busy activities in the locality, including the Sir Lloyd and Channel One sound system events with two or three thousand attending both of them. There could be six or thousand people in the street at any one time during the Carnival. 40 Leamington Road Villas is located between the two sound systems. There would be no Police officers in the vicinity unless they accompanied Environmental Health officers visiting the sound systems. Mr Nevitt added that the public would be stuck in the street some distance from public toilets in Shrewsbury Road and the result of this was that they urinated or defecated in residents' gardens. This was one of the residents' main concerns year on year. His concern was not that the Akabahs would be irresponsible operators but that the sale of alcohol would add to public nuisance and the problems of residents at this particular location.

Mr Nevitt provided the additional information in response to a question from the Sub-Committee that there were no toilets required as part of the premises licences for the sound systems as they provided regulated entertainment but did not sell alcohol. It was in his opinion difficult to know where public toilets could be located in Leamington Road Villas as it was difficult at times to get in and out.

Mabel Akabah and Angella Akabah responded to some of the points raised at the hearing. Mabel Akabah disputed (based on her experience over a period of 52 years that she had lived at the premises) that the public became 'stuck' in Leamington Road Villas due to the Carnival crowds. It was possible to keep moving. Angella Akabah advised that the amount of alcohol being sold was not similar to commercial premises such as a convenience store. They would also allow a select number of people to use their toilets, including families and pregnant women (Mabel Akabah estimated that approximately 50 people had used their facilities in 2014). Angella Akabah clarified that whilst the family had not sold alcohol during the 2015 Carnival, they had sold soft drinks. They had never had any security issues. Money was taken into the house. There were six people in the family working together. Some of the neighbours had introduced barriers in front of their homes but there were a few members of the public during Carnival who would try and enter residents' gardens. Mabel Akabah provided the additional information that prior to 2014 she had sold food and soft drinks as a street trader.

Members of the Sub-Committee in reaching their decision took the concerns of the Responsible Authorities very seriously, including in relation to selling alcohol at this location. However, it was also necessary for the Sub-Committee to take into account the Akabahs' experience. They had appeared to understand the environment that they would be operating in. They had sold alcohol before during the Carnival in 2014 and there was no evidence to show that they would undermine the licensing objectives by selling alcohol between the hours of noon and 19.00 hours. The Premises User, Mabel Akabah, had experience of street

trading outside of the Carnival event. In addition to selling alcohol at the Carnival in 2014 she had sold soft drinks there on an annual basis. She would have six adult children to assist her at the Carnival. Her daughter Angella Akabah holds a personal licence and would be able to assist in ensuring that the licensing objectives were promoted at the event and that the family operated in keeping with the undertakings that had been offered. The family and in particular Mabel Akabah, who had been involved for over 50 years, were in keeping with the spirit of the Carnival. In deciding not to issue a counter notice and permit the event to proceed, the Sub-Committee was not setting a precedent for future years particularly if it was found that the licensing objectives were not promoted at 40 Leamington Road Villas during Carnival weekend.

It was appreciated that the sale and consumption of alcohol did contribute to problems at the Carnival every year but the Sub-Committee felt that it could exercise a degree of discretion as to what was a proportionate response in the circumstances. Persons attending Carnival would be able to access alcohol from a number of sources. Mabel Akabah was using some local initiative to serve drinks from her premises, including non-alcoholic beverages. The Sub-Committee had no doubt that she could sell the alcohol responsibly with assistance from her daughter. The issue was whether sales of alcohol up until 19.00 hours would add to problems within the wider Carnival area. Whilst there was obviously the potential to add to problems, the Sub-Committee did not think that this particular proposal would undermine the licensing objectives, especially as Mrs Akabah had given an assurance that she would cease selling alcohol on the instructions of the Police if there was a concern in the immediate area. This decision was largely based on the confidence that the Sub-Committee had regarding Mrs Akabah's knowledge of both Carnival and her immediate neighbourhood. It was not an indication that it would be appropriate for other residents to engage in similar activity as that might well create an unacceptable problem.

Whilst Members of the Sub-Committee appreciated that alcohol was not sold at the DJ's sets, they were of the view that as the sound systems drew thousands of people to the area they should themselves offer or be required to provide public toilets. The Akabahs were offering some facilities to families and pregnant women.

Ms Wade, the Presenting Officer, brought to the Sub-Committee's attention that in the TEN it had been stated that the Premises User was a personal licence holder. Mr Panto stated that should Angella Akabah in the future submit a TEN on her mother's behalf she needed to be careful as it was technically a false declaration as it was Angella Akabah who is a personal licence holder rather than Mabel Akabah. The Sub-Committee gave the Premises User the benefit of the doubt in relation to that matter on the basis that Angella Akabah was nevertheless going to be present at all times when alcohol was being sold at the 40 Leamington Road Villas. Angella Akabah acknowledged the advice that had been given.