



CITY OF WESTMINSTER

# MINUTES

## Licensing Sub-Committee (2)

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (2)** Committee held on **Tuesday 20th December, 2016**, Rooms 5, 6 & 7 - 17th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6 QP.

**Members Present:** Councillors Nickie Aiken (Chairman) and Murad Gassanly

**Apologies for Absence:** Councillor Nick Evans

#### 1 MEMBERSHIP

There were no changes to the Membership.

#### 2 DECLARATIONS OF INTEREST

There were no declarations of interest.

#### 1 THE LIBRARY, 112 ST MARTIN'S LANE, WC2

### LICENSING SUB-COMMITTEE No. 2

*Tuesday 20th December 2016*

Membership: Councillor Nickie Aiken (Chairman) and Councillor Murad Gassanly

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

Relevant Representations: Environmental Health, Metropolitan Police, Licensing Authority, Covent Garden Community Association and Burleigh Mansions Residents' Association.

Present: Ms Melinka Berridge (Solicitor, representing the Applicant), Mr Ronald Ndoro (Applicant), Mr Dave Nevitt (Environmental Health), PC Reaz Guerra (Metropolitan Police), Mr Steve Rowe (Licensing Authority) and

Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project – representing Mr Selwyn Hardy, Burleigh Mansions Residents' Association).

<b>The Library, 112 St Martin's Lane, WC2 16/11258/LIPV</b>									
<b>1.</b>	<b>Late Night Refreshment (Indoors)</b>								
	<table border="0"> <thead> <tr> <th style="text-align: left;"><u>From</u></th> <th style="text-align: left;"><u>To</u></th> </tr> </thead> <tbody> <tr> <td>Monday to Thursday 23:00 to 00:00</td> <td>Monday to Wednesday 23:00 to 00:30</td> </tr> <tr> <td>Friday to Saturday 23:00 to 00:30</td> <td>Thursday to Saturday 23:00 to 01:30</td> </tr> <tr> <td>Sunday 23:00 to 23:30</td> <td>Sunday 23:00 to 00:00</td> </tr> </tbody> </table>	<u>From</u>	<u>To</u>	Monday to Thursday 23:00 to 00:00	Monday to Wednesday 23:00 to 00:30	Friday to Saturday 23:00 to 00:30	Thursday to Saturday 23:00 to 01:30	Sunday 23:00 to 23:30	Sunday 23:00 to 00:00
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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 Library operates as a members' club, boutique hotel and restaurant. The Applicant sought to extend the hours for the sale of alcohol and provision of late night refreshment by half an hour on Monday to Wednesday until 00:30, by an hour and a half on Thursday until 01:30, by an hour on Friday and Saturday until 01:30, by half an hour on Sundays until midnight and by an hour on Sundays before Bank Holidays until 01:30. In all cases, the premises are proposing to close 30 minutes after the terminal hour for licensable activities. There was no application to alter the existing permitted hours for hotel residents and their bona fide guests. The Chairman advised the Applicant that the Council's Statement of Licensing Policy had been updated since the grant of an application for a new premises licence in 2014. In the representations objecting to the application, particularly from the two amenity societies, it had been acknowledged that The Library was well run. However, they had concerns regarding the proposed terminal hours and the application being granted as an exception to policy in the West End Stress Area. It was for the Applicant to set out why the application should be considered a genuine exception to policy.</p> <p>Ms Berridge, representing the Applicant stated that there were no immediate neighbouring residential properties next to the premises. The Applicant had consulted with the relevant amenity associations. She explained that what the Applicant was aiming to achieve at The Library is a space where like-minded individuals from the creative sectors such as theatre, design and literature are able to come together. The members' club is primarily used for networking and events are held most nights of the week, including book launches, poetry readings and talks by successful individuals.</p> <p>Ms Berridge acknowledged that her client needed to meet a high threshold to persuade the Sub-Committee that the application constituted a genuine</p>								

exception to the Council's policy. She set out the key reasons why the application was exceptional and would not add to cumulative impact. Ms Berridge made the submission that The Library is remarkable in its diversity of members. She referred to the membership being 44% female, 30% black and 10% Asian and non-white ethnic minorities. The majority of members are in the 35-45 age range. She added that because of this the nature of The Library is different to other venues or private members' clubs in the West End. It helped to contribute to the appropriate behaviour of members inside and outside the premises. It was not a privileged gentleman's club. She took the view that The Library was also remarkable in that it had operated without incident since it had opened in July 2014. She stated that the Council's policy took into account different types of premises, including private members' clubs. Ms Berridge referred to other private members' clubs in the locality such as The Ivy and The Groucho which she perceived had been considered exceptions to policy as she was of the view they could demonstrate that there was something unique about their operation, including the restrictions and controls present.

Ms Berridge informed the Sub-Committee that there were annual and lifetime membership options and the cost currently was £850 per annum with a £250 joining fee. Members of the club were required to sign up to extensive membership rules and were likely to be excluded for inappropriate behaviour. It was not possible to gain entry at The Library without prior knowledge of those operating the club. Ms Berridge stated that the long and narrow nature of the building meant that on dispersal from the building, people had to leave single file. They did not all leave in a large group. Members of the club or their guests could wait in the lobby area so they did not have to wait for transport outside the venue. The hotel bedrooms were above the main floor and mezzanine area. Ms Berridge made the point that this created self-regulation because the Applicant was dependent on repeat business from those staying in the bedrooms.

Ms Berridge said that it was her understanding that The Library was unique in the West End as it has a partnership arrangement in place with the English National Opera, Cameron Delfont and Nimax Theatres. The cast, crew and directors in this arrangement were able to obtain temporary membership at The Library for the duration of the season of performances. Ms Berridge informed the Sub-Committee that these members were explaining to Mr Ndoro that they needed longer hours because after the performances they required the time to change, travel to the venue, then have a wind-down drink or eat before leaving the premises. The Applicant also wished to hold 'wrap parties' at the venue which were held at the end of a theatre or opera run.

Ms Berridge believed that the variation application if granted would create the same or less impact as the current premises licence. She stated that there were specific benefits in granting the variation application compared to what she described as an 'unencumbered' premises licence currently. The current capacity was 300 at all times and there was no time limit on re-entry. Her client had offered a condition that there would be no new entry of patrons after 00:30 on any day so that the club would not be seen as a destination venue. Conditions had also been offered that capacity would be reduced after midnight on Thursday, Friday and Saturday evenings to a maximum of 200 patrons and

after midnight on Sunday, Monday, Tuesday and Wednesday evenings to a maximum of 100 patrons. Conditions specifying the taxi services provided had also been offered by the Applicant.

Ms Berridge made the point that following discussions with the amenity societies, the extensions in terms of hours were purely for late night refreshment and the sale of alcohol and not for regulated entertainment. She believed that members or guests would be leaving a quiet venue and would disperse quietly. There would be an extension at the restaurant from 22:00 to 00:00 with an emphasis on food and not late night drinking. The Applicant intended that the application would cover private events and general use by members of the club and their guests.

Ms Berridge referred to Mr Kaner's proposals in his written representation on behalf of the Covent Garden Community Association. She explained that there were aspects that her client could not agree. These included his point that the 'conditions offered do not vary the categories of people to whom the activities can be offered'. She stated that there were events that members only could attend or those where non-members who were invited could attend. She was of the view that due to the wide variety of circumstances, differences in permissions would be unworkable from a management perspective and also would be impossible for the authorities to regulate. In respect of Mr Kaner's proposal to limit the capacity to 100 after midnight throughout the week, Ms Berridge commented that to do so would be to undermine what the application was seeking to achieve. The Applicant had advised her that it was common for there to be 200 persons in the club at midnight on Saturday evenings. She added that to reduce the capacities as suggested in the conditions offered by the Applicant was a reasonable and proportionate compromise.

Ms Berridge stated her client was content with a condition being placed on the licence in the event the application was granted to be in keeping with Mr Hardy's proposal on behalf of Burleigh Mansions Residents' Association for the sale of alcohol to cease thirty minutes before closing at 02:00 on Thursday to Saturday evenings. Mr Ndoro was also content for members to be directed to Trafalgar Square rather than up St Martin's Lane where there were more residents. She did not believe it would be practical to base the employment of a door supervisor on the capacity as suggested by Mr Hardy as this would vary on any given night. Ms Berridge added that it was for a staff member present in the lobby area at all times to ensure safe access and egress to and from the venue. The club did employ one or two SIA qualified operatives to match the nature of events if necessary. She asked that if Members were minded to require the Applicant to employ SIA door supervisor(s) that these be restricted to peak times of operation.

The Sub-Committee heard from the Metropolitan Police, Environmental Health and Licensing Authority. PC Guerra stated that the Police had maintained their representation as the application had been extended further beyond Core Hours in the West End Cumulative Impact Area. He confirmed that The Library did not generate any crime and disorder. He sought clarification regarding the affiliate memberships as part of the partnership arrangements at the premises which had been referred to by Ms Berridge.

Mr Nevitt for Environmental Health advised the Sub-Committee that The Library had good sound insulation and it was therefore unlikely that any noise would emanate from the building. It was well managed. Mr Nevitt commented however that the Council's Statement of Licensing Policy stated that the fact that such premises were well run was not sufficient in itself to constitute an exception to policy. Mr Nevitt added that paragraph 2.4.1 set out that 'the urban infrastructure cannot sustain any further growth in alcohol sales or in late night-time activity levels without accentuating the risk of a variety of harmful outcomes. The retention of people late at night contributes to the cumulative impact'. This was a key aspect as to why he had maintained his representation. There were residents nearby and slightly further afield. It was Environmental Health's concern that 200 people in the West End Cumulative Impact Area late at night presented a risk. Mr Nevitt noted that the Applicant had offered a reduction in capacity and had limited the application to late night refreshment (indoors) and on-sales of alcohol. He questioned whether the application was a genuine exception to policy. Mr Nevitt referred to other late night premises having a tailored membership for the likes of actors or directors and asked whether this was something the Applicant would like to pursue.

Mr Rowe on behalf of the Licensing Authority advised the Sub-Committee to consider his representation as set out in the report and in particular paragraphs 2.4.9 to 2.4.12 of the Statement of Licensing Policy which refers to private members' clubs and those premises which promote private functions. It was for the Sub-Committee to consider whether the application was a genuine exception to policy.

The Sub-Committee was also addressed by Mr Brown, representing Mr Hardy of Burleigh Mansions Residents' Association. Mr Brown confirmed that Mr Hardy did not have any issues with the running of the premises. It was whether the application constituted an exception to policy. It was Mr Hardy's view that policies CIP1 and HRS1 had made a difference to the quality of life of residents. Mr Hardy was concerned about the setting of a precedent which might be used by other clubs if an exception was found for this application. Mr Brown referred to the Policy stating that in order for an application to be genuinely exceptional, it has to address the underlying reasons for having the policy (paragraph 2.4.5). The reason for having the policy is the proliferation of late night, drink led premises.

The Sub-Committee asked a number of questions. Clarification was sought as to whether there would be 143 people standing, potentially drinking at the premises. Mr Ndoro replied this was the case. He informed the Sub-Committee that for events such as the wrap parties most would stand. The flexibility was to cover all the scenarios. He described a typical Friday evening as having live jazz music with 200-230 people standing and sitting at the venue. He was prepared to reduce the numbers slightly in order not to add to cumulative impact.

Mr Ndoro was asked about the affiliate membership scheme. He replied that the likes of Nimax theatres would inform him that there is a new production due to start and would give The Library all the details of those involved such as the cast and directors. They would be given temporary membership for the duration of

the production. Ms Berridge made the point that there was the same vetting process and the same rules including the number of guests applied to the temporary members. She accepted that the conditions required members to pay an admission fee of £250 which was not the case with the temporary membership holders. Mr Ndoro added that there were free theatre tickets for members as part of the arrangement.

The Sub-Committee asked Mr Ndoro what the numbers attending The Library were on an average week night. He responded that it depended on what activities were taking place. A book launch or reading would bring more members/guests into the premises.

The Sub-Committee considered that in the most recent Statement of Licensing Policy the approach towards private members' clubs had been reviewed. This had taken place since an application for a new premises licence had been granted in May 2014. In particular, paragraph 2.4.12 clearly states that the Council considers that in the cumulative impact areas, premises which restrict access to general members of the public, such as proprietary clubs and premises used for private functions, will not be considered to be exceptions to cumulative impact area policies for that reason alone. The Sub-Committee were of the view that the Applicant's Representative had not demonstrated that the application constituted a genuine exception to policy in the West End Cumulative Impact Area or that it would not add to cumulative impact. It had been a significant aspect of the Representative of the Applicant's case that the establishment was well run but this did not as set out in the Council's policy constitute an exception to policy in itself.

The Applicant was also relying on its diverse membership and the partnership arrangements that it had in place with various theatrical and entertainment organisations. However, that could not guarantee that no patrons leaving the premises during the early hours of the morning would add to cumulative impact. The policy was strict and could only be overridden in genuinely exceptional circumstances and, as referred to by Mr Nevitt during the hearing, the reason for the policy was that 'the urban infrastructure cannot sustain any further growth in alcohol sales or in late night-time activity levels without accentuating the risk of a variety of harmful outcomes. The retention of people late at night contributes to the cumulative impact'.

The Sub-Committee shared Mr Kaner's view that the Applicant's proposed conditions in respect of the last entry time and the reductions in capacity would not make a significant difference in limiting the cumulative impact. Mr Kaner had referred to the last entry condition only having any effect on Thursdays to Saturdays because on all other days licensable activities ended at this time or earlier. There would still potentially be up to 200 people dispersing from the premises at 02:00 in the West End Cumulative Impact Area on Thursday, Friday and Saturday evenings. Many of these people would have been in the venue vertically drinking. The other conditions offered, including the conditions relating to tax provision, did not actually address the reasons why the cumulative impact policy had been implemented and did not provide a reason for departing from the policy in this particular case. The Sub-Committee was not convinced of the argument that there would be less or the same impact as under the existing

	premises licence. The Sub-Committee refused the application.	
<b>2.</b>	<b>Sale by Retail of Alcohol (On Sales)</b>	
	<u>From</u> Monday to Thursday 10:00 to 00:00 Friday to Saturday 10:00 to 00:30 Sunday 12:00 to 23:30	<u>To</u> Monday to Wednesday 10:00 to 00:30 Thursday to Saturday 10:00 to 01:30 Sunday 12:00 to 00:00
	Amendments to application advised at hearing:  None.	
	Decision (including reasons if different from those set out in report):  The application was refused (see reasons for decision in Section 1).	
<b>3.</b>	<b>Hours premises are open to the public</b>	
	<u>From</u> Monday to Thursday 10:00 to 00:00 Friday to Saturday 10:00 to 00:30 Sunday 12:00 to 23:30	<u>To</u> Monday to Wednesday 10:00 to 01:00 Thursday to Saturday 10:00 to 02:00 Sunday 12:00 to 00:30
	Amendments to application advised at hearing:  None.	
	Decision (including reasons if different from those set out in report):  The application was refused (see reasons for decision in Section 1).	
<b>4.</b>	<b>Seasonal Variations / Non-Standard Timings</b>	
	<b><u>Late Night Refreshment (Indoors)</u></b>	
	<u>From</u> Sundays before Bank Holidays: 23:00 to 00:30	<u>To</u> Sundays before Bank Holidays: 23:00 to 01:30

<b><u>Sale by Retail of Alcohol (On sales)</u></b>	
<u>From</u>	<u>To</u>
Sundays before Bank Holidays: 12:00 to 00:30	Sundays before Bank Holidays: 12:00 to 01:30
<b><u>Hours premises are open to the public</u></b>	
<u>From</u>	<u>To</u>
Sundays before Bank Holidays: 12:00 to 00:30	Sundays before Bank Holidays: 12:00 to 02:00
Amendments to application advised at hearing:	
None.	
Decision (including reasons if different from those set out in report):	
The application was refused (see reasons for decision in Section 1).	

**2 STARBUCKS, GROUND FLOOR, NATIONAL HOUSE, 60-66 WARDOUR STREET, W1**

**LICENSING SUB-COMMITTEE No. 2**

*Tuesday 20th December 2016*

Membership: Councillor Nickie Aiken (Chairman) and Councillor Murad Gassanly

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

Relevant Representations: Environmental Health, Metropolitan Police and The Soho Society.

Present: Mr Craig Baylis (Solicitor, representing the Applicant), Mr David Argent (Regional Director of Operations, Applicant Company), Mr Dave Nevitt (Environmental Health) and PC Reaz Guerra (Metropolitan Police).

**Starbucks, Ground Floor, National House, 60-66 Wardour Street, W1  
16/11472/LIPN**



1.	<b>Late Night Refreshment (Indoors)</b>
	Monday to Sunday 23:00 to 05:00
	<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>Ms Lawrance informed the Sub-Committee when presenting the item that the Applicant had now agreed the proposed conditions except Environmental Health's suggested condition that 'there shall be no takeaway of hot food or hot drink after 23:00 hours'. Mr Baylis, when asked about this condition by the Sub-Committee stated that his client could not agree this condition as it is takeaway that drives the business. He referred to the fact that there had been a time limited licence for the premises between 1 July 2012 and 30 September 2012 when Core Hours had been permitted. He also referred to Caffe Nero in Frith Street being permitted to operate until 04:00 Thursday to Saturday.</p> <p>Mr Baylis explained that the reason for the application was because his client had observed a significant increase in footfall in the area as a result of the Night Tube. Starbucks at 60-66 was currently required to close at 23:00 and the Applicant was keen for customers to remain at the premises. Mr Baylis expressed the view that it was better for customers to have a coffee in the West End Cumulative Impact Area than an alcoholic drink in a local pub. He made the point that he would not be making the case that the application was an exception to the Council's policy, notably Policy FFP2 where it is the Licensing Authority's policy to refuse applications in the Cumulative Impact Areas, other than applications to vary hours within the Core Hours under Policy HRS1. Mr Baylis added that he had advised his client that an application with a terminal hour of 05:00 at this location was ambitious. It was for the Sub-Committee to consider what extension was reasonable. He did not believe that the application would cause any issues.</p> <p>Mr Argent commented that for the first time customers at 60-66 Wardour Street were being politely asked to leave at the weekend now the Night Tube was in operation. Caffe Nero had a well behaved clientele.</p> <p>The Sub-Committee heard from PC Guerra on behalf of Metropolitan Police and Mr Nevitt on behalf of Environmental Health. PC Guerra stated that the representation had been maintained as the hours applied for were beyond Core Hours. Conditions that had been proposed by the Police had been agreed by the Applicant. PC Guerra emphasised that it was for the Applicant to prove that the application would not add to crime and disorder and for the Sub-Committee to consider whether the application was a genuine exception to policy.</p> <p>Mr Nevitt drew Members' attention to the fact that it is the Council's policy that hot food and drink adds to the attractiveness for customers remaining in the</p>

cumulative impact area and not dispersing from it. Many of these customers would have been consuming alcohol in pubs, bars or night clubs. He also made the point that it would be inconsistent in policy terms to permit the application for Starbucks and refuse late night refreshment elsewhere in the West End Cumulative Impact Area. There was the potential for restaurants to want to operate until 05:00 in the West End Cumulative Impact Area and they would be able to make the case that they were able to offer table meals. The area would become constantly busy at all times. Ventilation or refrigeration used at the premises would run later which could potentially impact on residents. The use of the toilets would add to the attractiveness for patrons who may be intoxicated coming to the premises. There would be the potential for litter to be on the streets at a later time.

Mr Baylis in response to the Police and Environmental Health representations stated that his client had agreed to employ a door supervisor on Thursday, Friday and Saturdays from 23:00 until the end of licensable hours. Toilets were controlled by staff and they had the ability to lock or release them with a button under the counter. The licence holder would also be required as a result of a proposed condition to remove litter immediately outside the premises and sweep and wash this area.

The Sub-Committee considered that it was appropriate to grant Core Hours for late night refreshment (indoors). Core Hours are 23:30 Monday to Thursday and midnight Friday and Saturday. The Sub-Committee attached Environmental Health's proposed condition that 'there shall be no takeaway of hot food or hot drink after 23:00 hours'. Granting Core Hours for late night refreshment (indoors) and attaching a condition that there would be no takeaway of hot food or hot drink after 23:00 hours was consistent with what had been permitted for the time limited licence at the premises between 1 July 2012 and 30 September 2012 (12/02238/LIPN – heard by the Sub-Committee on 31 May 2012).

The Sub-Committee considered, taking into account the representations of Environmental Health and Metropolitan Police that there was not a case for granting the application until the early hours of the morning as an exception to policy. If the establishment was open any later than Core Hours it would add to cumulative impact and as set out in the Council's policy have the potential to attract groups of customers to remain in the West End Cumulative Impact Area, many of whom may have been consuming alcohol elsewhere. The congregation of people around these premises would potentially lead to additional noise and disturbance and further congestion in the area. Paragraph 2.5.18 of the Council's policy states that 'the Council considers that the addition of hot fast food and hot drink adds to the attractiveness of premises to people who have been drinking and who are more likely to be involved in anti-social behaviour'.

The Sub-Committee decided not to attach the proposed condition requiring a door supervisor to be employed on Thursday, Friday and Saturdays from 23:00 until the end of licensable hours. Members considered that this was an unreasonable burden given that the terminal hours for the premises on those evenings would be 23:30 on Thursday and midnight on Friday and Saturday.

Members were also aware that the Caffè Nero, 43 Frith Street permission until

	04:00 at weekends had not previously been granted by a Sub-Committee (it had been converted from a Justices' licence and had not been subject to the Council's current policy) and should therefore not be seen as a precedent.
<b>2.</b>	<b>Hours premises are open to the public</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 granted Core Hours for the premises (a terminal hour of 23:30 Monday to Thursday and midnight Friday and Saturday).

#### **Conditions attached to the Licence**

1. 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.
2. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
3. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police, which will record the following:
  - (a) all crimes reported to the venue
  - (b) all ejections of patrons
  - (c) any complaints received concerning crime and disorder
  - (d) any incidents of disorder
  - (e) any faults in the CCTV system
  - (f) any visit by a relevant authority or emergency service
4. After midnight there shall be no glass drinkware sold by the premises. At this time, any glass drinkware will be cleared from customer area, once it is no longer in use.

5. Outside tables and chairs shall be removed or rendered unusable by 23:00 hours.
6. The number of persons accommodated at the premises (excluding staff) shall not exceed:  
Ground floor 50 persons
7. There shall be no takeaway of hot food or hot drink after 23:00 hours.
8. 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.
9. 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.
10. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
11. 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.
12. All waste is to be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
13. No rubbish including bottles shall be moved, removed or placed in outside areas between 23:00 hours and 08:00 hours.

### **3 MAISON BERTEAUX, 28 GREEK STREET, W1**

#### **LICENSING SUB-COMMITTEE No. 2**

*Tuesday 20th December 2016*

Membership: Councillor Nickie Aiken (Chairman) and Councillor Murad Gassanly

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

Relevant Representations: Environmental Health and Metropolitan Police.

Present: Mr Alun Thomas (Solicitor, representing the Applicant), Ms Michele Wade (Applicant and Owner of premises), Ms Nicola Curtis (Environmental Health) and PC Reaz Guerra (Metropolitan Police).

<b>Maison Berteaux, 27-28 Greek Street, W1 16/11180/LIPN</b>	
<b>1.</b>	<b>Sale by retail of alcohol (On and Off sales)</b>
	Monday to Sunday 10:00 to 21:00
	Amendments to application advised at hearing:  None.
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee had been provided with a representation from the Police and correspondence between the Police and the Applicant's Representative prior to the hearing. The Police's representation had been omitted from the report but had been received by the Licensing Service within the consultation period.</p> <p>The Sub-Committee initially heard from Mr Thomas, representing the Applicant. He stated that Maison Berteaux is a French patisserie and tea rooms established in 1871. Ms Wade, the Applicant, owned the premises and had worked there since 1980. The Applicant was looking to offer wine, champagne or possibly cognac to complement the food offer. Mr Thomas explained that alcohol would not be a major part of the business.</p> <p>Paragraph 2.4.21 of the Council's policy sets out that the Council considers 'where applications for licenses to sell alcohol for consumption on the premises are made and (i) are appropriately conditioned so that the consumption of alcohol is not, and cannot become, a significant part of the operation of the premises and is regulated to promote responsible drinking; (ii) where the character of the premises is such that its customers are not likely to be involved in sustained or heavy drinking at later hours; and (iii) when the sale of alcohol is not permitted beyond 20.00 hours; then permitting the sale of alcohol for consumption on the premises is unlikely to add to cumulative impact in the cumulative impact area'. In response to questions from the Sub-Committee Mr Thomas commented that he believed it was appropriate to seek a terminal hour of 21:00 rather than 20:00 because of the lack of emphasis on alcohol at the premises. Any alcohol sold would be ancillary to food such as cake or chocolate and served by waiter or waitress. Off-sales would be restricted to alcohol consumed by persons in the outside area where there were tables and chairs on the highway. Customers would still come to the premises for a tea or coffee and there would be no draft beer available. He added that he was content with a proposed condition that the premises would continue to operate as a French café and that if Members wished to personalise the licence to Maison Berteaux he would not have any objection.</p> <p>PC Guerra advised the Sub-Committee that the Police had maintained their</p>

representation due to the fact that the Applicant was requesting a terminal hour of 21:00 which as set out in Paragraph 2.4.21 is beyond the 20:00 set out in the Council's policy. He made the point that it was for the Sub-Committee to consider whether the application was an exception to policy or not. The Police had no concerns regarding crime and disorder at the premises. Ms Curtis on behalf of Environmental Health also stated that she had no concerns regarding the operation. It was food led. Her representation had been maintained because the application did not fall fully within the Council's policy.

Mr Thomas was asked about the capacity. He replied that the maximum capacity was 64 and he was content with a capacity of 24 on the ground floor. If Members were concerned about capacity his client was willing to reduce the overall capacity to 50. Proposed conditions had been agreed with Environmental Health that works needed to take place in the basement and on the first floor. Mr Thomas also confirmed during the hearing that the actual address of the premises is 27-28 Greek Street.

The Sub-Committee decided to grant the application as applied for as it was satisfied that the sale of alcohol until 21.00 at these particular premises and subject to the conditions proposed would not add to cumulative impact. In announcing the decision, the Chairman stated that Maison Berteaux is a unique historic operation. Alcohol would be ancillary to food and served by waiter or waitress. There were no concerns as to whether the licensing objectives would be promoted. The combination of these factors meant that the Sub-Committee did not have specific concerns about cumulative impact from a maximum capacity of 64 people as a result of alcohol being sold until 21:00. The Sub-Committee attached the condition that there would be no consumption of alcohol after 21:30 to prevent customers drinking what they had purchased prior to 21:00 until the closing time of 23:00. The Sub-Committee also took up the Applicant's offer to personalise condition 11 (see below) so it referred to the premises operating as the French café Maison Berteaux. This would mean that the premises would be expected to retain its current character even in the event the licence was transferred.

**2. Hours premises are open to the public**

Monday to Sunday 08:00 to 23:00

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 responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
  - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
    - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;
      - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
      - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
    - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
    - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
    - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
    - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

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

7. The responsible person must ensure that—

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

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

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

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

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



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

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

Where -

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

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

- 8(iv). (1) Sub-paragraph 8(iv)(2) below applies where the permitted price given by Paragraph 8(ii)(b) above on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

### **Additional Conditions**

9. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises

is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.

10. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
11. The premises shall operate as the French café Maison Berteaux:
  - (i) where the supply of alcohol is by waiter or waitress service only
  - (ii) where alcohol shall not be sold or supplied for consumption on the premises otherwise than by persons who are seated in the premises and where the consumption of alcohol by such persons is ancillary to food (including cake and chocolate).
12. The sale and supply of alcohol for consumption off the premises shall be 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 where the consumption of alcohol by such persons is ancillary to food (including cake and chocolate), and where the supply of alcohol is by waiter or waitress service only.
13. No more than 15% of the retail area shall be used at any one time for the sale, exposure for sale, or display of alcohol.
14. Substantial food and non-intoxicating beverages, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
15. A Challenge 21 or 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.
16. A log shall be kept detailing all refused sales of alcohol. The log should include the date and time of the refused sale and the name of the member of staff who refused the sale. The log shall be available for inspection at the premises by the Police or an Authorised Officer of the City Council at all times whilst the premises is open.
17. The number of persons permitted (excluding staff) in the premises at any one time shall not exceed:  
  
Ground Floor – 24  
External seating – 16  
Basement – 12  
First floor tea room – 12.
18. No noise or odour shall emanate from the premises nor vibration be transmitted

through the structure of the premises which gives rise to a nuisance.

19. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
20. No deliveries shall take place between 23:00 and 07:00 hours.
21. 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.
22. No licensable activities shall take place within the basement until it has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.
23. No licensable activities shall take place on the first floor until it has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.
24. The consumption of alcohol on the premises (including the external seating area) shall cease at 21:30 hours.