



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 2nd February, 2017**, Rooms 5, 6 & 7 - 17th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6 QP.

Members Present: Councillors Peter Freeman (Chairman), Heather Acton and Aziz Toki

1 MEMBERSHIP

There were no changes to the membership.

2 DECLARATIONS OF INTEREST

In respect of the application for Ivy Soho Brasserie, Broadwick Street, Councillors Peter Freeman and Heather Acton declared that they had previously eaten at Ivy restaurants.

3 IVY SOHO BRASSERIE, 26-28 BROADWICK STREET, W1

LICENSING SUB-COMMITTEE No. 5

Thursday 2nd February 2017

Membership: Councillor Peter Freeman (Chairman), Councillor Heather Acton and Councillor Aziz Toki

Legal Adviser: Horatio Chance

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

Presenting Officer: Sumeet Anand-Patel

Relevant Representations: 5 in support and 6 opposed.

Present: Mr Stephen Walsh QC (Representing the Applicant), Ms Lilly Newell (Executive Director of Caprice Holdings and The Birley Group), Mr Baton Berisha (Operations Director), Mr Tomas Minkley (General Manager of premises), Mr George Jones (Property Director) and Mr Lou Myers, Ms Gillian Nesbitt and Mr Ken White (witnesses in support of application), Mr

Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project, representing Professor Martin Callingham and Mrs Liz Callingham, local residents) and Professor Martin Callingham and Mrs Liz Callingham.

Declaration: Councillors Peter Freeman and Heather Acton declared that they had previously eaten at Ivy restaurants.

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| Ivy Soho Brasserie, 26-28 Broadwick Street, W1 16/13443/LIPV | | | |
| 1. | Condition being varied | | |
| | <table border="0"> <tr> <td style="vertical-align: top;"> <p><u>Existing condition (11 on the existing premises licence)</u> Where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises or any external area of the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.</p> <p>Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.</p> </td> <td style="vertical-align: top;"> <p><u>Proposed condition</u> Where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises or any external area of the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals OR for consumption by those persons seated at the bar subject to a maximum of 18 without the requirement of those persons taking substantial table meals up to 22:00 hours.</p> <p>Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.</p> </td> </tr> </table> | <p><u>Existing condition (11 on the existing premises licence)</u> Where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises or any external area of the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.</p> <p>Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.</p> | <p><u>Proposed condition</u> Where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises or any external area of the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals OR for consumption by those persons seated at the bar subject to a maximum of 18 without the requirement of those persons taking substantial table meals up to 22:00 hours.</p> <p>Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.</p> |
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| | <p>Amendments to application advised at hearing:</p> <p>During the hearing, the Applicant agreed a proposed amendment to condition 11 on the existing premises licence so that alcohol would be ancillary to substantial table meals, save for 50% of customers sat at the bar up to a maximum of 9 persons being able to consume alcohol without the requirement to take a substantial table meal up until 22:00 hours. (See decision below).</p> | | |
| | <p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee heard from Mr Walsh, representing the Applicant. Mr Walsh advised that the Applicant Company, Troia (UK) Restaurants Ltd is part of</p> | | |

the Caprice Holdings and The Birley Group. Ivy Soho Brasserie would be the flagship premises in the Ivy Collection of restaurants. The premises would be run to the highest standards.

Mr Walsh referred to The Ivy Market Grill at 1A Henrietta Street permitting the sale of alcohol for up to fourteen people seated at the bar without the alcohol being ancillary to a substantial table meal until 21:30 and the premises is located in the West End Cumulative Impact Area (this had been granted under delegated authority and had not come before the Sub-Committee). He added that the variation had also been permitted in various forms at other premises. He believed that all the Ivy premises which had operated with this flexibility had not lost their restaurant character and become a bar. The Ivy Soho Brasserie except for the bar area would be subject to the full restaurant conditions and the bar area would be fully subject to restaurant conditions after 22:00.

Mr Walsh made the case that there would be no discernible negative impact if the application was granted. There had been no representations from the Responsible Authorities. He expressed the view that even if the Sub-Committee did consider that the application was contrary to the Council's Cumulative Impact Area policy ("CIA"), the style and nature of operation demonstrated a clear exception to the policy.

Mr Walsh referred to there being five representations in support of the application. The Licensing Service had received a letter in support of the application from Capital & Counties Properties Plc. They are the landlords for The Ivy Market Grill and advised that the premises there are run impeccably.

The Sub-Committee was informed by Mr Walsh that it was intended that of the 18 people who it was proposed could purchase alcohol without it being ancillary to substantial table meals up to 22:00 hours, 12 could be seated at stools around the front and the side of the bar and 6 behind. Mr Walsh explained that what was not sought was a dedicated bar for all of the customers to drink at. The seats provided would be dining covers. Even if customers were only interested in having a drink, they would also be provided with a menu. The aim of the premises was to encourage customers to eat. Customers would be seated and there would be no vertical drinking at the premises. Some flexibility was sought in the event some members of a family only wanted a drink. Mr Walsh submitted that at the Ivy Market Grill only 5% of customers just had a drink at the bar area without food.

Mr Walsh stated that the capacity at Ivy Soho Brasserie is 250 but due to the fact that the establishment is a restaurant and wished to give customers space to dine, his clients were content for the Sub-Committee to impose a more restrictive condition of 220. Mr Walsh stated that he respected the representations from residents but there had been no representations from the Responsible Authorities and the application did not add to cumulative impact or have a negative impact.

Ms Newell made the point that the Ivy premises in Westminster and in other boroughs in London were invariably located in residential areas. Management and staff connected with the Ivy premises prided themselves on being part of the

local communities and working with their residential and business neighbours. All these premises traded with no issues for the communities.

The Sub-Committee heard representations in support of the application. Mr Myers had not submitted a written representation and the Sub-Committee were not aware that it was proposed he would speak. The Sub-Committee asked the objectors whether they had any issues with Mr Myers addressing the Sub-Committee. Mrs Callingham replied that they did not object to hearing from Mr Myers. The Sub-Committee gave Mr Myers permission to address them.

Mr Myers stated that he lived at Southampton Street in such close proximity to The Ivy Market Grill that he could see inside the windows. Although there is what he described as a large and busy outside area at The Ivy Market Grill, it did not adversely affect his quality of life due to the good management of the area. He had not seen a large congregation at the bar and he was of the view that the staff looked after local residents.

Mr White stated that he lives in Brewer Street. He was a former Police Inspector in the Soho area and commented that he retains an interest in the regeneration of Soho. He was of the view that The Ivy Soho Brasserie was an important element in this process of regeneration of Broadwick Street and Soho.

Mrs Nesbitt also spoke in support of the application. She had lived in Marylebone since 1995 and had also lived in Lexington Street for more than twenty years. She explained that there was a bar and restaurant below her premises in Marylebone which she described as appalling. She had looked at examples of other premises including The Ivy Café Marylebone and had been particularly impressed. She was invited to meet those responsible for The Ivy Soho Brasserie as she lives in the area and asked them how it was The Ivy Café Marylebone was so well run. The Ivy Group management had then sent her a letter detailing what their management practices were. Mrs Nesbitt advised the Sub-Committee that The Ivy Market Grill in Covent Garden (without booking or providing her name) with a female friend with the intention of having a drink and had been advised that as the establishment was so busy they would need to order food. The stools they were shown to were fixed. The food was substantial and they had been able to sit at the stools between 20:00 and 22:30. Nobody had asked them to move on. She added that it had been delightful working with the Ivy Group representatives.

Mr Brown, representing Mr and Mrs Callingham, confirmed that the operators of The Ivy Soho Brasserie had engaged with all the residents. The objectors did not have any issues with the operators and there were no doubts that the operators would run an impressive restaurant. The objections, however, were based on policy grounds. Mr Brown referred to the Council's Statement of Licensing Policy, including the definition of a restaurant at paragraph 2.5.3. Mr Brown stated that whilst customers having a drink, and waiting to dine did comply with policy, drinking alcohol without it being ancillary to food was not.

Mr Brown made the point that if every licensed premises in the cumulative impact areas increased the number of drinkers which were not required to eat food by 18, it would be of significant concern. Mr Brown questioned whether

there were any exceptional circumstances in respect of the application. He pointed out that this was not a restaurant which had been open for some time seeking independent bar use. It was a new restaurant which had already added 250 people in the West End Cumulative Impact Area. The bar was not part of the original application. It had been granted as a restaurant. He accepted that the bar was not particularly visible from the street. He believed that if the proposed condition was to be imposed it would be easier to enforce it at the bar than throughout the premises.

Mrs Callingham addressed the Sub-Committee. Mrs Callingham stated that she was speaking on behalf of residents in Upper John's Street, Beak Street and Marshall Street. She was particularly unhappy with licence holders being granted an initial premises licence and then returning soon after to vary the licence as it was misleading. She did not dispute that The Ivy Soho Brasserie would be a well-run restaurant. However, the application was adding to stress in the West End Cumulative Impact Area. She referred to the 'tap dripping' effect in the sense that the bath in the Cumulative Impact Area had been filled beyond capacity and was overflowing. Up to eighteen people drinking without food was not acceptable to residents. She questioned why a well-run restaurant would have 18 people waiting to drink and not consume food. Mrs Callingham believed it was of benefit that food was served at the bar and asked whether the Applicant was willing to consider a much lower number of people who were able to drink without it being ancillary to food in order to provide greater control.

The Sub-Committee asked the Applicant a number of questions. These included why the application should be considered an exception to policy. Mr Walsh replied that if the Sub-Committee did decide that the application was an exception to policy, the Applicant could demonstrate that the Ivy Collection premises did not add to cumulative impact. He believed an example of this was at The Ivy Market Grill. He added that it would be inconsistent to permit additional drinkers at The Ivy Market Grill and not at Ivy Soho Brasserie.

Mr Walsh also expressed the view that the application was not adding 18 drinkers but adding flexibility to the grown up usage at a first class restaurant. This was not a dedicated bar but worked hand in hand with the dining concept.

The Sub-Committee asked Mr Walsh whether his client would be content to have up to 50% of the 18 customers sat at the bar required to eat there. Members made it clear that there was no presumption to grant the premises due to there being an indication it would be well-run. Mr Walsh responded that his client would be willing to accept the percentage in the form of a condition.

The Sub-Committee also asked whether the Applicant was willing to encourage that vehicles used on behalf of the premises were electric vehicles. Ms Newell replied that the Ivy Group encouraged this. Mr Walsh provided the additional information that customers were also encouraged to wait inside for taxis.

The Sub-Committee, based on the evidence received and the discussion during the hearing, granted the application in part as an exception to policy. The Applicant had agreed an amendment to condition 11 on the existing premises licence so that alcohol would be ancillary to substantial table meals, save for

50% of customers sat at the bar up to a maximum of 9 persons being able to consume alcohol without the requirement to take a substantial table meal up until 22:00 hours. The Sub-Committee considered that the amended application, with the reduced numbers being able to drink without food at the bar, would not fundamentally change the nature and character of these restaurant premises. Other aspects of the application which the Sub-Committee considered would prevent the premises from moving away from being a bona fide restaurant were that all customers would be seated and served by waiter or waitress and that the bar would not be visible from the street.

The Sub-Committee accepted the Applicant's offer of a reduced capacity of 220 which would be of benefit in the West End Cumulative Impact Area. Members also noted the Applicant's comments that staff would encourage customers to wait inside the premises for taxis and also encourage that vehicles used on behalf of the premises were electric vehicles.

The Sub-Committee attached conditions that Patrons permitted to temporarily leave and then re-enter the premises, including to smoke, would be limited to 9 persons at any one time. They would not be permitted to take drinks or glass containers with them.

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 only operate as a restaurant
- (i) in which customers are shown to their table,
 - (ii) where the supply of alcohol is by waiter or waitress service only,
 - (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery, (iv) which do not provide any take away service of food or drink for immediate consumption,
 - (v) which do not provide any take away service of food or drink after 23.00, and
 - (vi) where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises or any external area of the

premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals, save for 50% of persons sat at the bar up to a maximum of 9 persons who may consume alcohol without the requirement to take a substantial table meal up until 22:00 hours.

Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.

12. There will be no off sales of alcohol after 23:00
13. The premises will operate a "Challenge 25" policy whereby any person attempting to buy alcohol who appears to be under 25 will be asked for photographic ID to prove their age. The recommended forms of ID that will be accepted are passports, driving licences with a photograph, photographic military ID or proof of age cards bearing the 'PASS' mark hologram.
14. All outside tables and chairs shall be rendered unusable by 23.00 each day
15. 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.
16. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
17. There shall be no striptease or nudity, and all persons shall be decently attired at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue licence.
18. Notices shall be prominently displayed in any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
19. 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.
20. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
21. No waste or recyclable materials, including bottles, shall be moved, removed or placed in outside areas between 23:00 hours and 08:00 hours.
22. 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 premise is open.

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 or searching equipment or scanning equipment
 - (g) any visit by a relevant authority or emergency service.
24. No deliveries to the premises shall take place between 23:00 and 08:00 hours.
25. The Licence will have no effect until the premises have been assessed as satisfactory by the Environmental Health Consultation Team and this condition has been removed from the Licence.
26. Before the premises open to the public, the plans as deposited will be checked by the Environmental Health Consultation Team to ensure they are an accurate reflection of the premises constructed. Where the premises layout has changed during the course of construction new plans shall be provided to the Environmental Health Consultation Team and the Licensing Authority.
27. The maximum number of persons permitted on the premises at any one time (excluding staff) shall not exceed
 - Ground Floor 220 persons.Subject to appropriate facilities being provided on final clearance.
28. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall be limited to 9 persons at any one time.
29. 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.

4 JACK WILLS, BASEMENT TO FIRST FLOOR, 6 FOUBERT'S PLACE, W1

LICENSING SUB-COMMITTEE No. 5

Thursday 2nd February 2017

Membership: Councillor Peter Freeman (Chairman), Councillor Heather Acton and Councillor Aziz Toki

Legal Adviser: Horatio Chance

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

Presenting Officer: Sumeet Anand-Patel

Relevant Representations: Metropolitan Police, Environmental Health, Licensing Authority and 13 other representations objecting to application.

Present: Mr Alun Thomas (Solicitor, representing the Applicant), Ms Claudine Hamp (Global Head of Store Design), Ms Nicola Curtis (Environmental Health), PC Sandy Russell (Metropolitan Police), Mr Steve Rowe (Licensing Authority), Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project, representing Mr Martin Callingham and Mrs Liz Callingham, local residents) and Professor Martin Callingham and Mrs Liz Callingham).

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| Jack Wills, Basement to First Floor, 6 Foubert's Place, W1 16/13472/LIPN | |
| 1. | Sale by retail of alcohol (On) |
| | Monday to Saturday 10:00 to 20:00 Sunday 12:00 to 18:00 |
| | Amendments to application advised at hearing: During the hearing Mr Thomas proposed the condition that save for private events, the sale of alcohol would commence at 17:00. |
| | Decision (including reasons if different from those set out in report): The Sub-Committee heard from Mr Thomas, representing the Applicant. He stated that the intention of the application was to sell alcohol at the premises which at all times would be ancillary to the main use of the premises as a retail shop for limited hours at the flagship store. He explained that this was required for private shopper events or whilst the shop opened to the public, including being available to those waiting whilst others were shopping. Ms Hamp informed the Sub-Committee that the company had decided to apply for on-sales in response to a request from the landlord to provide an improved customer experience. It was felt that the addition of the licensable activity would result in customers being likely to stay longer in the store. Ms Hamp stated that the store opened at 10:00. The counter/bar was located in the back section on the ground floor. It was proposed that coffee would be provided during the day. The counter/bar had been designed so that behind it there was a cabinet where some alcohol would be displayed. The alcohol would not be on display all the time. It was intended that alcohol would be on display from 17:00. This area would look like a coffee servery until then. There would not be any draught beer sold. Ms Hamp and Mr Thomas wished to refute that the premises would become a bar or a pub. They made the point that it would remain a Jack Wills store with women's clothing on the ground floor and men's clothing on the first floor. It was estimated that alcohol would be approximately 1% of the sales at the premises and this made it 'virtually de minimis'. Mr Thomas referred to the proposed |

conditions that the sale of alcohol on the premises would at all times be ancillary to the main use of the premises as the Jack Wills Limited retail shop and that the licensed area would at all times remain under the management of Jack Wills Limited and the licence would be limited to their personal use only. These were designed to personalise and limit the use so that if the premises licence was transferred they would restrict the potential for a new operator to come in and run it as a bar.

Mr Thomas stated that food would be sold. It was not proposed that there would be a condition that alcohol would be ancillary to a table meal. Ms Hamp added that this would include breakfast, toasted sandwiches and salad and it was planned there would be local ingredients from as close to London as possible.

Ms Hamp clarified that Jack Wills occupies the site of two buildings and has two entrances. One of the buildings had an entrance/exit onto Kingly Street and the other was onto Foubert's Place. Mr Thomas made the point that he had been made aware in pre-application advice from Environmental Health that in order for the Applicant to be fully policy compliant, there should be no access to the counter/bar area from the street. The Applicant had not ignored this advice and had planned to address the Sub-Committee on this point. Environmental Health was proposing a condition that after 1800 hours until the end of licensed hours the doors to Kingly Street shall be used for emergency egress from the premises only or whenever the premises is open for licensable activities, the doors to Kingly Street shall only be used for emergency egress from the premises. The Police were proposing a condition that whenever the premises are open for licensable activities, the doors to Kingly Street shall only be used for emergency egress from the premises. Mr Thomas' response to this was that many of those having a drink would be in the basement. Also the footfall was at its peak from 17:00 to around 18:00. His client was willing to start selling alcohol at 17:00 with customers being able to enter from Kingly Street at that time. His proposed condition was save for private events, the sale of alcohol would commence at 17:00. He had no objection to the doors to Kingly Street being used for egress from the premises only after 18:00.

Mr Thomas referred to paragraph 2.4.20 of the Council's Statement of Licensing Policy ("SLP") that 'the availability of alcohol at lunchtime or in the early evening in premises where alcohol is ancillary to other uses of the premises and not associated with sustained or high alcohol consumption to later hours may not be likely to add to cumulative impact in the cumulative impact area'. The terminal hour of the premises would be 20:00. Mr Thomas believed that the application was within policy as set out in paragraph 2.4.21 of the SLP in that alcohol would not become a significant part of the operation of the business, where the character of the premises was unlikely to change and customers being involved in sustained and heavy drinking and where the sale of alcohol was not beyond 20:00. It was a shop and there were personalised conditions. He believed that the only aspect that was not policy compliant was the counter/bar area being accessible from Kingly Street.

Mr Thomas questioned whether the residents who had made objections were directly affected by the application given that they lived outside of the 75 metres radius of the premises. He also pointed out that Councillor Roberts'

representations in the papers did not refer to this application. He added that if Shaftesbury felt that the licensing objectives were not going to be promoted, they would not have supported the application.

The Sub-Committee heard from the Responsible Authorities. Mr Rowe on behalf of the Licensing Authority stated that it needed to be determined whether the application was dealt with either as a pub or bar. The shop is located in the West End Cumulative Impact Area. The operating hours are within the Council's Core Hours policy. However, the shop was proposing to sell alcohol without food. Therefore if the application was in keeping with policy PB2 of the SLP, the policy set out that such applications would be refused in the Cumulative Impact Area other than those being varied within Core Hours. It was a new application.

Mr Rowe referred to conditions having been proposed and Mr Thomas relying on paragraph 2.4.20 of the SLP. He said that whilst the conditions went some way to addressing the Licensing Authority's concerns there was the issue that there was direct access to the bar from the street. It contradicted section iv) of paragraph 2.4.22 that requires the consumption of alcohol to be restricted to an area which is an integral part of the premises with access to that area only through the premises and with no direct access to the street. Mr Rowe stated that this was to avoid the bar being visible from the street. He recommended that the Police proposed condition (condition 34 on the revised set of conditions) that 'whenever the premises are open for licensable activities, the doors to Kingly Street shall only be used for emergency egress from the premises' was attached to the licence.

Mr Rowe added that if Members of the Sub-Committee were of the opinion that the operation of the premises did not fall within PB2, he wished to refer them to paragraph 2.4.18 of the SLP which states that the premises needed to demonstrate that the application would not add to cumulative impact. As the proposed hours were within Core Hours applications were generally granted subject to other policies.

Ms Curtis confirmed that Environmental Health had provided pre-application advice to the Applicant, including in relation to the policy regarding accessibility to the bar/counter from the street. She had undertaken a site visit of the premises and during the site visit she had been made aware that before 10:00 the ground floor would operate as a café which was separated by doors from the rest of the premises. She had proposed a condition relating to the doors to Kingly Street and agreed other conditions with the Applicant, including that the number of persons permitted within the licensed areas at any one time (excluding staff) shall not exceed 30 persons, the sale of alcohol on the premises would at all times be ancillary to the main use of the premises as the Jack Wills Limited retail shop and that the licensed area would at all times remain under the management of Jack Wills Limited.

PC Russell addressed the Sub-Committee. PC Russell advised that she had concerns that direct access from Kingly Street to the bar/counter would undermine the prevention of crime and disorder licensing objective. It was submitted that Kingly Street is a busy street, particularly from 17:00 to 19:00. The Police were uncomfortable with people being able to see the bar from the

street and have immediate access to it. There was the potential for the premises not to be used as a shop but as a bar. Pc Russell therefore recommended that condition 34 was attached to the premises licence. All other conditions proposed by the Police had been agreed by the Applicant.

The Sub-Committee asked a number of questions. Mr Thomas was asked how he would protect young children if alcohol was being sold. He replied that the age demographic of the clientele was 25-35. However, there was the potential for children to be with the adults. He believed that it was no different if alcohol was sold in a restaurant. There was a proposed condition requiring a Challenge 25 policy be put in place.

Mr Thomas and Ms Hamp were asked about access to the bar/counter from the retail area through the double doors on the ground floor. They replied that the double doors would be open during trading hours (the premises would be a coffee shop prior from 08:00 to 10:00 when the double doors were closed). In order for it to be ancillary to retail, there needed to be access to the retail area through these doors. It was clarified that the stairs and a lift from the ground floor went to the basement where there was another seating area for customers to have a drink.

In terms of capacity, Ms Curtis stated that the layout supported a capacity of 30. There was not a need to split the capacity for public safety reasons.

The Sub-Committee heard from Mr Brown, representing Mr and Mrs Callingham. Mr Brown stated that it was not correct that their applications should be given less weight as had appeared to be suggested by Mr Thomas as they were perfectly entitled to be concerned with what was taking place in Soho and in particular object to applications where alcohol was not ancillary to food. They had lived there for nineteen years.

Mr Brown explained that Mr and Mrs Callingham were not making any criticism of Jack Wills. This was an objection based on policy. Mr Brown referred to paragraph 2.4.17 of the SLP. Mr Brown made the point that the key aspect of cumulative impact policy was that it was not based on an individual premises but the overall effect. The fact that Mr and Mrs Callingham lived outside a 75 metre radius was therefore neither here nor there. Mr Brown did not accept Mr Thomas' point that the application was compliant with policy except for the counter/bar area being accessible from Kingly Street. Mr Brown was not entirely convinced that alcohol not being a significant part of the operation was covered within the conditions. Mr Brown referred to sales of alcohol being 1% of revenue being a guess. In terms of usage, he perceived that a significant percentage of the shop space being given over to the premises licence. Under the terms of the proposed conditions, there was no requirement to have food.

Mr Brown took the view that in policy terms the application was in keeping with Policy PB2 albeit that some elements of 2.4.17 of the policy might apply. Mr Brown made the submission that PB2 addressed the sale of alcohol without food and did not only have to apply to a pub or a bar. In respect of Policy 2.4.17, Mr Brown stated that it was not clear one way or the other whether there could be sustained drinking or not. A capacity of 30 in the licensed area could be seen as

relatively high. Mr Brown believed that department stores with a café that was some distance from the street were very different from a shop where alcohol would be easily accessible.

Mrs Callingham addressed the Sub-Committee. Mrs Callingham stated that she was speaking on behalf of residents in Upper John's Street, Beak Street and Marshall Street. Mrs Callingham stated that she was alarmed at the audacious application for the premises licence. Mrs Callingham said she was concerned that there would be another bar in the area adding to cumulative impact. There were crowds outside the pubs in Kingly Street and the Applicant was seeking a capacity of another 30 people at this location. Mrs Callingham commented that Jack Wills is a great shop which does not need a premises licence. Mrs Callingham said she saw it as a strategic move to get a premises licence at all costs and feared that in the event Jack Wills left the premises, it would give an edge to the next operator to obtain a licence for a bar. There was the potential for every shop in Soho to have a bar.

Mr Thomas was given the opportunity to respond to the objectors' comments. Mr Thomas re-iterated that there were personalised conditions being proposed and that granting the application did not set a precedent because applications are to be considered on their own merits. Mr Thomas clarified that he was not saying that the residents were not entitled to make representations but that it would have less impact on them if they were not directly impacted by the premises. Mr Thomas did not believe that if the licence was between 17:00 and 20:00 for a maximum of 30 customers, alcohol would not become a significant part of the use of the premises.

Mr Thomas also advised Members that the refuse collection from the premises took place at 16:00. There were deliveries at 06:30. The proposed condition was that no deliveries to the premises would take place between 23.00 and 07.00 on the following day. It was submitted that the condition was either removed or made clearer in that it should only relate to the sale of alcohol. Mr Thomas added that there would not be large deliveries of alcohol for what was a relatively small servery.

Ms Curtis was asked by the Sub-Committee how people would be prevented from entering the premises via Kingly Street if they could exit via the door. Ms Curtis replied that she would expect a management plan would be provided by the Applicant explaining how they would close the door. She had amended the wording of the proposed condition so that the door could only be used for emergency egress. Mr Thomas provided the clarification that the premises had a SIA registered door supervisor on the premises at all times and the supervisor's job would be to monitor the door to Kingly Street.

The Sub-Committee considered that granting the application in part would not add to cumulative impact if the premises were appropriately conditioned. In particular it was essential that the supply of alcohol is ancillary to the continued use of the premises as a retail shop. The policy was not seeking to establish standalone bars and the alcohol should be an additional facility for those who were planning to shop anyway at Jack Wills.

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| | <p>The Sub-Committee shared the concerns of the objectors regarding the accessibility and visibility of the bar/counter from Kingly Street in the West End Cumulative Impact Area and attached the Police's proposed condition that 'whenever the premises are open for licensable activities, the doors to Kingly Street shall only be used for emergency egress from the premises'. In order that the alcohol should be an additional facility for those who were planning to shop anyway at Jack Wills, the Sub-Committee decided that the hours for the sale of alcohol would be Monday to Saturday 17:00 to 20:00 and Sunday 17:00 to 18:00 rather than beginning at 10:00 every day of the week. Prior to 17:00 the Sub-Committee decided that alcohol would only be sold for consumption by persons attending a pre-booked and bona fide private function or event to which members of the public are not admitted. A register of persons attending the event would be kept at the premises and made available for immediate inspection by police or an authorised officer of the Council. The Sub-Committee appreciated Mr Thomas' point that he had offered 17:00 as the commencement hour for the sale of alcohol in order that customers would be able to enter from Kingly Street at that time. The Sub-Committee also imposed the condition that there would be no advertising of bar facilities at or in the vicinity of the premises.</p> <p>The Sub-Committee as requested by Mr Thomas amended the proposed deliveries condition so that there would be no deliveries to the premises relating to the licensed activities shall take place between 23.00 and 07.00 on the following day.</p> |
| 2. | Hours premises are open to the public |
| | <p>Monday to Saturday 10:00 to 21:00 Sunday 12:00 to 18:00</p> |
| | <p>Amendments to application advised at hearing:</p> <p>None.</p> |
| | <p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the proposed opening hours. The sale of alcohol would be Monday to Saturday 17:00 to 20:00 and Sunday 17:00 to 18:00.</p> |

| Conditions attached to the Licence | |
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| <u>Mandatory Conditions</u> | |
| 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. 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. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
11. There shall be no striptease or nudity, and all persons shall be decently attired

at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue licence.

12. 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.
13. 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 to the public. This staff member shall be able to show Police recent data or footage with the absolute minimum of delay when requested.
14. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
15. The number of persons permitted within the licensed areas at any one time (excluding staff) shall not exceed 30 persons.
16. The sale of alcohol on the premises shall at all times be ancillary to the main use of the premises as the Jack Wills Limited retail shop.
17. The supply of alcohol on the premises shall be by waiter or waitress service only to persons seated at tables or seated at the servery.
18. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold for consumption on the premises.
19. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
20. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 07.00 hours on the following day.
21. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 07.00 on the following day.
22. No deliveries to the premises relating to the licensed activities shall take place between 23.00 and 07.00 on the following day.
23. 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.

24. There shall be no draught beer available on the premises.
25. 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.
26. There will be no sale of alcohol until the works have been assessed as satisfactory by the Environmental Health Consultation Team and this condition has been removed from the Licence.
27. The licensed area shall at all times remain under the management of Jack Wills Limited and the licence is limited to their personal use only.
28. 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.
29. 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.
30. 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.
31. Whenever the premises are open for licensable activities, the doors to Kingly Street shall only be used for emergency egress from the premises.
32. There shall be no advertising of bar facilities at or in the vicinity of the

premises.

33. Prior to 17:00, alcohol shall only be sold for consumption by persons attending a pre-booked and bona fide private function or event to which members of the public are not admitted. A register of persons attending the event shall be kept at the premises and made available for immediate inspection by police or an authorised officer of the Council.

5 LE BIJOU, 12-14 LODGE ROAD, NW8

LICENSING SUB-COMMITTEE No. 5

Thursday 2nd February 2017

Membership: Councillor Peter Freeman (Chairman), Councillor Heather Acton and Councillor Aziz Toki

Legal Adviser: Horatio Chance
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon
Presenting Officer: Sumeet Anand-Patel

Relevant Representations: Environmental Health.

Present: Mr Camile Azzi (Applicant), Mr Elias Abou Jaoude (Manager of premises) and Mr Dave Nevitt (Environmental Health).

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| Le Bijou, 12-14 Lodge Road, NW8 16/10939/LIPN | |
| 1. | Late Night Refreshment (Indoors and Outdoors) |
| | Monday to Sunday 23:00 to 02:00 |
| | Amendments to application advised at hearing: Members of the Sub-Committee were informed prior to the hearing that the Applicant had reduced the terminal hour to 01:00 following correspondence with Environmental Health. Licensable activities were no longer sought on Mondays. The Applicant had also agreed conditions proposed by Environmental Health that there shall be no take away after 23:00 and late night refreshment after 24:00 shall be restricted to hot drinks only. |
| | Decision (including reasons if different from those set out in report): The Sub-Committee initially heard from Mr Jaoude that the premises operated as a coffee shop in the morning, serving English breakfast from 08:00 and as a shisha bar from approximately 15:30 onwards. The Applicant wished to offer customers the option of having tea and coffee with their shisha and had applied |

for late night refreshment from 23:00. There would be no sales of alcohol.

The Sub-Committee was addressed by Mr Nevitt on behalf of the Council's Environmental Health department. Mr Nevitt stated that the main purpose of the application was to provide late night refreshment to benefit customers who were sitting outside at the front of the Premises. There was residential accommodation above (the Applicant had suggested that these were short term lets and there had not been any representations from residents) and in close proximity to the café. Mr Nevitt explained to the Sub-Committee that a contentious aspect of the application was that the amended terminal hour of 01:00 for late night refreshment was beyond the Council's Core Hours policy and it was for activities outside the premises. The use of outside areas was often curtailed to 23:00 and Environmental Health looked to minimise the impact on local residents and prevent public nuisance.

Mr Nevitt referred to the proposed conditions agreed with the Applicant. Mr Nevitt made the point that customers were able to smoke shisha outside and consume cold drinks without any restrictions in terms of hours and without the premises needing to be licensed. This was how Le Bijou was currently operating. Mr Nevitt informed the Sub-Committee that the Council's Noise Team had not received any complaints relating to the outside use during the previous two years. He did not believe that there had been any issues since the premises had changed hands (Mr Jaoude stated that this had been three years ago)

Mr Nevitt commented that it did make it more attractive for customers to remain outside if they had the option of a tea or coffee with their shisha, including during the cooler months. It was therefore felt that the application increased the risk of local residents experiencing public nuisance. Balanced against that, Mr Nevitt believed, was that the Applicant did not sell alcohol, there was no history of noise complaints and the Applicant had agreed almost all of Environmental Health's proposed conditions designed to prevent public nuisance. It provided the opportunity to introduce some regulatory measures at the premises.

Mr Nevitt advised Members that the Applicant had not agreed his proposed condition restricting the maximum number of persons in the external area to 20 people.

The Sub-Committee asked Mr Jaoude what type of burners was used for the shisha. He replied that charcoal burners were used. He was asked whether he and Mr Azzi had considered using electric burners and he said that he had when Mr Nevitt had raised his concerns. Mr Jaoude responded in relation to a capacity figure for the outside area that the cafe was only busy for four or five months during the year. He believed most of his customers arrived by car.

Mr Nevitt was asked to expand on the point in his letter to the Applicant (included in the report) requesting that the Applicant look at the arrangements regarding the type of outside furniture and stacking or moving of outside furniture. Mr Nevitt said he had advised the Applicant not to put heavy furniture outside which was likely to be noisy if moved after the premises closed. At the moment the furniture was relatively lightweight.

Mr Nevitt was also asked about his proposed condition that the external canopy would be in place at all times when the outside area is in use by customers. He replied that the canopy assisted in stopping the fumes and odours rising up to the windows of residents directly above the premises and also lessened the impact of outside noise. The Applicant was not permitted to fully enclose this area with the canopy due to health legislation. Mr Nevitt confirmed the canopy was compliant as it had been assessed by the licensing inspectors. He added that the application had resulted from the licensing inspectors having found that staff had inadvertently sold teas and coffees to customers during licensable hours.

Mr Nevitt explained that there was a public safety issue for Environmental Health in respect of the charcoal burners. Environmental Health had had joint visits with the London Fire and Emergency Planning Authority and health and safety teams. There were safety arrangements in place.

The Sub-Committee asked Mr Nevitt for his reasoning regarding his proposed capacity of 20 people. He replied that currently the numbers outside were unregulated. However, from a safety point of view, if people were packed in to the space they could easily be touched or burnt by hot coals. Large numbers of people outside created more noise. Mr Nevitt advised that once the customers outside numbered 30 or more the outside area was overcrowded. Mr Jaoude responded that the only time that the Applicant might have a problem complying with a capacity of 20 would be for four weeks during the summer. Otherwise he would be happy with a capacity of 20. Mr Nevitt added that this period during the summer related to Ramadan. There was the option for the operators to apply for temporary event notices during this period.

The Sub-Committee granted the application with the revised terminal hour for hot drinks of 01:00 (hot food would not be served after midnight), permitting a capacity of 25 outside which was intended to help the Applicant whilst following Mr Nevitt's advice and avoiding placing a capacity on the premises licence which could lead to the public safety licensing objective being undermined. In granting the application. The Sub-Committee took into account Mr Nevitt's advice that there was nothing to prevent the Applicant from operating the premises as a shisha bar and there was no limit in terms of the time customers could currently sit outside. Granting the application enabled the Sub-Committee to attach conditions to the licence which had been agreed between Mr Nevitt and the Applicant and which promoted the licensing objectives. The Sub-Committee noted that there had not been any complaints received by the Council in respect of the premises during the previous two years and there had not been any representations from local residents objecting to the application.

2. Hours premises are open to the public

Monday to Sunday 16:00 to 02:00

Amendments to application advised at hearing:

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| | None. |
| | <p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below.</p> |

| Conditions attached to the Licence | |
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| <u>Conditions</u> | |
| 1. | <p>The premises shall only operate as a restaurant</p> <ul style="list-style-type: none"> (i) in which customers are shown to their table, (ii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery, (iii) which do not provide any take away service of food or drink for immediate consumption, (iv) which do not provide any take away service of food or drink after 23.00. |
| 2. | <p>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.</p> |
| 3. | <p>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.</p> |
| 4. | <p>Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.</p> |
| 5. | <p>The maximum number of persons in the external area shall be 25.</p> |
| 6. | <p>The mechanical plant, including the kitchen extract fan, shall be switched off at</p> |

24:00.

7. After 23:00 a member of staff shall be present at all times when the outside area is in use to supervise and manage customers so as to ensure that noise is kept to a minimum.
8. Late Night Refreshment after 24:00 shall be restricted to hot drinks only.
9. There shall be no take away after 23:00.
10. There shall be no loudspeakers permitted in the outside area.
11. The external canopy shall be in place at all times when the outside area is in use by customers.

6 ICHI BUNS, 22A WARDOUR STREET, W1

LICENSING SUB-COMMITTEE No. 5

Thursday 2nd February 2017

Membership: Councillor Peter Freeman (Chairman), Councillor Heather Acton and Councillor Aziz Toki

Legal Adviser: Horatio Chance

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

Presenting Officer: Sumeet Anand-Patel

Relevant Representations: Metropolitan Police and Environmental Health.

Present: Mr Alun Thomas (Solicitor, representing the Applicant), Mr Dave Nevitt (Environmental Health) and PC Michael Day (Metropolitan Police).

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| Ichi Buns, 22A Wardour Street, W1 16/12567/LIPN | |
| 1. | Late Night Refreshment (Indoors & Outdoors) – Ground Floor & Basement |
| | Monday to Sunday 23:00 to 02:00 |
| | Amendments to application advised at hearing: None. |
| | Decision (including reasons if different from those set out in report): As a preliminary matter, the Chairman wanted it recorded that he had had a discussion with Mr Thomas who was representing the Applicant prior to the |

hearing and had politely requested that if possible Mr Thomas proceed with the application as swiftly as was possible given that Members of the Sub-Committee were pressed for time. Mr Thomas informed the Sub-Committee that he also had an engagement that he needed to attend that evening and was content to proceed with his submissions as swiftly as possible.

This is an application for a new premises licence. As explained by Ms Anand-Patel and by Mr Thomas during the hearing, under an existing premises licence, the Applicant is able to provide late night refreshment, including takeaway, on the ground floor and basement until 04:00. The Applicant is also able to sell alcohol on the ground floor and basement until midnight. The Applicant applied for an additional two hours for the sale of alcohol until 02:00 on the ground floor and basement with a two hour reduction on those floors for late night refreshment both indoors and outdoors. The terminal hour for late night refreshment would also therefore be 02:00 on the ground floor and basement. There were no proposed changes to the hours on the first floor.

Mr Thomas emphasised that the proposed extension of alcohol was ancillary to food whilst the hours for takeaway were being reduced. He referred to policy 2.4.7 of the Council's Statement of Licensing Policy ("SLP") which states that an example of circumstances where applications might be granted as an exception to policy is a 'substitution of existing licensable activity at the premises with licensable activities which would have less impact on the area and would be more likely to further the licensing objectives'. He was not convinced that he was required to demonstrate that the application was an exception to policy on the grounds that the application did not involve bar use. He commented that there was more benefit from a restaurant with a terminal hour of 02:00 than a takeaway with a terminal hour of 04:00. He believed there was more likelihood of customers seeking a takeaway after 02:00 committing a crime or being a victim of crime.

The Sub-Committee heard from Mr Nevitt on behalf of the Council's Environmental Health department. He made the point that the Sub-Committee had granted applications for the sale of alcohol until 01:00 for genuine 100% restaurant premises in cumulative impact areas. However, the terminal hour in this case went beyond that time. Mr Nevitt referred to policy 2.4.7 and stated that it was for the Sub-Committee to consider whether it was more advantageous to have a terminal hour of 02:00 for the sale of alcohol with food than it was to have takeaway until 04:00. Mr Nevitt added that Environmental Health's perception was that it could be viewed either way. In the event the application was granted, there would be the advantage that the premises would no longer sell takeaway. Currently there were premises such as nightclubs which closed at 03:00 and the takeaway at Ichi Buns would potentially draw people to the area and make it a destination venue. He informed the Sub-Committee that the premises had not opened yet and there was still building work to be carried out at 22A Wardour Street.

The Sub-Committee was also addressed by PC Day on behalf of the Police. He advised that his representation had been maintained in order to support the Council's policy. As the premises had not opened, there were no crime statistics. He advised Members that he had policed the area over a period of

sixteen months and Wardour Street had high levels of crime and disorder. He had submitted an objection to the Applicant's original application in September 2016 due to the high levels of crime and disorder in the area.

Mr Thomas was asked by the Sub-Committee whether it was intended to have delivery vehicles providing the takeaway. The Sub-Committee were informed that the operators were looking at having a third party company undertaking deliveries. The Sub-Committee suggested that in the event the application was granted, an informative was included with the decision that the Applicant would use its best efforts for deliveries to be carried out via walking, cycling or electric vehicles in order to limit noise and air pollution. Mr Thomas made the point that it was not possible to drive up Wardour Street past the W Hotel. After midnight cars going up Lyle Street could only turn left.

Mr Wroe advised Members of the Sub-Committee that there were two different conditions on the existing premises licence requiring alcohol to be ancillary to food with one applying to the ground floor and the other applying to the basement and the first floor. He suggested that one approach would be for the Council's model restaurant condition, MC66, which currently was in force on the first floor also applying to the ground floor and basement. Mr Thomas responded that he was not willing to accept this approach as it would prevent his clients being able to provide takeaway. He was of the view that he had made a fair proposal and to restrict his client any further would not be commercially acceptable. Mr Thomas confirmed that he was also not prepared to accept less of an extension in hours for the sale of alcohol.

After having considered the nature of the application, the Sub-Committee informed Mr Thomas that his submission was accepted that in theory an extension of two hours to the terminal hour for a restaurant potentially could result in less cumulative impact in the event that there was also a two hour decrease in the terminal hour for a takeaway service. However, Mr Thomas had resisted the imposition of the model restaurant condition for the ground floor and basement. Mr Thomas stated that he had two difficulties with MC66 being imposed. Firstly, the existing premises licence did not require it and he had offered a compromise in the form of the reduction in the terminal hour for late night refreshment. Secondly, MC66 set out that there would be no takeaway service of food or drink for immediate consumption. Mr Thomas requested that if Members were not minded to accept his approach in relation to MC66, that the Sub-Committee consider adjourning the application rather than refusing it. Mr Wroe made the point that takeaway only applied in MC66 after 23:00. Currently the fast food premises policy was relevant to the application. Mr Thomas responded that he would be in difficulty agreeing no takeaway after 23:00 in the absence of the owner of the premises, Mr Sarlas. He could agree MC66 if part iv) which did not permit the takeaway service of food or drink for immediate consumption was removed.

The Sub-Committee asked Mr Thomas whether the ground floor and basement floors constituted a genuine restaurant. He replied that it was a restaurant which provided takeaway. A Korean bun might be in casual wrapping but this was not comparable to McDonalds or Burger King. He did not believe it was accurate to call it fast food as it was necessary to go to the counter and it did not look like a

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| | <p>fast food premises in the design layout.</p> <p>Mr Thomas brought to the Sub-Committee's attention that the application was not time critical for his clients as the premises would not open until June. He was requesting an adjournment, particularly as the owner was not in attendance. The Sub-Committee felt that on balance it was appropriate and proportionate to grant the request for an adjournment.</p> |
| 2. | Late Night Refreshment (Indoors & Outdoors) – First Floor |
| | <p>Monday to Thursday 23:00 to 23:30 Friday and Saturday 23:00 to 00:00</p> |
| | <p>Amendments to application advised at hearing:</p> <p>None.</p> |
| | <p>Decision (including reasons if different from those set out in report):</p> <p>The application was adjourned (see Section 1).</p> |
| 3. | Recorded Music (Indoors & Outdoors) – Ground Floor & Basement |
| | <p>Monday to Saturday 10:00 to 02:00 Sunday 12:00 to 02:00</p> |
| | <p>Amendments to application advised at hearing:</p> <p>None.</p> |
| | <p>Decision (including reasons if different from those set out in report):</p> <p>The application was adjourned (see Section 1).</p> |
| 4. | Recorded Music (Indoors & Outdoors) – First Floor |
| | <p>Monday to Thursday 10:00 to 23:30 Friday and Saturday 10:00 to 00:00 Sunday 12:00 to 22:30</p> |
| | <p>Amendments to application advised at hearing:</p> <p>None.</p> |

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| | Decision (including reasons if different from those set out in report): The application was adjourned (see Section 1). |
| 5. | Sale by retail of alcohol (On and Off) – Ground Floor & Basement |
| | Monday to Saturday 10:00 to 02:00 Sunday 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 adjourned (see Section 1). |
| 6. | Sale by retail of alcohol (On and Off) – First Floor |
| | Monday to Thursday 10:00 to 23:30 Friday and Saturday 10:00 to 00:00 Sunday 12:00 to 22:30 |
| | Amendments to application advised at hearing: None. |
| | Decision (including reasons if different from those set out in report): The application was adjourned (see Section 1). |
| 7. | Hours premises are open to the public - Ground Floor & Basement |
| | Monday to Saturday 10:00 to 02:00 Friday and Saturday 12:00 to 02:00 |
| | Amendments to application advised at hearing: None. |

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| | <p>Decision (including reasons if different from those set out in report):</p> <p>The application was adjourned (see Section 1).</p> |
| 8. | Hours premises are open to the public – First Floor |
| | <p>Monday to Thursday 10:00 to 00:00 Friday and Saturday 10:00 to 00:30 Sunday 12:00 to 23:00</p> |
| | <p>Amendments to application advised at hearing:</p> <p>None.</p> |
| | <p>Decision (including reasons if different from those set out in report):</p> <p>The application was adjourned (see Section 1).</p> |
| 9. | Seasonal variations / Non-standard timings |
| | <p><u>Late Night Refreshment (Indoors & Outdoors) – Ground Floor & Basement, Late Night Refreshment (Indoors & Outdoors) – First Floor, Recorded Music (Indoors & Outdoors) – Ground Floor & Basement, Recorded Music (Indoors & Outdoors) – First Floor, Sale by retail of alcohol (On and Off) – Ground Floor & Basement, Sale by retail of alcohol (On and Off) – First Floor, Hours premises are open to the public - Ground Floor & Basement & Hours premises are open to the public – First Floor</u></p> <p>From the end of permitted hours on New Year’s Eve to the start of permitted hours on New Year’s Day.</p> <p><u>Late Night Refreshment (Indoors & Outdoors) – Ground Floor & Basement, Recorded Music (Indoors & Outdoors) – Ground Floor & Basement, Sale by retail of alcohol (On and Off) – Ground Floor & Basement & Hours premises are open to the public - Ground Floor & Basement</u></p> <p>An additional hour when British Summer Time commences.</p> <p><u>Late Night Refreshment (Indoors & Outdoors) – First Floor, Recorded Music (Indoors & Outdoors) – First Floor & Sale by retail of alcohol (On and Off) – First Floor</u></p> <p>Sundays before Bank Holidays until 00:00.</p> |
| | <p>Amendments to application advised at hearing:</p> |

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| | None. |
| | <p>Decision (including reasons if different from those set out in report):</p> <p>The application was adjourned (see Section 1).</p> |

**7 TO CONSIDER GRANTING AUTHORITY TO SETTLE AN APPEAL -
CHUTNEY MARY, 72-73 ST JAMES'S STREET, SW1**

LICENSING SUB-COMMITTEE No. 5

Thursday 2nd February 2017

Membership: Councillor Peter Freeman (Chairman) and Councillor Aziz Toki

Legal Adviser: Horatio Chance
 Policy Adviser: Chris Wroe
 Committee Officer: Jonathan Deacon

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| Chutney Mary, 72-73 St James's Street, SW1 |
| <p>To consider granting authority to settle an appeal arising from the Licensing Sub-Committee decision of 19 May 2016.</p> |
| <p>RESOLVED: That under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 the public be excluded from the meeting for the following item of business on the grounds that the public interest in the hearing taking place in private outweighs the public interest in that part of the meeting taking place in public.</p> |
| <p>Decision:</p> <p>That, having regard to the officer's report, authority be given to settle the appeal on the basis set out in the report.</p> |