



CITY OF WESTMINSTER

# MINUTES

## Licensing Sub-Committee (1)

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (1)** Committee held on **Thursday 16th February, 2017**, Rooms 5, 6 & 7 - 17th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6 QP.

**Members Present:** Councillors Angela Harvey (Chairman), Heather Acton and Murad Gassanly

#### 1 MEMBERSHIP

It was noted that there were no changes to the membership.

#### 2 DECLARATIONS OF INTEREST

There were no declarations of interest.

#### 3 THE STAR PUBLIC HOUSE, 38 ST JOHN'S WOOD TERRACE, NW8

##### LICENSING SUB-COMMITTEE No. 1

*Thursday 16th February 2017*

Membership: Councillor Angela Harvey (Chairman), Councillor Heather Acton and Councillor Murad Gassanly

Legal Adviser: Horatio Chance  
Policy Adviser: Chris Wroe  
Committee Officer: Tristan Fieldsend  
Presenting Officer: Heidi Lawrence

Relevant Representations: Environmental Health and three local residents.

Present: Mr Anil Drayan (Environmental Health ("EH") and Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project, representing two local residents)

**38 St John's Wood Terrace, London, NW8 6LS**  
**16/11987/LIPN**

**1. Playing of Recorded Music - Indoors**

Monday to Sunday: 10:00 – 23:00

**Seasonal Variations/Non-Standard Timings:**

From the end of permitted hours on new Year's Eve to the start of permitted hours on New Year's Days.

Amendments to application advised at hearing:

None

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

The Sub-Committee considered an application by West End Investments Ltd for a new premises licence in respect of 38 St John's Wood Terrace, London, NW8 6LS.

The Licensing Officer advised that the application was for a shadow licence to mirror a new premises licence granted by the Licensing Sub-Committee on 26 January 2017. It was noted however that this application was not identical as it proposed the playing of recorded music and late night refreshment, which was a slight variance. It was also noted that the premises plan submitted was different to the one submitted on 26 January 2017. Finally, it was the Sub-Committee's understanding that the applicant's representatives had been instructed by their client not to attend the hearing.

The Chairman expressed concern that the applicants had chosen not to attend the hearing, especially in light of the fact, that the application before the sub-committee was different to the licence granted on 26 January 2017.

Mr Drayan, representing EH, understood that the application wanted to mirror all the licensable activities and conditions on the operator's licence agreed on 26 January 2017. Anything extra which was stated on the proposed licence would be withdrawn although of significant concern was that the plan demarcating the licensable area was different as it did not include the external area. Mr Drayan confirmed that apart from the differences on the licence already mentioned EH was nevertheless satisfied with the application.

The Council's Policy Adviser explained to the Sub-Committee that if an applicant had submitted an application with the red line clearly defined on the plan denoting where licensable activities were to take place, they were then prevented from extending the scope of the application without going through the statutory consultation period by either amending the application or submitting a fresh one. This was because interested parties would have decided whether to make representations or not on the application based on the details before them.

The Sub-Committee noted that because the plan demarcating the licensable area was different from the original application various proposed conditions were now not relevant to the application.

The Licensing Officer advised that the applicant was aware the plans were different but had decided to leave it to the Sub-Committee to make a decision. The Legal Advisor endorsed the view of the Policy Advisor and confirmed for the record that the Sub-Committee was therefore obliged to deal with the application before them as it was and derived no such authority to amend the plan to include the external area for the purposes of determining the application as that would be unlawful and out of keeping with the intention and spirit of the Licensing Act 2003. The Council's Policy Adviser also clarified that the application before the Sub-Committee was requesting both on and off sales of alcohol whilst the original operator's licence granted had withdrawn the provision of off sales. There had been no indication from the applicant that they wished to withdraw off sales or that they would agree to the same restrictions imposed on the operator's licence. The applicant was not present to clarify the issues raised by the Sub-Committee.

Mr Brown, from Westminster Citizens Advice Bureau, advised the Sub-Committee that it would not be able to extend the premises licensable area without going through the relevant consultation processes. The objections raised by local residents related to the external area and surprise was expressed that the applicant was not present to provide clarity on their application. The Sub-Committee was reminded that there was no presumption to award a shadow licence even if it mirrored the operator's licence. Mr Brown provided a background to the case of *Extreme Oyster, Star Oyster Ltd v Guildford Borough Council (2013) EWHC 2174* which concerned the use of shadow licences.

Mr Brown highlighted that conditions had been imposed on the licence granted on 26 January 2017 but as the applicant was not present reassurances on the application could not be received. No information was available on who the applicant was and what experience they had in running a licensed premises, let alone explaining to the Sub-Committee in oral evidence how they were going to best promote the licensing objectives. If granted the applicant could potentially use the licence immediately and it would be unknown for what purpose. The applicant had stated that a shadow licence had been applied for to provide protection if the operator's licence was surrendered, however Mr Brown suggested that this was unnecessary as the freeholder was protected under Section 178 of the Licensing Act 2003.

After careful consideration of the application the Sub-Committee came to the view that further information on the application was required from the applicant. The Sub-Committee was of the view that the applicant needed to provide further clarity on, but not limited to, the licensing history of the applicant and the unexplained discrepancies between the existing licence granted on 26 January 2017 and the current shadow licence application. It was recognised that the application was not the same as the original application as it was not for the same premises and it would not automatically follow that if the Sub-Committee were minded to approve the application that similar conditions would be given in respect of this application; it was for different licensable activities and conditions

	<p>had been proposed which were not relevant to the application. The Sub-Committee felt it was most unfortunate for all parties that the applicant had not attended the Sub-Committee to provide the further information required. The Sub-Committee felt that it could not arrive at a proper Decision without the required information/clarification from the Applicant in respect of the many issues highlighted above. As such it was considered appropriate to adjourn the application to a future Sub-Committee meeting to allow the applicant an opportunity to attend and explain their position fully to the Sub-Committee.</p>
<b>2.</b>	<p><b>Late Night Refreshment – Indoors</b></p> <p>Monday to Sunday: 23:00 – 23:30</p> <p><b>Seasonal Variations/Non-Standard Timings:</b></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>Amendments to application advised at hearing:</p> <p>None</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>Deferred (see reasons for decision in Section 1).</p>
<b>3.</b>	<p><b>Sales by Retail of Alcohol – On and Off Sales</b></p> <p>Monday to Saturday: 10:00 – 23:00 Sunday: 10:00 – 22:30</p> <p><b>Seasonal Variations/Non-Standard Timings:</b></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>Amendments to application advised at hearing:</p> <p>None</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>Deferred (see reasons for decision in Section 1).</p>
<b>4.</b>	<p><b>Hours Premises Are Open to the Public</b></p> <p>Monday to Saturday: 10:00 – 23:00 Sunday: 10:00 – 22:30</p>

	<b>Seasonal Variations/Non-Standard Timings:</b> From the end of trade on New Year's Eve until the start of trade on New Year's Day.
	Amendments to application advised at hearing:  None
	Decision (including reasons if different from those set out in report):  Deferred (see reasons for decision in Section 1).

#### 4 ESSENTIALS FOOD TO GO, 7-14 COVENTRY STREET, W1

##### LICENSING SUB-COMMITTEE No. 1

*Thursday 16th February 2017*

Membership: Councillor Angela Harvey (Chairman), Councillor Heather Acton and Councillor Murad Gassanly

Legal Adviser: Horatio Chance  
Policy Adviser: Chris Wroe  
Committee Officer: Tristan Fieldsend  
Presenting Officer: Heidi Lawrence

Relevant Representations: The Metropolitan Police, Environmental Health and the Licensing Authority.

Present: Mr Hadi Ahmad (Applicant), Mr Suresh Kanapathi (Licensing Consultant), PC Bryan Lewis (The Metropolitan Police ("The Police")), Ms Sally Thomas (Environmental Health ("EH")) and Mr Nick Nelson (Licensing Authority)

<b>Essentials Food to Go, 7-14 Coventry Street, London, W1D 6DG 16/11957/LIPN</b>	
<b>1.</b>	<b>Late Night Refreshment - Indoors</b>  Monday to Sunday: 23:00 – 05:00  <b>Seasonal Variations/Non-Standard Timings:</b>  None applied for.
	Amendments to application advised at hearing:  None

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

The Sub-Committee considered an application by Global VIPs Ltd for a new premises licence in respect of 7-14 Coventry Street, London, W1D 6DG.

The Licensing Officer provided an outline of the application to the Sub-Committee and confirmed that the applicant had agreed to all the conditions proposed by the Responsible Authorities save for an SIA condition proposed by the Police.

Mr Ahmad explained that he had been a shopkeeper for some twenty-seven years operating a premises located at Leicester Square Tube Station. This application was for a premises located at Coventry Street which was a small convenience store with the application intended to cater for users of the 24 hour night tube. It was described how the application was simply to allow the sale of hot food, serving mainly samosas, sausage rolls and other pastries until 05:00 hours.

Mr Kanapathi, representing the applicant, recognised that the premises was located in a Cumulative Impact Area ("CIA"), however, it was submitted that this application should be considered an exception to policy on the basis that the premises was very small in nature, it was already open twenty-four hours a day and no cooking would take place at the premises, simply the reheating of food in a microwave oven. It was stated that in the past Temporary Event Notices ("TENS") had been applied for at various times, including New Year, without any reported issues or disturbances. The area was not residential, the shop was serviced by CCTV and no alcohol would be available for sale at any time. No noise emanated from the premises and although there was the potential for litter this would only be a small amount and would not create any nuisance. The application had been measured against all the licensing objectives and it was felt that this application would not only uphold them but also promote them. Should the licence be agreed, conditions had been agreed with the Responsible Authorities, apart from an SIA condition, and Mr Kanapathi highlighted how these would restrict the sale or display of hot food or drink to no more than 10% of the total sales area. Mr Ahmad clarified for the benefit of the Sub-Committee the location of the microwave oven and where the hot food display would be situated within the store.

Ms Thomas, representing EH, confirmed that the store currently operated twenty-four hours a day, in a busy location and was able to warm-up pre-prepared food items. Proposed conditions had been agreed with the applicant to restrict the operation of the business to ensure it did not become a regular fast food premises.

PC Lewis, representing the Metropolitan Police, advised that the Police's representation was maintained on the basis the application was located within a CIA and was contrary to the City Council's Statement of Licensing Policy ("SLP"). Conditions had been proposed which were agreed with the applicant except for one relating to a SIA licenced door supervisor. PC Lewis confirmed that the premises was small with no recorded instances of nuisance or disturbance.

Mr Nelson, representing the Licensing Authority, confirmed that its representation was maintained as the application was located in a CIA and the hours proposed were beyond core hours. It was also highlighted how the proposal would contravene Policies CIP1, HRS1 and FFP2 of the SLP. It was recognised that it was a small operation but it still had the potential to add to the impact in the area. If the Sub-Committee was minded to grant the application it had to be convinced that this application was a genuine exception to Policy and would not lead to cumulative impact.

In response to a question the applicant informed the Sub-Committee that during the operation of the TENS an average of fifty customers per night would purchase hot food.

The Council's Policy Advisor clarified that EH's proposed conditions would only limit the display of hot food to 10% of the sales area and not the quantity of sales.

The Sub-Committee stated that it fully understood the needs of the local community when considering an application of this type but had to consider the application on its individual merits based on the evidence before it. The Sub-Committee must strike the right balance when considering the application. Whilst the Sub-Committee noted that some of the proposed conditions promoted the licensing objectives, it was the Sub-Committee's decision overall that what was proposed was in fact nothing over and above what a responsible operating running a licensed Premises should be doing to promote the licensing objectives.

After carefully considering the application the Sub-Committee thanked the applicant for his well-presented proposal and expressed their sympathy for his desire as a small business owner to seek to provide a better customer offer in the local area. However, it was recognised that the premises was located in a CIA for which strict policies applied in order to ensure against the proliferation of establishments providing late night refreshment. The hours requested were far in excess of the core hours policy and it was felt the provision of late night refreshment for the hours requested would add to the cumulative impact in the area. For the Committee to grant an application that could be considered an exception to policy the Sub-Committee had to be satisfied that what the Applicant was proposing to do was unique and set themselves aside from the other Premises within the City which would merit a departure from the Policy presumption. The SLP restricted licensed Premises for a reason within the CIA and it was not considered appropriate that the application should be granted without proper scrutiny by the Sub-Committee. Accordingly, based on the facts before it the Sub-Committee was of the opinion that the applicant had not demonstrated that the application was an exception to Policy and it was therefore refused accordingly. The Sub-Committee noted and acknowledged the service Mr Ahmad had provided residents and visitors to Westminster for twenty-seven years and wished him all the best in his future endeavours.

2.	<p><b>Hours Premises are Open to the Public</b></p> <p>Monday to Sunday: 00:00 – 00:00</p> <p><b>Seasonal Variations/Non-Standard Timings:</b></p> <p>None applied for.</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 refused (see reasons for decision in Section 1).</p>

**5 BAKER STREET NEWS, 202 BAKER STREET, NW1**

This item was withdrawn.

The Meeting ended at 11.49 am

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

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