



CITY OF WESTMINSTER

# MINUTES

## Licensing Sub-Committee (4)

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (4)** Committee held on **Thursday 27th July, 2017**, Room 3.1, 3rd Floor, 5 Strand, London, WC2 5HR.

**Members Present:** Councillors Jean Paul Floru (Chairman), Julia Alexander and Shamim Talukder

#### 1 MEMBERSHIP

There were no changes to the membership.

#### 2 DECLARATIONS OF INTEREST

There were no declarations of interest.

#### 3 29 SHEPHERD MARKET, W1

### LICENSING SUB-COMMITTEE No. 4

*Thursday 27th July 2017*

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Julia Alexander and Councillor Shamim Talukder

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

Relevant Representations: Environmental Health, 1 x Managing Agents on behalf of residents and 1 local resident.

Present: Mr Joseph Grisy (Operations Manager, Applicant Company), Mr Dave Nevitt (Environmental Health) and Mr Alun Thomas (Solicitor, representing Orbiton Estates, Managing Agents for residents at Carrington House).

**29 Shepherd Market, W1**  
**17/02442/LIPN**

<b>1.</b>	<b>Late Night Refreshment (Indoors and Outdoors)</b>
	Monday to Saturday: 23:00 to 00:00
	<p>Amendments to application advised at hearing:</p> <p>Mr Grisy confirmed that the application was being amended so that licensable activities would conclude at 22:30 Monday to Saturday and 22:00 on Sunday. That effectively meant that the application for late night refreshment no longer had to be determined.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee was not required to consider this aspect of the application.</p>
<b>2.</b>	<b>Sale by retail of alcohol (On and Off)</b>
	<p>Monday to Saturday: 10:00 to 00:00</p> <p>Sunday: 10:00 to 22:30</p>
	<p>Amendments to application advised at hearing:</p> <p>Mr Grisy confirmed that the application was being amended so that licensable activities would conclude at 22:30 Monday to Saturday and 22:00 on Sunday. He also advised that the Applicant was not seeking off sales.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee was initially required to decide whether there should be a further adjournment of the hearing for the application. The director of the company, Mr Shervin Sepanje, had requested an adjournment of the application when it had previously been scheduled on 25 May 2017 due to illness. The Sub-Committee had then adjourned the application.</p> <p>The Sub-Committee was informed immediately prior to the hearing on 27 July 2017 that Mr Sepanje was continuing to suffer from hypertension and that he was requesting a further adjournment. The Licensing Service had attempted to contact Mr Sepanje for some time prior to the 27 July hearing but only received communications from Mr Grisy, Operations Manager at the Applicant Company, shortly before it was due to take place.</p> <p>Following the request for a further adjournment, the Licensing Service had contacted the parties to the hearing in order to see whether they were content for the application to be adjourned. Mr Thomas, representing Orbiton Estates who are the managing agents for residents at Carrington House, requested that the matter was discussed at the hearing itself as he had not seen any evidence to confirm the medical prognosis for Mr Sepanje.</p>

The hearing on 27 July 2017 was attended by Mr Grisy. He continued to request an adjournment as Mr Sepanje had not been able to attend. Mr Thomas indicated that he was now satisfied with the explanation given regarding the medical prognosis and was not insisting that the hearing proceeded in the absence of Mr Sepanje. However, the Sub-Committee was able to ascertain that Mr Grisy was sufficiently knowledgeable about the application that it would not prejudice the Applicant's case if the matter was heard. This included Mr Grisy being able to confirm that the application was being amended so that licensable activities would conclude at 22:30 Monday to Saturday and 22:00 on Sunday with the premises closing to the public half an hour later each night. The hearing therefore proceeded.

Mr Grisy stated at the hearing that off sales were not being sought. He expressed the view that the proposed conditions which had been agreed by the Applicant would ensure that there would be no public nuisance. The amended terminal hours would be earlier than other premises in the area, including two public houses close to Carrington House and there would therefore not be issues with dispersal. A high level of footfall occurred in Shepherd Market between 23:00 and 23:15. He made the point that the premises were not in one of the Council's designated cumulative impact areas. He was content for the same conditions to be on the licence as existed at the Applicant Company's premises situated immediately next door at 27 Shepherd Market which is known as Iran Restaurant.

Mr Grisy wished to respond to some of the points made in the Orbiton Estates' written representation. These included that 27 Shepherd Market was a separate entity from 29 Shepherd Market with the usage being completely different. Sushi, caviar and champagne were being provided at 29 Shepherd Market. He clarified that there would be no outside seating at the premises.

The Sub-Committee heard from Mr Nevitt, on behalf of Environmental Health. He stated that 29 Shepherd Market was in a separate building from the Applicant Company's other premises in 27 Shepherd Market. 27 Shepherd Market had kitchen and cooking facilities whereas this was not being provided at 29 Shepherd Market. It did not appear that food was being prepared at the premises. Mr Nevitt asked for clarification on how food was being taken from 27 to 29 Shepherd Market.

Mr Nevitt advised the Sub-Committee that 29 Shepherd Market was currently an empty shell of a building which had not been fitted out. He believed he had agreed with the Applicant that a capacity would be decided following completion of the works. The Applicant had agreed reduced hours which were less than Core Hours and also that notices would be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly. There was no mechanical plant or kitchen extract associated with the premises and therefore this would not be a source of noise.

The Sub-Committee asked Mr Grisy about how food would be delivered at 29 Shepherd Market. He replied that the Applicant Company was developing a central kitchen point from where food such as caviar and sushi would be

delivered to a number of sites, including 29 Shepherd Market.

Mr Nevitt referred to the Applicant having agreed the Council's model restaurant condition, MC66. Mr Grisy was asked by Mr Nevitt and the Sub-Committee whether the Applicant was able to comply with the various aspects of the condition, including being able to provide substantial table meals. He replied that the food provided such as sushi would be in keeping with the description of a substantial table meal.

Mr Thomas was given the opportunity to ask Mr Grisy some questions. These included whether it was proposed that food was made, cooked and prepared off site. Mr Grisy replied that food would be stored and served at 29 Shepherd Market. He also asked what alcohol would be served. Mr Grisy replied that it would be wine and champagne. Mr Grisy refuted the idea that alcohol was ever sold without food at 27 Shepherd Market (this being suggested by Mr Thomas based on what was said in evidence at a hearing to consider a licence for those premises). Smokers would be advised not to loiter outside the premises.

Mr Thomas also asked how the Applicant would proceed at 29 Shepherd Market considering that there was no A3 planning use and no extract. Mr Grisy replied that there would be no food physically cooked on the premises.

Mr Thomas expressed concerns that the Applicant was agreeing MC66 when it did not appear to him that it could be complied with. He queried whether substantial table meals were being provided and particularly questioned whether food was being prepared on the premises. In terms of the small size of the premises, Mr Thomas doubted that customers would be taken to their tables and would receive waiter or waitress service when there was barely room for 15 covers. He added that MC66 should not be amended as the Metropolitan Police had withdrawn on the basis of the Applicant having agreed the condition. He clarified at this point that he was requesting that on behalf of Orbiton Estates the application should be refused.

Mr Thomas referred to the Council's refusal of the planning permission for the use of the ground and lower ground floor as a café (Class A3) at 29 Shepherd Market. He emphasised that whilst the planning and licensing regimes were separate, the planning decision that the 'introduction of another A3 use within Shepherd Market would intensify an existing over concentration of A3 uses in this area' reflected that it added to cumulative impact in what Mr Thomas described as 'a mini cumulative impact area'. Mr Thomas believed that up to 20 people leaving the premises until 23:00 still had the potential to cause nuisance to local residents.

Mr Thomas concluded with the points that it was more comforting that licensable activities were ceasing at 22:30. It had also been confirmed to him that there would be no tables and chairs outside the premises. However, his clients were still concerned that there was the potential for noise nuisance to local residents at this location because the alleyway was so narrow. He also believed that MC66 could not be complied with, though he did accept that there was an advantage to residents that there would be no cooking at the premises. Mr Thomas referred also to Mr Deavin's representation. Mr Deavin lives in close

proximity to the premises.

Mr Panto was asked for legal advice by the Sub-Committee on his view as to whether MC66 could be amended. Mr Thomas had asserted that it should not be amended as it had been agreed between the Applicant and the Police prior to the Police withdrawing their representation. Mr Panto replied that he was of the opinion that it was legitimate to do so. The Sub-Committee was still focussing on whether the licensing objectives were being promoted or not. A particular matter for the Sub-Committee to consider was whether in the event food was not being prepared at the premises this was adversely impacting on the licensing objectives. It was possible that an amended MC66 would not have an adverse impact on the licensing objectives.

Mr Thomas recommended that the correct manner in which to proceed would be for the Applicant to withdraw the application, re-submit it and consult the Police afresh regarding the application rather than amending MC66. Mr Panto advised that there was always the potential for a scenario that when parties who have made representations in response to an application agree conditions with an Applicant and subsequently withdraw their representations, a hearing would take place if other parties' representations were maintained. It was always risky for parties to withdraw their representations when the hearing continued. He added that the remaining parties at the hearing had the legitimate right to look at the proposed conditions and for the Sub-Committee to decide whether they should be retained, amended or removed.

Mr Grisy explained that in his view food would be prepared on the premises and therefore complied with MC66 in the same way as other premises which offered sushi on their menu. The fresh fish would be cut, marinated, oiled and spiced on site.

Mr Grisy confirmed that there would be two personal licence holders on the premises at all times the restaurant at 29 Shepherd Market would be operating.

The Sub-Committee, in granting the application for the amended hours, considered that the application promoted the licensing objectives. The Applicant had taken a number of steps to achieve this by responding to the concerns of those who had objected. The Police's concerns had been addressed, the Applicant having agreed to operate pursuant to model condition 66. The Applicant had also agreed Environmental Health's proposed conditions. The Applicant had responded to Orbiton Estates' concern that the application had originally sought to extend the terminal hours for the sale of alcohol beyond the existing terminal hour of 23:00 Monday to Saturday and 22:30 on Sunday by reducing the proposed hours for licensable activities to 22:30 Monday to Saturday and 22:00 on Sunday and the closing time half an hour later. Mr Grisy had also confirmed that there would be no off sales, no late night refreshment and no external seating.

The Sub-Committee considered that the proposed hours were in keeping with those in Shepherd Market and that there was no reason to believe that the premises would cause public nuisance to residents either as a result of the operation itself or customers dispersing. Members noted that there would be no

odours or noise from a mechanical plant or kitchen extract. The Applicant had also offered conditions that there would be no background music inside or outside the premises which the Sub-Committee attached to the premises licence.

The Sub-Committee took the view that the Applicant was confident that all the aspects of MC66 would be complied with and therefore did not seek to amend this condition. In the event that conditions such as MC66 were not complied with, there was the potential for the premises licence to be reviewed.

The Sub-Committee noted Mr Thomas' case regarding the application adding to cumulative impact but took the view that planning and licensing are separate regimes. The planning policy places an emphasis on existing A1 retail use being protected. The introduction of another A3 use within Shepherd Market would intensify an existing over concentration of A3 uses in this area. In respect of the licensing position, Shepherd Market is not located in one of the Council's designated cumulative impact areas. The Sub-Committee did not deem it inappropriate for premises to operate at 29 Shepherd Market under the 2003 Licensing Act but the decision to grant the licence was without prejudice to any requirement to obtain planning permission and should not be taken as an indication that such permission would be granted.

Mr Grisy had stated he was content for the conditions on the 29 Shepherd Market premises licence to reflect those on the 27 Shepherd Market licence. These included that 'no noise would be permitted to emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance'. The hours for deliveries and the removal and movement of rubbish were also restricted.

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

Monday to Saturday:	07:00 to 00:00
Sunday:	08:00 to 23:00

Amendments to application advised at hearing:

Mr Grisy confirmed that the application was being amended so that the closing time for the public would be 23:00 Monday to Saturday and 22:30 on Sundays.

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

The Sub-Committee granted the application with the amended opening hours.

## 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. There shall be two personal licence holders on duty on the premises at all times when the premises are authorised to sell alcohol.
10. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
11. The number of persons permitted in the premises at any one time (including staff) shall not exceed (X) persons. (TO BE SPECIFIED ON COMPLETION OF WORKS)
12. No licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.
13. 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.
14. 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.
15. A Challenge 21 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
16. 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. It must be completed within 24 hours of the incident and will record the following:
  - (a) all crimes reported to the venue
  - (b) all ejections of patrons
  - (c) any complaints received concerning crime and disorder
  - (d) any incidents of disorder
  - (e) all seizures of drugs or offensive weapons
  - (f) any faults in the CCTV system
  - (g) any refusal of the sale of alcohol
  - (h) any visit by a relevant authority or emergency service.
17. 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,
- and
- (v) where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in 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.

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

- 18. 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 or passport.
- 19. Substantial food and non-intoxicating beverages shall be available throughout the permitted hours in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
- 20. 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.
- 21. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
- 22. All waste is to be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
- 23. No rubbish including bottles will be moved, removed or placed in outside areas between 23:00 hours and 08:00 hours.
- 24. No deliveries shall be made to the premises between the hours 20:00 hours and 08:00 hours.
- 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.

#### **4 THE SPICE OF LIFE, 37-39 ROMILLY STREET, W1**

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

*Thursday 27th July 2017*

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Julia Alexander and Councillor Shamim Talukder

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

**The Spice of Life, 37-39 Romilly Street, W1  
 17/05592/LIPV**

Application adjourned to a future Licensing Sub-Committee meeting at the Applicant's request.

**5 FREGGO, 27-29 SWALLOW STREET, W1**

**LICENSING SUB-COMMITTEE No. 4**  
*Thursday 27th July 2017*

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Julia Alexander and Councillor Shamim Talukder

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

Relevant Representations: Licensing Authority.

Present: Mr Gary Grant (Counsel, representing the Applicant), Mr Andrew Wong (Solicitor, on behalf of the Applicant), Mr Steve Kirby (Operations Director, Applicant Company) and Mr David Sycamore (Licensing Authority).

**Freggo, 27-29 Swallow Street, W1  
 17/05986/LIPN**

<b>1.</b>	<b>Recorded Music (Indoors)</b>
	Monday to Thursday: 08:00 to 23:30 Friday to Saturday: 08:00 to 00:00 Sunday: 10:00 to 22:30
	Amendments to application advised at hearing:  None.
	Decision (including reasons if different from those set out in report):

The Sub-Committee heard from Mr Grant, representing the Applicant. He informed the Sub-Committee that Gaucho at 25 Swallow Street had taken over Freggo at 27-29 Swallow Street. The Applicant wished to sell 'small bites' such as empanadas (a baked stuffed bread or pastry originating from Latin countries such as Argentina where Gaucho's cuisine is from) which would be available either inside the premises or as a takeaway. There would be a capacity internally and externally of approximately 40 people. The Applicant also wished to provide wines or craft beers.

Mr Grant put forward the case that the premises would not add to cumulative impact because Freggo had already been operating and it was not bringing more people in. Freggo was an ice cream parlour without any regulations or restrictions on its opening or closing hours. In the event the Applicant was granted a licence, the Sub-Committee would be able to restrict these hours.

Mr Grant advised that his client was amending the application so that the terminal hours for licensable activities, including off sales and also when the premises would close to the public would be in keeping with the Council's Core Hours policy. The Applicant wished to retain the same commencement hours for licensable activities and for when the premises would be open to the public in order to be able to provide breakfasts or teas and coffees. He added that the Applicant did want to have the ability to sell a bottle of wine as an off sale. Gaucho next door was permitted to provide off sales.

The Applicant had proposed an amended form of the Council's model condition 66 which had been discussed with Environmental Health and the Police who had subsequently withdrawn their representations. The premises would operate as a restaurant, shop and delicatessen. MC66 would be retained except that there was the amendment that the deli would not provide any take away service of deep fried food or drink for immediate consumption. Mr Grant explained that this was to prevent Freggo being a fast food premises. He clarified to the Sub-Committee that the empanadas were baked and not deep fried. He also confirmed that in keeping with the amended MC66 the premises would not be a bar and there would be no vertical drinking.

The Sub-Committee sought reassurance that the Applicant would prevent noise emanating from the use of the tables and chairs outside. Mr Kirby responded that customers were able to use the tables and chairs outside Freggo already up until midnight or 00:30 and there were no particular noise issues. He commented that he did not envisage any nuisance in the event the application was granted and the premises moved to the deli format. Alcohol would be ancillary to the Argentinian delicacies on the Gaucho menu. The premises would not operate as a bar. Staff were trained to oversee the outside area. Mr Grant made the additional point that there had not been any residential representations in respect of the application.

Mr Wroe asked for clarification on the numbers inside the premises. Mr Grant replied that there was a capacity for the external tables and chairs licence of 15 people. He queried whether the Sub-Committee might be amenable to permit a maximum capacity of 30 inside. A works condition had been proposed which did

not include a capacity number (Environmental Health had withdrawn). It was suggested by the Sub-Committee and agreed by the Applicant that in the event the Sub-Committee decided to grant the application, model condition 90 should be attached to the premises licence so that the capacity should be determined by Environmental Health. The figure of 40 had been offered by Mr Grant as it had been requested by Mr Sycamore in order that there was an indication of the potential cumulative impact.

Mr Wroe also asked whether the Applicant had agreed the Police's proposed conditions. Mr Grant confirmed that his client had agreed these conditions.

The Sub-Committee was addressed by Mr Sycamore, on behalf of the Licensing Authority. He stated that as a result of discussions with Mr Grant he was content with the proposed hours as the terminal hours were in keeping with the Council's Core Hours policy. He did question Mr Grant's submissions on cumulative impact on the basis that the approximate 40 people had previously been consuming ice cream whereas the Applicant had applied for a new premises licence which included alcohol. He made the point that the consumption of alcohol potentially leads to changes in behaviour.

Mr Sycamore added that whilst an amended MC66 had been agreed by the Applicant, the premises would also be operating as a shop and deli and would be providing alcohol, including as off sales in the West End Cumulative Impact Area.

The Sub-Committee granted the application (with terminal hours for licensable activities and the closing time being amended to Core Hours and the commencement hour for on-sales being amended to 10:00). The Sub-Committee considered that the application would promote the licensing objectives. In reaching this decision, Members took into account the amendments to the terminal hours and that key elements of the Council's model restaurant condition MC66 had been retained including that the sale of alcohol would be ancillary to substantial table meals and customers would be served by waiter or waitress service both internally and externally. The Council's policy is that 'new restaurant premises will generally be granted the core hours (for premises that serve alcohol for consumption on the premises) in line with Policy HRS1'. The Sub-Committee noted that whilst the application did include off sales, the Applicant also operated Gaucho the next door premises which is able to provide off-sales in any event.

**2. Late Night Refreshment (Indoors and Outdoors)**

Monday to Thursday:	23:00 to 23:30
Friday to Saturday:	23:00 to 00:00

Amendments to application advised at hearing:

None.

	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below (see reasons for decision in Section 1).</p>						
<b>3.</b>	<b>Sale by retail of alcohol (On and Off)</b>						
	<table> <tr> <td>Monday to Thursday:</td> <td>08:00 to 23:30</td> </tr> <tr> <td>Friday to Saturday:</td> <td>08:00 to 00:00</td> </tr> <tr> <td>Sunday:</td> <td>10:00 to 22:30</td> </tr> </table>	Monday to Thursday:	08:00 to 23:30	Friday to Saturday:	08:00 to 00:00	Sunday:	10:00 to 22:30
Monday to Thursday:	08:00 to 23:30						
Friday to Saturday:	08:00 to 00:00						
Sunday:	10:00 to 22:30						
	<p>Amendments to application advised at hearing:</p> <p>Mr Grant offered on behalf of his client that off-sales would cease in line with core hours (23:00 Monday to Saturday and 22:30 on Sunday). Mr Grant also confirmed that the Applicant had agreed the Police's proposed condition that on sales would not commence until 10:00.</p>						
	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted (including the amended terminal hour for off-sales and the amended commencement hour for on-sales), subject to conditions as set out below (see reasons for decision in Section 1).</p>						
<b>4.</b>	<b>Hours premises are open to the public</b>						
	<table> <tr> <td>Monday to Thursday:</td> <td>07:00 to 00:00</td> </tr> <tr> <td>Friday to Saturday:</td> <td>07:00 to 00:30</td> </tr> <tr> <td>Sunday:</td> <td>07:00 to 23:00</td> </tr> </table>	Monday to Thursday:	07:00 to 00:00	Friday to Saturday:	07:00 to 00:30	Sunday:	07:00 to 23:00
Monday to Thursday:	07:00 to 00:00						
Friday to Saturday:	07:00 to 00:30						
Sunday:	07:00 to 23:00						
	<p>Amendments to application advised at hearing:</p> <p>Mr Grant offered that the closing time to members of the public would be in keeping with Core Hours (23:30 Monday to Thursday, midnight Friday and Saturday and 22:30 on Sunday).</p>						
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the application, including the amended closing times set out above.</p>						
<b>5.</b>	<b>Seasonal variations / Non-standard timings</b>						
	<p><b><u>Recorded Music (Indoors), Late Night Refreshment (Indoors and Outdoors), Sale by retail of alcohol (On and Off) and Hours premises are open to the public</u></b></p>						

	<p>All licensable activities shall be extended from the end of the permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.</p> <p><b><u>Recorded Music (Indoors) and Sale by retail of alcohol (On and Off)</u></b></p> <p>Sundays before Bank Holidays 08:00 to 00:00</p> <p><b><u>Late Night Refreshment (Indoors and Outdoors)</u></b></p> <p>Sundays before Bank Holidays 23:00 to 00:00</p> <p><b><u>Hours premises are open to the public</u></b></p> <p>Sundays before Bank Holidays 07:00 to 00:30</p>
	<p>Amendments to application advised at hearing:</p> <p>Mr Grant offered that the closing time to members of the public would be in keeping with Core Hours. This means that the premises would close to the public on Sundays before Bank Holidays at midnight</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the application, including the amended hours the premises are open to the public on Sundays before Bank Holidays.</p>

<b>Conditions attached to the Licence</b>	
<b><u>Mandatory Conditions</u></b>	
1.	No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2.	No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3.	Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4.	(1) The responsible person must ensure that staff on relevant premises do



not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

(d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;

(e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

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

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

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

(3) The policy must require individuals who appear to the responsible

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

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

7. The responsible person must ensure that—

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

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

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

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

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

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

Where -

- (i) P is the permitted price,

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

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

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

**Additional Conditions**

9. The premises, including any permitted external area appropriately authorised for the use of tables and chairs on the highway, shall only operate as a Restaurant, Shop and Deli. The Restaurant and Deli shall only operate in a way;
- (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 deep fried food or drink for immediate consumption (apart from drink that is consumed in the

- permitted external area),
- (v) which do not provide any take away service of fast food or drink after 23.00, and
  - (vi) where, apart from off-sales in sealed containers, alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises (including any permitted external area) 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.

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

10. Save for in any permitted external area authorised for the use of tables and chairs on the highway, all sales of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the premises.
11. A Challenge 21 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognized photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
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 authorized 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. This staff member must be able to provide a Police or authorized council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
14. 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.
15. All tables and chairs shall be removed from the outside area by 23.00 each day.
16. Save for in any permitted external area 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.
17. Notices shall be prominently displayed at all exits requesting patrons to respect

the needs of local residents and businesses and leave the area quietly.

18. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 08.00 on the following day.
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 08.00 hours on the following day.
21. 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.
22. No licensable activities shall take at the premises until the capacity of the premises has been determined by the Environmental Health Consultation Team and the licensing authority has replaced this condition on the licence with a condition detailing the capacity so determined.
23. No licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.
24. The sale of alcohol for consumption on the premises shall only be permitted during the hours the sanitary facilities at 25/27 Swallow Street are available to patrons
25. 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. It must be completed within 24 hours of the incident and will record the following:
  - (a) all crimes reported to the venue
  - (b) all ejections of patrons
  - (c) any complaints received concerning crime and disorder
  - (d) any incidents of disorder
  - (e) all seizures of drugs or offensive weapons
  - (f) any faults in the CCTV system
  - (g) any refusal of the sale of alcohol
  - (h) any visit by a relevant authority or emergency service.
26. There shall be no sales of alcohol for consumption on the premises prior to 10:00 hours.
27. After 22:00 hours no alcohol shall be served in glass drinking vessels for consumption in the outside external area.

