



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (2)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (2)** Committee held on **Thursday 7th September, 2017**, Room 3.1, 3rd Floor, 5 Strand, London, WC2 5HR.

Members Present: Councillors Tim Mitchell (Chairman), Heather Acton and Rita Begum

1 MEMBERSHIP

There were no changes to the Membership.

2 DECLARATIONS OF INTEREST

Councillor Heather Acton declared by way of a personal interest in respect of application 4 on the agenda, Basement And Ground Floor, 19 New Quebec Street, W1 that she lives near the premises and has used the Applicant's shop. This did not in any way affect her ability to consider the application free from bias and with an open mind.

1 90-92 GREAT PORTLAND STREET, W1

LICENSING SUB-COMMITTEE No. 2

Thursday 7th September 2017

Membership: Councillor Tim Mitchell (Chairman), Councillor Heather Acton and Councillor Rita Begum

Legal Adviser: Horatio Chance

Committee Officer: Jonathan Deacon

Presenting Officer: Heidi Lawrance. Daisy Gadd also in attendance.

Relevant Representations: Freehold owner of 89 Great Portland Street, Leaseholder Management Company for 89 Great Portland Street, 1 Residents' Association and 10 x local residents.

Present: Mr Paul Twyman (Agent, Representing the Applicant), Mr Rajbir Singh Sawhney (Applicant), Mr Richard Brown (Solicitor, Citizens Advice Bureau)

Licensing Advice Project, representing 10 residents including Ms Agata Duda and Ms Deborah Knight. He was also representing Ms Sharon Palazzo), Ms Sharon Palazzo (on behalf of Portland Apartments Ltd, leaseholders for residents' flats within 89 Great Portland Street), Ms Agata Duda and Ms Deborah Knight (local residents).

90-92 Great Portland Street, W1 ("The Premises") 17/07371/LIPN	
1.	Sale by Retail of Alcohol (Off)
	<p>Monday to Saturday: 08:00 to 23:00 Sunday: 10:00 to 22:30</p>
	<p>Amendments to application advised at hearing:</p> <p>During the hearing, Mr Brown proposed on behalf of residents the hours for off sales and the opening hours to the public of 10:00 to 20:00 Monday to Saturday and 10:00 to 18:00 on Sundays. These were agreed by the Applicant.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee heard from Mr Twyman, representing the Applicant. He stated that the Applicant intended to open a retail shop, specialising in selling top end of the market alcoholic products, in particular spirits. The Sub-Committee was advised that the Applicant had been operating a shop in Bedford Street for two years without any issues arising. Mr Twyman was concerned that the nature of the application had been somewhat misconstrued as to what was being proposed by objectors to the application. This he believed may have resulted from what had appeared on the holding company's website. There was a letter of response on behalf of the Applicant to the residents' written representations in the Sub-Committee's report.</p> <p>The Sub-Committee asked Mr Twyman for clarification as the application was for the sale of alcohol for consumption off the Premises but there had been references to the Applicant holding tasting events at the Premises which would potentially involve on sales. He replied that if there was a tasting event free of charge, which did not amount to the sale of alcohol this was not a licensable activity. He had agreed with Environmental Health that any events held at the Premises which were not free of charge would be dealt with under Temporary Event Notices ('TENS'). This would restrict the number of events to a maximum of 15 per annum. Mr Twyman added that he did not expect these events to be lengthy. They were likely to be completed by 21:00 and would involve 90 – 120 minute presentations.</p> <p>Mr Twyman wished to put on record that there would be no late night collections which had been raised as a concern by local residents. Deliveries would</p>

normally take place between 08:00 and 11:00.

The Sub-Committee heard from Mr Brown. He made the point that the application had caused considerable concern to residents and representatives of 89 Portland Street. He disputed that the application had been misconstrued by residents. He believed there had been a lack of information in the application form and additional submissions which had led to residents making their own enquiries as to what the application involved. He also was of the view that Mr Twyman's letter in the report had not made it clear about the tasting sessions and whether they were intended to constitute "on sales" which had not been applied for. Mr Brown commented that the position had been somewhat clarified on the tasting sessions at the hearing as they would now be held only when TENs had been submitted.

Mr Brown referred to the indication by the Applicant that the hours and conditions would be the same as the Applicant's Whisky Exchange premises in Bedford Street. He advised the Sub-Committee that what was proposed in terms of the hours and conditions was not acceptable to local residents as they did not specifically take into account the local area and its character. Whilst the proposed hours were within the Council's Core Hours policy, the residents had set out in their written representations that the nature of the area was relatively quiet. It was submitted that there was relatively low footfall in the evenings with people passing through as it was not fully a commercial area. Residents were not of the view that 23:00 was an appropriate terminal hour for this location.

Mr Brown requested that conditions on the Premises licence if the Sub-Committee was minded to grant took into account that there would be events held under TENs as they would then apply to the TENs. He also sought additional information as to whether it was intended that there would be empty bottles involved from the tasting events, adding to deliveries and refuse. He also asked that in the event of any on sales at the Premises, the capacity was lower than the 60 which had been set for the Premises on public safety grounds. There was a condition in the operating schedule that off sales could not be consumed on the Premises.

The Sub-Committee was addressed by Ms Duda. She had lived in a flat with her husband opposite the premises for two years. In her opinion she had found it suitable in terms of planning to start a family and work from home as it was relatively quiet and not a busy area. Ms Duda concurred with Mr Brown's point that there was relatively low footfall in the evenings with people passing through. There were not groups of people congregating outside.

Ms Duda explained that there were issues with traffic congestion in Great Portland Street. There was noise from people sounding their horns and there were concerns regarding the impact of deliveries to the Premises. She had concerns regarding the tasting events and in particular that people would congregate, smoke and create noise out in the street later in the evening, particularly when dispersing. The events could also lead to bottles being moved later at night. She expressed disappointment that the Applicant had not given details on the tasting events initially and that residents had had to make further enquiries, including on the holding company's website. She had not found the

letter from the Applicant (included in the report) helpful including as a result of finding out that whilst the tasting events were supposed to be promotional in nature it had appeared to be possible for members of the public to arrange to have events at the Premises, potentially beyond 21:00. She was keen to have restrictions on events on the Premises licence and also a condition attached that the Premises would only sell high end whisky.

The Sub-Committee heard from Ms Palazzo. She expressed concerns about the additional noise that would be created from the Premises and that any such noise would impact on local residents in 89 Great Portland Street given that the windows were typically single glazed. This included any deliveries in the morning or later at night. She referred to the previous tenants of the unit being a bicycle shop which had few deliveries. Ms Palazzo also raised concerns about rubbish collections, the traffic congestion this caused and the noise arising from drivers sounding their horns.

Ms Palazzo emphasised that the area where the shop would be located was not a shopping destination. It was some distance away from the likes of Oxford Street. There was limited commercial activity and some offices but the area in her opinion was overwhelmingly residential. There would be more residents coming into the locality shortly and there would consequently be more cars on the street which would lead to greater congestion. She was of the view that it was highly likely that there would be noise nuisance from tasting events, particularly as a result of a large number of people all dispersing at the same time having consumed alcohol.

Mr Brown requested an earlier terminal hour at the Premises on behalf of residents. He proposed 10:00 to 20:00 Monday to Saturday and 10:00 to 18:00 on Sundays. He believed this was in keeping with the actual hours that were operated for Whisky Exchange in Bedford Street. Mr Brown also asked for a condition in the event the Sub-Committee was minded to grant the application which would ensure that the Premises would remain a high end whisky shop. This would provide some comfort both in respect of the current operation and in the event the Premises licence was transferred at some stage in the future.

Mr Brown proposed hours for both deliveries and collections which were identical to those proposed for the operating hours. He stated that residents were requesting a start time of 10:00 because congestion caused by deliveries or collections was much more likely to take place during the rush hour. The added congestion also contributed to significant traffic pollution.

Mr Brown asked for restrictions on tasting events, including the numbers present and also that the Applicant give written notice to residents of any upcoming events following TENs being submitted. He was also keen that there was a condition on the licence limiting the impact on smokers being able to create a public nuisance which would disturb residents.

Mr Twyman was given the opportunity to respond to the points made by the objectors. He referred to his letter in the report setting out that ticketed tasting or promotional events would be limited to 30 people in the basement. He confirmed that the ticketed events would all require TENs. The Applicant stated

that he did not envisage holding all events at the shop. They could be advertised at the shop and held elsewhere, similarly to events being held at Brown's Hotel when the Applicant is operating the shop at Bedford Street. Mr Twyman clarified that there would be no on sales sought as part of this application.

Following discussions with the Applicant, Mr Twyman advised that Mr Sawhney was willing to accept the operating hours proposed by Mr Brown. Mr Sawhney was requesting that deliveries and collections take place from 09:00 to 20:00 Monday to Saturday and 09:00 to 18:00 on Sundays. Mr Twyman and Mr Sawhney explained that there would be few deliveries to the shop. These deliveries would be via small diesel vans. Orders were placed centrally and consolidated in one delivery via the head office. It was not a case of multiple suppliers turning up at different times of the day in Great Portland Street. There would also not be a delivery service of items from the Premises to customers. In response to a question from the Sub-Committee, Mr Sawhney stated that he would be willing to encourage clients to walk, cycle or use electric vehicles in order to reach the Premises.

Mr Brown in response to the points made by Mr Twyman and Mr Sawhney requested that the maximum capacity for events in the basement was lowered to 20. He was also seeking assurances on behalf of residents that there was confirmation on the Premises licence that there could be no consumption of alcohol on the Premises. Mr Twyman asked that the maximum capacity for events was not limited to 20, particularly if it was inclusive of staff.

The Sub-Committee asked Mr Twyman whether the Applicant was willing to have a condition on the Premises licence to the effect that the Premises would be restricted to operate as a specialist whisky shop. Mr Twyman and Mr Sawhney responded that the alcohol being sold would not be purely limited to whisky as was the case in their Bedford Street branch. The alcohol sold included wines and champagnes, cognacs, rums and gins. Mr Sawhney described it as 'premium alcohol' and advised that the price points were not similar to high street supermarkets or general off licences. The lowest prices for certain items were around £15 but there were other items on sale in the tens of thousands of pounds bracket. Mr Sawhney sought to assure the Sub-Committee and residents that events would be educational and provide an experience for its customer base. The Sub-Committee was advised that the events were not there to encourage people to consume vast quantities of alcohol which could potentially lead to public nuisance.

The Sub-Committee asked Mr Twyman and Mr Sawhney why if deliveries were consolidated it would not be possible to commence deliveries at 10:00. Mr Sawhney replied that deliveries did need to be in place at the shop before it opened. He was also concerned that a van could arrive from head office before 10:00 and it would be impractical for the driver to have to continue to drive around the area or wait somewhere before being able to deliver items.

Members of the Sub-Committee, having read all the written representations and listened to parties at the hearing, were mindful of the concerns of local residents. The Sub-Committee noted the eloquent way in which residents and their

representatives expressed their concerns about the potential impact of the premises operating as an off-licence. In respect of the Council's policy, the Premises are not located in one of the Council's designated cumulative impact areas. It was necessary for the application to be considered on its merits and for the Sub-Committee to consider whether the application promoted the licensing objectives.

The Sub-Committee decided to grant the application, subject to conditions as set out below. The Sub-Committee took into account that the Applicant had agreed to the reduced hours proposed by Mr Brown on behalf of residents for off sales and the opening hours to the public of 10:00 to 20:00 Monday to Saturday and 10:00 to 18:00. The Sub-Committee considered that with the Premises operating within these hours and being subject to the conditions on the licence, and the assurances given during the hearing, particularly in relation to the running and management of the tasting events, the licensing objectives would be promoted.

The Sub-Committee sought to strengthen the conditions on the licence which the Applicant had agreed with Environmental Health and the Police prior to the Responsible Authorities withdrawing their representations. One was to restrict the nature of the operation as requested by residents in order to provide some comfort both in respect of the current operation and in the event the Premises licence was transferred. The Sub-Committee noted the Applicant's point that he could not comply with a condition that the Premises would only be able to operate as a specialist whisky shop as he sold different types of alcohol – this was accepted by the Sub-Committee. The Sub-Committee in the framing of the proposed condition regarding restricted use of the Premises, therefore adopting the Applicant's wording used in the description of the Premises and attached the condition that 'the Premises shall operate as a specialist retail shop selling high end products including rare, collectable and aged spirits'.

The Sub-Committee commended the Applicant on consolidating deliveries to the premises which would minimise the impact on local residents and on traffic congestion. The Sub-Committee noted residents' concerns about traffic congestion and noise from the use of horns in Great Portland Street. The Sub-Committee, however, considered that the Applicant's offer to reduce the proposed hours for deliveries to 09:00 to 20:00 Monday to Saturday and 09:00 to 18:00 on Sunday was significant and reasonable. The Sub-Committee decided that these hours would also be applied to collections of waste which were not covered by existing conditions on the operating schedule. The Sub-Committee took the view that these hours for collections and deliveries would ensure that residents were not disturbed late at night or very early in the morning thereby promoting the public nuisance licensing objective. The delivery hours would also enable the Applicant to be able to bring the deliveries into the shop before the trading day commenced.

In respect of events, the Sub-Committee decided that it was appropriate and proportionate to impose a maximum capacity in the basement area of 30 people excluding staff. Mr Sawhney would be expected to run any events in keeping with how he had described the nature of the events to the Sub-Committee.

	<p>The Sub-Committee required the Applicant to notify residents of any TENs by way of informative. Mr Twyman advised the Sub-Committee that Mr Sawhney would be unlikely to open the Premises until January and would potentially submit all 15 TENs together prior to opening, planning the year ahead for the various events. Other informatives requested of the Applicant by the Sub-Committee were for the Applicant to use sustainable transport and to encourage customers/guests to do so when visiting the premises. The Sub-Committee noted the Applicant did not intend to have a delivery service to customers from the Premises.</p> <p>A condition in the operating schedule and attached to the Premises licence sets out that all off sales would be in sealed containers only and would not be consumed on the Premises. In order to prevent smokers consuming alcohol outside and causing any nuisance to local residents, the Sub-Committee attached the model condition that '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'.</p>				
2.	Hours premises are open to the public				
	<table border="0"> <tr> <td>Monday to Saturday:</td> <td>08:00 to 23:00</td> </tr> <tr> <td>Sunday:</td> <td>10:00 to 22:30</td> </tr> </table>	Monday to Saturday:	08:00 to 23:00	Sunday:	10:00 to 22:30
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	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the hours as amended by the Applicant (see reasons for decision in Section 1).</p>				

Conditions attached to the Licence	
<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 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.
- 5(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.
- 5(ii) For the purposes of the condition set out in paragraph 5(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.

5(iii). Where the permitted price given by Paragraph 5(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.

5(iv). (1) Sub-paragraph 5(iv)(2) below applies where the permitted price given by Paragraph 5(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

6. A personal licence holder shall be on the premises during the hours permitted to supply alcohol.

7. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.

8. No super-strength beer, lagers or ciders of 5.5% ABV (alcohol by volume) or above shall be sold at the premises except for premium beers and ciders sold in glass bottles.

9. The maximum number of persons permitted in the basement of the premises (including staff) shall not exceed 50 persons.

10. Prominent signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises, where alcohol is on public display, and at the point of sale.

11. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.

12. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.

13. 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.

14. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
15. No collections of waste or recycling materials (including bottles) from the premises shall take place between 20.00 and 09.00 on the following day Monday to Saturday and between 18.00 and 09:00 on the following day on Sundays.
16. 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.
17. 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 premises are open.
18. 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.
19. 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.
20. 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) any faults in the CCTV system,
 - (f) any visit by a relevant authority or emergency service.
21. 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.

22. There shall be a personal licence holder on duty on the premises at all times when the premises are authorised to sell alcohol.
23. No super-strength beer, lagers, ciders or spirit mixtures of 5.5% ABV (alcohol by volume) or above shall be sold at the premises, except for premium beers and ciders supplied in glass bottles.
24. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
25. Prominent signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises, where alcohol is on public display, and at the point of sale.
26. The number of persons permitted in the basement part of the premises at any one time shall not exceed (X) persons. *(to be confirmed on completion of works condition but shall in any case not be more than 60 persons)*
27. 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.
28. The premises shall operate as a specialist retail shop selling high end products including rare, collectable and aged spirits.
29. No deliveries to the premises shall take place between 20.00 and 09.00 on the following day Monday to Saturday and between 18.00 and 09:00 on the following day on Sundays.
30. 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.
31. When events are held in the basement area of the premises the maximum capacity shall not exceed 30 people, excluding staff.

2 GREEN MAN PUBLIC HOUSE, 57 BERWICK STREET, W1

LICENSING SUB-COMMITTEE No. 2

Thursday 7th September 2017

Membership: Councillor Tim Mitchell (Chairman), Councillor Heather Acton and Councillor Rita Begum

Legal Adviser: Horatio Chance

Committee Officer: Jonathan Deacon

Presenting Officer: Daisy Gadd. Heidi Lawrance also in attendance.

Relevant Representations: Licensing Authority.

Present: Ms Bo-Eun Jung (Counsel, Representing the Applicant), Ms Karen Fahy (Manager, Applicant Company), Mr Joseph Concannon (Designated Premises Supervisor), Ms Kerry Rossall (Designated Premises Supervisor, O’Neills in Great Marlborough Street, W1) and Mr David Sycamore (Licensing Authority).

Green Man Public House, 57 Berwick Street, W1 (“The Premises”) 17/07395/LIPV	
1.	To vary the sale of alcohol on Sunday (to include Sunday immediately prior to a bank holiday) to commence at 10:00 hours. The commencement hour on the existing premises licence on Sundays is midday.
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): The Applicant (Mitchells And Butlers Leisure Retail Ltd) submitted an application for a variation of the premises licence at 57 Berwick Street and also an application for a variation of the premises licence at 37-38 Marlborough Street. These two applications were scheduled for the same Licensing Sub-Committee meeting on 7 September 2017. The two applications were heard together by the Sub-Committee with the agreement of the parties to the hearing as the Applicant in both cases was seeking to bring the commencement hour forward for the sale of alcohol on Sunday from midday to 10:00 hours. The Sub-Committee would however, produce separate Decisions for each of the Premises. It was noted that both premises are located within the Council’s West End Cumulative Impact Area. The Sub-Committee heard from Ms Jung. She stated that the Green Man Public House which opened at 09:00 provided a substantial breakfast menu (included in the report), catering for tourists and weekend shoppers in particular. Ms Jung explained that the Applicant wished to enable customers to be given the option of having an alcoholic drink such as a glass of prosecco or a bloody mary with their breakfast. She added that there was no intention to have drinks promotions or advertise the fact that there would be sales of alcohol on Sunday mornings. Ms Jung stated that the Applicant was well aware that the Premises is located in the West End Cumulative Impact Area and that the proposed hours were outside of the Council’s Core Hours policy (Core Hours commences at midday on Sundays). She made the case for the application being an “exception” to the Council’s policy and that the application would not add to cumulative impact. Ms Jung referred in particular to paragraph 2.4.1 of the City Council’s Statement of Licensing Policy (“SLP”) that specific locations in the City had ‘been identified as cumulative impact areas because the cumulative effect of the concentration of late night and drink led premises and/or night cafés has led to serious problems

of disorder and/or public nuisance affecting residents, visitors and other businesses'. She had also identified other instances where the SLP had indicated that it was particularly the retention of people late at night in the cumulative impact areas which caused these issues.

Ms Jung expressed the view that the hours between 10:00 and 12:00 were sufficiently late in the day and that they would not be exploited by customers who stayed out all night drinking. They would appeal to customers who wanted to have a drink with their breakfast. She confirmed that a condition had been agreed with Environmental Health and the Police that alcohol sold between 10:00 and 12:00 on Sundays would be ancillary to substantial food and on that basis they had subsequently withdrawn their representations. The alcohol would be for consumption on the Premises only. Ms Jung also advised the Sub-Committee that the menus and also staff would inform customers that no alcohol would be sold on Sunday mornings without them consuming a substantial meal.

Ms Jung stated that Mr Concannon, the Designated Premises Supervisor, had some twenty five years' experience in the industry. He had been the General Manager of the Spirit Pub Company. She commented that his experience and effectiveness of the manager was reflected in the fact that there had been no crime and disorder or public nuisance issues at the Premises during the last year.

Ms Jung advised the Sub-Committee that the Applicant had a number of other premises in the City where alcohol was sold on Sunday mornings and there had been no reported problems raised at those premises and the Premises in question. She referred also to there being no objections to the application from local residents.

The Sub-Committee was addressed by Mr Sycamore on behalf of the Licensing Authority. He stated that the Licensing Authority welcomed that there would be no drinks promotions and that alcohol sold on Sunday mornings would be ancillary to food. The Licensing Authority however maintained their representation as the Premises is located in the West End Cumulative Impact Area and that the proposed hours were outside of the Council's Core Hours policy. The Licensing Authority did have some concerns as the SLP acknowledges that residents are entitled to an extra respite from the impact of licensed premises on a Sunday. Mr Sycamore made the point that the Council's policy document also sets out that operators are expected to run premises well and that this did not in itself constitute an exception to policy.

The Sub-Committee asked Ms Jung whether the Applicant was willing to have a condition on the premises licence that there would be no drinks promotions or advertising of alcohol sold between 10:00 and midday in the event the Sub-Committee was minded to grant the application. Ms Jung confirmed that this was acceptable to the Applicant. The Sub-Committee asked Mr Sycamore whether such a condition being attached to the premises licence would provide him with greater reassurance. He replied that it would. The primary concern of the Licensing Authority was if the alcohol was attracting more people into the West End Cumulative Impact Area. It was stated that preventative conditions could go some way to supporting the policy in this respect.

The Sub-Committee noted that the Applicant already offered breakfast from 09:00 to 12:00 and asked whether it was expected that the sale of alcohol would add to footfall at this location. Ms Jung replied that it was not expected to increase footfall, particularly as there would be no drinks promotions and no advertising of this offer. The opinion stated was that the breakfast trade would remain popular as it was already. Ms Jung also provided the information to the Sub-Committee that the number of covers for Green Man Public House is 30.

The Sub-Committee noted it is the Council’s policy to refuse applications in the Cumulative Impact Areas for pubs and bars other than applications to vary hours within the Core Hours under Policy HRS1. It was also noted that Core Hours on Sunday commence at midday. The Sub-Committee therefore gave careful consideration when reaching a decision in respect of this application. The Sub-Committee shared the view of the Licensing Authority that the primary concern in policy terms would be if the sale of alcohol at the Premises attracted more people into the West End Cumulative Impact Area and were to undermine the licensing objectives. However, the Applicant was offering conditions that on sales of alcohol would be ancillary to substantial food for the additional two hours applied for on Sunday morning and that no drinks promotions or such other advertising (including on the Applicant’s websites) would take place indicating that the sale of alcohol is permitted on Sunday between the hours of 10:00 and 12.00. The Sub-Committee considered that this went some way to reassure that the application would not attract customers earlier into the cumulative impact area in search of a drink led premises, which clearly was not the intention of the Applicant by seeking this proposed offer to sale alcohol earlier. The Sub-Committee would have had greater concerns that the Premises management was seeking to attract customers in search of alcohol had the commencement hour for on-sales been earlier than 10:00 hours. The Sub-Committee decided to grant the application as applied for.

Whilst the Sub-Committee appreciated that running the Premises well and the designated premises supervisor having significant experience is not a reason in itself to grant an application as an exception to the Council’s policy, the Applicant did provide some additional reassurance in the decision to grant the application that would promote the licensing objectives. The Sub-Committee noted that the Police and Environmental Health had withdrawn their representations and that there had been no objections from local residents which was a key consideration in the Sub-Committee’s determination of the matter. It was therefore the Sub-Committee’s considered view that the imposition of these conditions is entirely appropriate, proportionate in order to achieve this promotion.

2. To amend condition 22 C & D under Annex 3 to reflect the hours on Sundays to be from 10:00 hours.

Amendments to application advised at hearing:

None.

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

The Sub-Committee granted the application as applied for (see reasons for decision in Section 1).

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.
9. All persons guarding premises against unauthorised access or occupation or against outbreaks of disorder or against damage (door supervisors) must be licensed by the Security Industry Authority.
10. Admission of children to the premises must be restricted in accordance with the film classification recommended by the British Board of Film Classification or recommended by this licensing authority as appropriate.

Additional Conditions

11. This licence is subject to all the former Rules of Management for Places of Public Entertainment licensed by Westminster City Council, in force from 4 September 1998 and incorporating amendments agreed by the Council on 25 October 1999, 30 June 2000, 16 January 2001 and 1 October 2001.
12. On New Year's Eve the premises can remain open for the purpose of providing regulated entertainment from the time when the provision of regulated entertainment must otherwise cease on New Year's Eve to the time when regulated entertainment can commence on New Year's Day (or until midnight on New Year's Eve where no regulated entertainment takes place on New Year's Day).
13. The doors at the front of the premises shall remain closed except for the immediate access and egress of customers and staff.
14. From Thursday to Saturday inclusive the entrance will be supervised from 21:00 by two door supervisors registered with the City Council.
15. The sound limiting device at the premises shall be set and maintained at a level to be decided upon the Environmental Health Officer.
16. Notices shall be provided at the premises requesting patrons to leave quietly. Similar reminders shall be made over the loud speakers and by door supervisors at the door.
17. The licence holder shall use her best endeavours to ensure that customers do not congregate on the public highway outside the premises.
18. All other reasonable requests made by the Environmental Health Officer so as to avoid the emanation of noise shall be complied with.
19. The number of persons accommodated (excluding staff) at the premises shall

not exceed 220.

20. If any entertainment is provided for children or if an entertainment is provided at which the majority of persons attending are children, then, if the number of children attending the entertainment exceeds 100, it shall be the duty of the holder of the premises licence (or the holder of the club premises certificate):
- (a) to station and keep stationed wherever necessary a sufficient number of adult attendants, properly instructed as to their duties, to prevent more children or other persons being admitted to the building, or to any part thereof, than the building or part can properly accommodate,
 - (b) to control the movement of the children and other persons admitted while entering and leaving the building or any part thereof, and
 - (c) to take all other reasonable precautions for the safety of the children.
21. The terminal hour for Late Night Refreshment on New Year's Eve is extended to 05:00 on New Year's Day.
22. Alcohol shall not be sold, supplied, consumed in or taken from the premises except during permitted hours.
In this condition, permitted hours means:
- (a) Monday to Wednesday, 10:00 to 23:30
 - (b) Thursday to Saturday 10.00 to 01:00
 - (c) Sundays, 10:00 to 22:30
 - (d) Sundays immediately prior to a Bank Holiday, 10:00 to 00:00
 - (e) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, 00.00 midnight on 31st December).
- NOTE - The above restrictions do not prohibit:
- (a) the sale or supply of alcohol to or the consumption of alcohol by any person residing in the licensed premises;
 - (b) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
 - (c) the sale of alcohol to a trader or registered club for the purposes of the trade or club;
 - (d) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;
 - (e) the taking of alcohol from the premises by a person residing there;
 - (f) the supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied;
 - (g) the supply of alcohol for consumption on the premises to persons

employed there for the purposes of the business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

In this condition, any reference to a person residing in the premises shall be construed as including a person not residing there but carrying on or in charge of the business on the premises.

23. The sale of alcohol must be ancillary to the use of the premises for music and dancing and substantial refreshment. For the avoidance of doubt, the ancillary restrictions of alcohol to food and dancing previously in force which have been carried over on conversion of the Special Hours Certificate do not apply during the 'core hours' specified in policy HRS1.
24. All customers should be off the premises by 11:30pm Monday - Wednesday, 1:30am Thursday to Saturday and 10:50pm Sunday (midnight on Sundays immediately prior to Bank Holidays).
25. Credit card sales to be allowed, subject to the proviso that customers are to be presented with an itemised bill.
26. All persons under the age of 14 shall be accompanied at all times by an adult. No person under 14 shall be allowed to remain in the bar area after 9pm (9:30pm if taking a table meal accompanied by an adult).
27. All other reasonable requests by the Environmental Health Officer so as to avoid the emanation of noise shall be complied with.
28. Performance of live music is limited to not more than two performers.
29. The sale of alcohol on Sunday between the hours of 10.00 and 12.00 shall be for consumption "On" the premises only, and shall be ancillary to substantial food'.
30. No drinks promotions or such other advertising shall take place indicating that the sale of alcohol is permitted on Sunday between the hours of 10:00 and 12.00.

3 O'NEILL'S, 37-38 GREAT MARLBOROUGH STREET, W1

LICENSING SUB-COMMITTEE No. 2

Thursday 7th September 2017

Membership: Councillor Tim Mitchell (Chairman), Councillor Heather Acton and Councillor Rita Begum

Legal Adviser: Horatio Chance

Committee Officer: Jonathan Deacon

Presenting Officer: Daisy Gadd. Heidi Lawrance also in attendance.

Relevant Representations: Licensing Authority.

Present: Ms Bo-Eun Jung (Counsel, Representing the Applicant), Ms Karen Fahy (Manager, Applicant Company), Ms Kerry Rossall (Designated Premises Supervisor), Mr Joseph Concannon (Designated Premises Supervisor, Green Man Public House, 57 Berwick Street), and Mr David Sycamore (Licensing Authority).

O'Neill's, 37-38 Great Marlborough Street, W1 ("The Premises") 17/07390/LIPV	
1.	To vary the sale of alcohol on Sunday (to include Sunday immediately prior to a bank holiday) to commence at 10:00 hours. The commencement hour on the existing premises licence on Sundays is midday.
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): The Applicant (Mitchells And Butlers Leisure Retail Ltd) submitted an application for a variation of the premises licence at 57 Berwick Street and also an application for a variation of the premises licence at 37-38 Marlborough Street. These two applications were scheduled for the same Licensing Sub-Committee meeting on 7 September 2017. The two applications were heard together by the Sub-Committee with the agreement of the parties to the hearing as the Applicant in both cases was seeking to bring the commencement hour forward for the sale of alcohol on Sunday from midday to 10:00 hours. The Sub-Committee would however, produce separate Decisions for each of the Premises. It was noted that both premises are located within the Council's West End Cumulative Impact Area. The Sub-Committee heard from Ms Jung. She stated that O'Neills which opened at 09:00 provided a substantial breakfast menu (included in the report), catering for tourists and weekend shoppers in particular. Ms Jung explained that the Applicant wished to enable customers to be given the option of having an alcoholic drink such as a glass of prosecco or a bloody mary with their breakfast. She added that there was no intention to have drinks promotions or advertise the fact that there would be sales of alcohol on Sunday mornings. Ms Jung stated that the Applicant was well aware that the Premises is located in the West End Cumulative Impact Area and that the proposed hours were outside of the Council's Core Hours policy (Core Hours commences at midday on Sundays). She made the case for the application being an exception to the Council's policy and that the application would not add to cumulative impact. Ms Jung referred in particular to paragraph 2.4.1 of the City Council's Statement of Licensing Policy that specific locations in the City had 'been identified as cumulative impact areas because the cumulative effect of the concentration of

late night and drink led premises and/or night cafés has led to serious problems of disorder and/or public nuisance affecting residents, visitors and other businesses'. She had also identified other instances where the SLP had indicated that it was particularly the retention of people late at night in the cumulative impact areas which caused these issues.

Ms Jung expressed the view that the hours between 10:00 and 12:00 were sufficiently late in the day and that they would not be exploited by customers who stayed out all night drinking. They would appeal to customers who wanted to have a drink with their breakfast. She confirmed that a condition had been agreed with Environmental Health and the Police that alcohol sold between 10:00 and 12:00 on Sundays would be ancillary to substantial food and on that basis they had subsequently withdrawn their representations. The alcohol would be for consumption on the Premises only. Ms Jung also advised the Sub-Committee that the menus and also staff would inform customers that no alcohol would be sold on Sunday mornings without them consuming a substantial meal.

Ms Jung stated that Mr Concannon, the Designated Premises Supervisor, had some twenty five years' experience in the industry. He had been the General Manager of the Spirit Pub Company. She commented that his experience and effectiveness of the manager was reflected in the fact that there had been no crime and disorder or public nuisance issues at the Premises during the last year.

Ms Jung advised the Sub-Committee that the Applicant had a number of other premises in the City where alcohol was sold on Sunday mornings and there had been no reported problems raised at those premises and the Premises in question. She referred also to there being no objections to the application from local residents.

The Sub-Committee was addressed by Mr Sycamore on behalf of the Licensing Authority. He stated that the Licensing Authority welcomed that there would be no drinks promotions and that alcohol sold on Sunday mornings would be ancillary to food. The Licensing Authority however maintained their representation as the Premises are located in the West End Cumulative Impact Area and that the proposed hours were outside of the Council's Core Hours policy. The Licensing Authority did have some concerns as the SLP acknowledges that residents are entitled to an extra respite from the impact of licensed premises on a Sunday. Mr Sycamore made the point that the Council's policy document also sets out that operators are expected to run premises well and that this did not in itself constitute an exception to policy.

The Sub-Committee asked Ms Jung whether the Applicant was willing to have a condition on the premises licence that there would be no drinks promotions or advertising of alcohol sold between 10:00 and midday in the event the Sub-Committee was minded to grant the application. Ms Jung confirmed that this was acceptable to the Applicant. The Sub-Committee asked Mr Sycamore whether such a condition being attached to the premises licence would provide him with greater reassurance. He replied that it would. The primary concern of the Licensing Authority was if the alcohol was attracting more people into the West End Cumulative Impact Area. It was stated that preventative conditions

could go some way to supporting the policy in this respect.

The Sub-Committee noted that the Applicant already offered breakfast from 09:00 to 12:00 and asked whether it was expected that the sale of alcohol would add to footfall at this location. Ms Jung replied that it was not expected to increase footfall, particularly as there would be no drinks promotions and no advertising of this offer. The opinion stated was that breakfast trade would remain popular as it was already. Ms Jung also provided the information to the Sub-Committee that the number of covers for Green Man Public House is 30.

The Sub-Committee noted it is the Council's policy to refuse applications in the Cumulative Impact Areas for pubs and bars other than applications to vary hours within the Core Hours under Policy HRS1. It was also noted that Core Hours on Sunday commence at midday. The Sub-Committee therefore gave careful consideration when reaching a decision in respect of this application. The Sub-Committee shared the view of the Licensing Authority that the primary concern in policy terms would be if the sale of alcohol at the Premises attracted more people into the West End Cumulative Impact Area and were to undermine the licensing objectives. However, the Applicant was offering conditions that on sales of alcohol would be ancillary to substantial food for the additional two hours applied for on Sunday morning and that no drinks promotions or such other advertising (including on the Applicant's websites) would take place indicating that the sale of alcohol is permitted on Sunday between the hours of 10:00 and 12.00. The Sub-Committee considered that this went some way to reassure that the application would not attract customers earlier into the cumulative impact area in search of a drink led premises, which clearly was not the intention of the Applicant by seeking this proposed offer to sale alcohol earlier. The Sub-Committee would have had greater concerns that the Premises management was seeking to attract customers in search of alcohol had the commencement hour for on-sales been earlier than 10:00 hours. The Sub-Committee decided to grant the application as applied for.

Whilst the Sub-Committee appreciated that running the Premises well and the designated premises supervisor having significant experience is not a reason in itself to grant an application as an exception to the Council's policy, the Applicant did provide some additional reassurance in the decision to grant the application that would promote the licensing objectives. The Sub-Committee noted that the Police and Environmental Health had withdrawn their representations and that there had been no objections from local residents which were a key consideration in the Sub-Committee's determination of the matter. It was therefore the Sub-Committee's considered view that the imposition of these conditions is entirely appropriate, proportionate in order to achieve this promotion.

2. To amend condition 11C & D under Annex 3 to reflect the hours on Sundays to be from 10:00 hours.

Amendments to application advised at hearing:

None.

	Decision (including reasons if different from those set out in report):
	The Sub-Committee granted the application as applied for (see reasons for decision in Section 1).

Conditions attached to the Licence	
<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.	<p>(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.</p> <p>(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—</p> <p>(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;</p> <p style="padding-left: 40px;">(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</p> <p style="padding-left: 40px;">(ii) drink as much alcohol as possible (whether within a time limit or otherwise);</p> <p>(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;</p> <p>(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</p>

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 terminal hour for late night refreshment on New Year's Eve is extended to 05:00 on New Year's Day.
10. The Venue will install and maintain a comprehensive CCTV system as per the minimum requirements of a Metropolitan Police Crime Prevention Officer. 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 venue is open for licensable activities for a period of 31 days with date and time stamping. Recordings shall be made available, immediately upon the request of police or authorised officer throughout the preceding 31 day period
11. The permitted hours for sale and supply of alcohol is:
- (a) Monday to Thursday 10:00 to 23:30
 - (b) Friday to Saturday 10:00 to 00:00
 - (c) Sunday 10:00 to 22:30
 - (d) Sunday Prior to Bank Holiday: 10:00 to 00:00
 - (e) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).
12. Customers shall be off the premises by no later than 23:30 Monday to Thursday, 00:00 Friday to Saturday and Sunday prior Bank holiday and 22:50 Sunday.
13. Credit card sales shall be allowed, subject to the proviso that customers are to be presented with an itemised bill.
14. All persons under the age of 14 shall be accompanied at all times by an adult. No person under 14 shall be allowed to remain in the bar area after 21:00 unless they are taking table meals accompanied by an adult when after 21:30.
15. Noise and vibration will not be allowed to emanate from the premises so as to cause a public nuisance to nearby properties.
16. All windows and doors to be kept closed when regulated entertainment takes place except immediate access and egress of persons. For avoidance of doubt

the reference to regulated entertainment does not include background music.

17. A sound limiting device must be fitted to the musical amplification system set at a level determined by and to the satisfaction of an authorised officer of the Environmental Health Service. The keys securing the noise limiter shall be held by the applicant only, and shall not be accessed by any other person. The limiter shall not be altered without prior agreement with the Environmental Health Service.
18. No alteration or modification to any existing sound system(s) should be effected without prior knowledge of an authorised officer of the Environmental Health Service.
19. Any additional generating equipment shall not be used on the premises without being routed through the sound limiter device.
20. There shall be no licensable activities or consumption of alcohol by patrons permitted outside the premises after 23:00 Monday to Saturday and after 22:30 on Sunday except as may be permitted under any street trading licence that may be granted by Westminster City Council.
21. Whilst live music is taking place the number of persons accommodated at any one time (excluding staff) shall not exceed the following:
225 persons ground floor.
22. All emergency doors shall be maintained effectively self closing and not held open other than by approved device.
23. Curtains and hangings shall be arranged so as not to obstruct emergency signs.
24. The certificates below shall be submitted to the Licensing Authority upon written request:
 - (a) any emergency lighting battery or system
 - (b) any electrical installation
 - (c) Any emergency warning system.
25. Any special effects or mechanical installations shall be arranged and stored so as to minimise any risk to the safety of those using the premises. The following special effects will only be used 10 days prior notice being given to the Licensing Authority where consent has not previously been given:
 - dry ice and cryogenic fog
 - smoke machines and fog generators
 - pyrotechnics including fire works
 - firearms
 - lasers
 - explosives and highly flammable substances
 - real flame
 - strobe lighting

26. Flashing or particularly bright lights on or outside the premises shall not cause a nuisance to nearby properties (save insofar as they are necessary for the prevention of crime).
27. All electrical sockets used to supply power for hand held electrical equipment shall be protected by a residual current device of 30 milliamps sensitivity complying with British Standard Specification 4293 : 1993.
28. No person shall give at the premises any exhibition, demonstration or performance of hypnotism, mesmerism or any similar act or process which produces or is intended to produce in any other person any form of induced sleep or trance in which susceptibility of the mind of that person to suggestion or direction is increased or intended to be increased. NOTE: (1) This rule does not apply to exhibitions given under the provision of Section 2(1A) and 5 of the Hypnotism Act 1952.
29. No entertainment, performance, service or exhibition involving nudity or sexual stimulation which would come within the definition of a sex establishment in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Greater London Council (General Powers) Act 1986 (whether or not locally adopted), shall be provided.
30. There shall be no striptease or nudity and all persons shall be decently attired at all times.
31. Clearly legible notices shall be displayed at all exits from the premises requesting patrons to respect the needs of local residents and to leave the premises and area quietly.
32. There shall be no loud speakers located within the acoustic lobby or externally.
33. The performance of live music shall be restricted to a maximum of 4 performers.
34. 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) any complaints received regarding crime and disorder
 - (c) any incidents of disorder
 - (d) any faults in the CCTV system
 - (e) any refusal of the sale of alcohol
 - (f) any visit by a relevant authority or emergency service.
35. There shall be no live music or sound checks Monday to Friday from 09:00 hours to 18:00 hours except for Bank Holiday Mondays.
36. All performances of live music shall be restricted to the raised area only as shown on the plan MC605-203 dated March 2011.

37. The sale of alcohol on Sunday between the hours of 10.00 and 12.00 and shall be for consumption "on" the premises only, and shall be ancillary to substantial food.
38. No drinks promotions or such other advertising shall take place indicating that the sale of alcohol is permitted on Sunday between the hours of 10:00 and 12.00.

4 BASEMENT AND GROUND FLOOR, 19 NEW QUEBEC STREET, W1

LICENSING SUB-COMMITTEE No. 2

Thursday 7th September 2017

Membership: Councillor Tim Mitchell (Chairman), Councillor Heather Acton and Councillor Rita Begum

Legal Adviser: Horatio Chance

Committee Officer: Jonathan Deacon

Presenting Officer: Daisy Gadd. Heidi Lawrance also in attendance.

Relevant Representations: 1 local resident.

Present: Mr Nic Rasclé (Applicant).

Declaration: Councillor Heather Acton declared by way of a personal interest that she lives near the premises and has used the Applicant's shop. This did not in any way affect her ability to consider the application free from bias and with an open mind.

Basement And Ground Floor, 19 New Quebec Street, W1 ("The Premises") 17/06994/LIPN	
1.	Sale by Retail of Alcohol (On and Off)
	Tuesday to Saturday: 10:00 to 23:00 Sunday: 09:30 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 Rasclé that he had opened the Premises as a fishmonger approximately three years ago. He wished to be able to sell

French and Japanese alcohol for consumption on and off the premises Tuesday to Saturday 10:00 to 23:00 and Sunday 09:30 to 22:30. This was in keeping with the fish sold, including sushi. The Applicant envisaged that on the ground floor alcohol would be available in the indoor and external seated eating areas and in the basement there would be a seafood / oyster bar. There would be a maximum of 12 people in the basement bar area. It was intended that there would be a training/testing area in the basement where there would be classes such as wine tasting and a demonstration of how to prepare fish. This area would have up to 12 people sitting and 6 people standing. The overall proposed capacity was 20 upstairs and 30 downstairs. There would be a maximum of 6 people in the external area. There would be no primary cooking at the Premises.

Mr Rasclé was given the opportunity to respond to the written representation from the local resident who had objected to the application. The local resident was not in attendance at the hearing. The Sub-Committee noted that the local resident had referred to significant problems with noise from Arabesque and The Grazing Goat in New Quebec Street. He also experienced nuisance from building work and rubbish in the street. The Sub-Committee had noted the comments in that objection but had to consider the application on its individual merits with a view to promoting the licensing objectives. Mr Rasclé advised that he had some twenty eight years' experience of catering. He expressed the view that Portman Estate were working to improve the street and that some of the scaffolding was beginning to be removed. He would be restricting the potential for noise, including that rubbish would not be collected until 08:30 or 09:00 in the morning. He had a storage facility for rubbish. Most of the food would be prepared downstairs and the outside area would not be used at a late hour.

The Sub-Committee asked Mr Rasclé whether he would be willing to bring forward the terminal hour for the use of the outside area. He replied that he would be content with tables and chairs being rendered unusable by 22:00 hours and placed inside the premises by 23:00 hours each day. He was planning to reduce the number of seats outside and have a higher percentage of customers downstairs.

Mr Rasclé was asked by the Sub-Committee whether he planned to have a delivery service from the Premises. He replied that he was not intending to do so. His experience from his Primrose Hill shop was that there was a lack of demand and the Premises in any event focussed on a local clientele.

Mr Rasclé was asked by the Sub-Committee about whether he intended to use sustainable transport, particularly electric vehicles. He stated that he did not currently have an electric powered van as there was not one which he believed was appropriate for his family needs, including his young son. He would look at using an electric van in the future, particularly if it was suitable for three people. He did use environmentally friendly products, including recycling bags.

The Sub-Committee noted that the Applicant had agreed a condition proposed by the Police that the supply of alcohol at the Premises would only be ancillary to food. Mr Rasclé confirmed that he was content with all the conditions proposed by Environmental Health and the Police who had subsequently

withdrawn their representations. The Sub-Committee asked Mr Rasclé whether he would accept, in order to provide further reassurance, a condition that on the ground floor alcohol would be served to seated customers at a table. The Sub-Committee appreciated that there would be customers in the basement who would potentially be standing consuming food or drink for the classes which took place. Mr Rasclé responded that he would prefer not to have alcohol only served to seated customers at a table. He requested the option of a few customers being able to have a glass of wine at the long counter on the ground floor whilst they were waiting for their table.

The Sub-Committee decided to grant the application. The Premises is not located in one of the Council's designated cumulative impact areas. There were no objections from the Responsible Authorities. The Applicant had agreed a number of conditions with Environmental Health and the Police which promoted the licensing objectives. These included that the supply of alcohol at the Premises shall only be ancillary to food and that the sale of alcohol on the Premises shall at all times be ancillary to the main use of the Premises as a fishmonger. The latter condition meant that the premises licence could not simply be transferred to an operator who wished to operate the Premises as a pub or a bar. The Sub-Committee noted that one of the local resident's concerns related to litter and the Applicant had agreed a condition with Environmental Health that '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'.

The Applicant had agreed in discussions with the Sub-Committee that the outside area would not be used by customers after 22:00 which limited the potential for nuisance to local residents. The Sub-Committee, taking into account Mr Rasclé's request that a few customers be able to have a glass of wine at the long counter on the ground floor whilst they were waiting for their table, attached the condition to the premises licence that 'the number of persons permitted on the ground floor shall be limited to 20 diners of which a maximum of 6 can stand consuming alcohol prior to taking a table meal'.

The Sub-Committee decided it was appropriate to make a slight adjustment to the hours on Sunday so that the Premises would open at 09:30, on and off sales of alcohol would commence at 10:00 and would cease at 22:30 when the Premises would also be required to close. The commencement hours on Sunday were then consistent with the rest of the week and the terminal hour for alcohol and the closing time on Sunday would be consistent with the Council's Core Hours policy. This would not impact on the Applicant's ability to serve brunch where alcohol would be ancillary to food.

2. Hours premises are open to the public

Monday to Saturday:	09:30 to 23:00
Sunday:	09:30 to 23:00

	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee decided to grant the application, subject to conditions as set out below. The Sub-Committee amended the opening hours on Sunday so that the Premises would open to the public at 09:30 and close to the public at 22:30.</p> <p>See reasons for decision in Section 1.</p>

Conditions attached to the Licence	
<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.	<p>(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.</p> <p>(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—</p> <p>(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;</p> <p style="padding-left: 40px;">(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</p> <p style="padding-left: 40px;">(ii) drink as much alcohol as possible (whether within a time limit or otherwise);</p>

- (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. Notices will be used in the area of smoking requesting patrons to respect local residents and keep the noise down.

10. Measures to be taken to ensure no disturbance to residents in the area.

11. Train staff to ensure compliance with the law in relation of adults buying alcohol for children.

12. Alcoholic beverages will be kept in designated areas such as behind the counter fridge where children and clients have no access

13. The number of persons permitted in the Basement of the premises at any one time (excluding staff) shall not exceed 30 persons.

14. The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises do so in an orderly manner so as to ensure that there is no public nuisance or obstruction of the public highway.

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. No fumes, steam or odours shall be emitted from the licensed premises so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated.

17. 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.

18. 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.

19. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
20. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.
21. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.
22. All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.
23. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
24. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
25. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 22.00 hours and 08.00 hours on the following day.
26. No deliveries to the premises shall take place between 22.00 hours and 08.00 hours on the following day.
27. No licensable activities shall take place in the basement of the premises until the premises have 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.
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 entire 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 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.

30. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
31. All outside tables and chairs shall be rendered unusable by 22:00 hours and placed inside the premises by 23:00 hours each day.
32. The sale of alcohol on the premises shall at all times be ancillary to the main use of the premises as a fish monger.
33. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
34. A Challenge 21 or 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.
35. The supply of alcohol at the premises shall only be ancillary to food
36. 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 faults in the CCTV system, searching equipment or scanning equipment (e) any refusal of the sale of alcohol (f) any visit by a relevant authority or emergency service.
37. The number of persons permitted on the ground floor shall be limited to 20 diners of which a maximum of 6 can stand consuming alcohol prior to taking a table meal.