



CITY OF WESTMINSTER

# MINUTES

## Licensing Sub-Committee (3)

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (3)** held on **Thursday 1st February, 2018**, Room 3.1, 3rd Floor, 5 Strand, London, WC2 5HR.

**Members Present:** Councillors Melvyn Caplan (Chairman), Susie Burbridge and Karen Scarborough

#### 1 MEMBERSHIP

There were no changes to the Membership.

#### 2 DECLARATIONS OF INTEREST

There were no declarations of interest.

#### 3 INKO NITO, 55 BROADWICK STREET, W1

#### LICENSING SUB-COMMITTEE No. 3

*Thursday 1st February 2018*

Membership: Councillor Melvyn Caplan (Chairman), Councillor Susie Burbridge and Councillor Karen Scarborough

Legal Adviser: Barry Panto  
Policy Adviser: Chris Wroe  
Committee Officer: Jonathan Deacon  
Presenting Officer: Daisy Gadd

Relevant Representations: Environmental Health, Licensing Authority and 2 local residents.

Present: Mr Alun Thomas (Solicitor, Representing the Applicant), Ms Rebecca Boland (Managing Director and Designated Premises Supervisor), Mr Dave Nevitt (Environmental Health) and Mr Steve Rowe (Licensing Authority).

**Inko Nito, 55 Broadwick Street, W1**  
**17/14383/LIPV**

1.	<b>Late night refreshment (Indoors)</b>				
	<table border="0"> <tr> <td data-bbox="268 241 347 277"><u>From</u></td> <td data-bbox="842 241 884 277"><u>To</u></td> </tr> <tr> <td data-bbox="268 315 778 389">Monday to Thursday 23:00 to 23:30 Friday to Saturday 23:00 to 00:00</td> <td data-bbox="842 315 1347 351">Monday to Saturday 23:00 to 00:30</td> </tr> </table>	<u>From</u>	<u>To</u>	Monday to Thursday 23:00 to 23:30 Friday to Saturday 23:00 to 00:00	Monday to Saturday 23:00 to 00:30
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Monday to Thursday 23:00 to 23:30 Friday to Saturday 23:00 to 00:00	Monday to Saturday 23:00 to 00:30				
	<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 heard from Mr Thomas, representing the Applicant. He stated that the application was in three parts. Firstly, there was the proposed variation of the layout. The original application considered by the Licensing Sub-Committee in June 2017 had been submitted by the landlord, Shaftesbury, prior to the tenant being known. The variation of the layout reflected the requirements of the new tenant and included the reconfiguration of WCs, kitchen and back-of-house areas and also the removal of the bar servery. Mr Thomas made the point that he believed there had been no objection to this aspect of the application.</p> <p>The second aspect of the application was the increase of the proposed hours. Mr Thomas referred to the proposed hours being in line with those permitted for the planning permission at the premises. He also said that the planning permission had taken into account a full assessment of issues relating to amenity, plant and dispersal.</p> <p>Mr Thomas explained that the third aspect of the application was to reduce the capacity at the premises from 150 to 120 in the event that the Sub-Committee was minded to grant the application. He made the point that the Council's model restaurant condition, MC66, was included on the existing premises licence granted by the Licensing Sub-Committee in June 2017 and that the application continued to comply with policy RNT2 for a restaurant in the West End Cumulative Impact Area. The Sub-Committee had taken cumulative impact into account in granting Core Hours.</p> <p>Mr Thomas spoke about the representations from two local residents who were not in attendance at the hearing. He had written to both residents and had spoken with the resident who had expressed concerns that an extension to the hours prior to the restaurant opening was premature. Mr Thomas drew Members' attention to the decision of the Sub-Committee in June 2017 that there was the option for the Applicant to again seek the hours originally applied for when an operator was identified. The hours originally applied for by Shaftesbury in June had been beyond Core Hours.</p>				

Mr Thomas placed emphasis on the experience of the operator, including Ms Boland who is the Managing Director of Zuma Ltd (the parent company) and the Designated Premises Supervisor for Inko Nito. Ms Boland advised that she had worked in hospitality for 17 years, including having previously run Harrods' restaurants for 5 years. There had been no complaints or issues relating to these restaurants. Zuma Ltd operated 17 restaurant businesses around the world including 3 in Westminster. Mr Thomas added that the 3 in Westminster where there had been no complaints or issues, were Zuma in Raphael Street, ROKA in North Audley Street and ROKA in Charlotte Street. He believed it was significant that there had been no complaints given that Zuma and ROKA are located in residential areas.

Ms Boland described the intended operation of Inko Nito which is due to open in May 2018. It would be Japanese charcoal grilled cooking with a Korean influence. The charcoal grill would be in the centre of the restaurant. There would be no bar waiting area in the premises. There were likely to be 95 covers. Ms Boland explained that the reason the Applicant was requesting an extension of hours was that diners would eat an hour or an hour and a half after they were seated. Therefore, with the current opening hours, it was necessary to stop seating people at around 22:00 each evening.

Mr Thomas stated that Inko Nito would be close to Shaftesbury's Carnaby Village which has 24 hour security and CCTV. He also spoke about the strong lease terms that Shaftesbury has with its tenants.

Mr Thomas referred to the Council's relevant policies RNT2 and HRS1 and the fact that applications for restaurants in the designated cumulative impact areas are considered on their merits provided it can be demonstrated that they will not add to cumulative impact. Mr Thomas expressed the view that the operators' other three premises in Westminster had not added to cumulative impact. They all had waiter/waitress service, a meet and greet at the front door, no external seating or regulated entertainment. Mr Thomas also referred to there being evidence in the Council's policy that restaurants operating up to 01:00 were less likely to cause crime and disorder and public nuisance. He added that a proposed reduction in capacity was a proven way to reduce cumulative impact. If there were problems the premises licence could be reviewed.

Mr Panto advised the Sub-Committee that whilst the manner in which the restaurant is operated is a factor for consideration, even if it was run well it could still potentially add to cumulative impact. Whether it added to cumulative impact or not could not be reviewed. Mr Thomas responded that he appreciated that whether premises added to cumulative impact or not could not be reviewed. However, if they were poorly run they could be. He was of the view that the Zuma Ltd premises in Westminster did not add to cumulative impact.

The Sub-Committee was addressed by Mr Nevitt on behalf of Environmental Health and Mr Rowe on behalf of the Licensing Authority. Mr Nevitt confirmed that the ROKA and Zuma premises are well run. However, he made the point that none of the three restaurants owned by Zuma Ltd in Westminster were located in a designated cumulative impact area. He perceived that there had been premises licences with MC66 as a condition on the licence granted until

later than the hours being applied for at Inko Nito. There were advantages that the operator had a track record, had agreed the Council's model restaurant condition and was a committed restaurateur without the requirement for a bar. There was also a commitment to reduce the capacity.

Mr Nevitt also asked the Sub-Committee to consider alternatives to the wording of the movement and collections of waste or recyclable materials, including bottles, conditions in the event that the Members were minded to grant the application. The proposed original conditions set out in the report had limited the movement and collections to 07:00 to 23:00. Environmental Health's proposed amendments provided an exception if collections are arranged during the times for the Council's own commercial waste collection for the street outside of these hours.

Mr Rowe stated that the current application was for a restaurant and the Applicant was willing to reduce the capacity whilst seeking to increase the hours of operation. It was for the Sub-Committee to decide whether it was satisfied that the compromise would not add to cumulative impact.

The Sub-Committee asked Mr Thomas a number of questions. These included further clarification as to why the application justified additional hours and why the application would not add to cumulative impact in the West End Cumulative Impact Area (it had been noted that the operator's three other premises in Westminster were not located in a cumulative impact area). Mr Thomas replied that whilst they are not in a cumulative impact area, two of them are in residential areas and they had not adversely impacted on residents. He believed it was often necessary for applicants seeking later hours outside the cumulative impact areas to prove that they did not add to cumulative impact. He gave 85 Piccadilly as an example.

The Sub-Committee asked Mr Thomas whether he was willing to explore the idea that the licensable activities authorised by the licence would only be carried on at the premises by the Applicant. It would add a personal element to the licence based on the good reputation of the Applicant and would mean that the licence would have to be varied before it could be operated by another licence holder. Mr Thomas replied that he had no objections if the Sub-Committee found it necessary to impose it. However, he would prefer that it was not included. He had represented the company for the last 15 years and during that time they had not disposed of any restaurants.

The Sub-Committee had carefully considered whether it was appropriate to make a decision on the application now or delay a decision until the premises had been operating for six months or so on the basis that the application was premature. The Sub-Committee decided that it was appropriate to make a decision now and that it would not be premature to do so.

The Sub-Committee was satisfied that the premises would be operated in such a way as to not have an adverse effect on cumulative impact. It was possible to have a clearer picture of the nature of the operation than it had been for the Sub-Committee at the hearing in June 2017 before a tenant was identified. Inko Nito would very clearly be food led, being a restaurant without a bar. It would have a

	<p>layout with the charcoal grill in the centre of the restaurant and it was very likely that it would continue to be very much food led. The Sub-Committee did consider that the Applicant's track record with restaurants was a benefit with Environmental Health having confirmed that the three premises operated in Westminster did not cause any issues. The combination of the Applicant's track record and the proposed nature of the restaurant indicated that there were unlikely to be problems with the dispersal of customers from the premises into the West End Cumulative Impact Area during the hours applied for. It was also of significance that the Applicant had offered to reduce the capacity from 150 to 120 in the Cumulative Impact area and the Sub-Committee attached this condition to the premises licence.</p> <p>The Sub-Committee decided not to impose the amended conditions proposed by Environmental Health relating to the movement and collections of waste or recyclable materials, including bottles. These proposals were considered to be a relaxation of the conditions proposed by the Applicant that was not permitted without others having the opportunity to object. The Sub-Committee considered that the movement and collections of waste late at night would have the potential to undermine the licensing objectives.</p>				
<b>2.</b>	<b>Sale by Retail of Alcohol (On)</b>				
	<table border="0"> <thead> <tr> <th data-bbox="268 981 347 1014"><u>From</u></th> <th data-bbox="842 981 890 1014"><u>To</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="268 1055 778 1160">Monday to Thursday 10:00 to 23:30 Friday to Saturday 10:00 to 00:00 Sunday 12:00 to 22:30</td> <td data-bbox="842 1055 1353 1126">Monday to Saturday 10:00 to 00:30 Sunday 12:00 to 22:30</td> </tr> </tbody> </table>	<u>From</u>	<u>To</u>	Monday to Thursday 10:00 to 23:30 Friday to Saturday 10:00 to 00:00 Sunday 12:00 to 22:30	Monday to Saturday 10:00 to 00:30 Sunday 12:00 to 22:30
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	<p>Amendments to application advised at hearing:</p> <p>None.</p>				
	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below (see reasons for decision in Section 1).</p>				
<b>3.</b>	<b>Hours premises are open to the public</b>				
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	<p>Amendments to application advised at hearing:</p>				

	None.				
	Decision (including reasons if different from those set out in report):  Granted, subject to conditions as set out below.				
<b>4.</b>	<b>Layout alteration</b>				
	The variation seeks various alterations to the layout, namely the following: <ul style="list-style-type: none"> <li>• Reconfiguration of WCs</li> <li>• Reconfiguration of kitchen and back-of-house areas</li> <li>• Addition of lobby to the restaurant entrance in the bottom right corner</li> <li>• Removal of entrance in the centre of the shop-front</li> <li>• Removal of bar servery</li> <li>• Addition of robata</li> <li>• Removal of raised area</li> <li>• Change to furniture arrangement.</li> </ul>				
	Amendments to application advised at hearing:  None.				
	Decision (including reasons if different from those set out in report):  Granted, subject to conditions as set out below.				
<b>5.</b>	<b>Condition being varied</b>				
	<table border="0"> <thead> <tr> <th><u>Condition 23</u></th> <th><u>Proposed variation</u></th> </tr> </thead> <tbody> <tr> <td>The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 150 persons.</td> <td>The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 120 persons.</td> </tr> </tbody> </table>	<u>Condition 23</u>	<u>Proposed variation</u>	The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 150 persons.	The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 120 persons.
<u>Condition 23</u>	<u>Proposed variation</u>				
The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 150 persons.	The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 120 persons.				
	Amendments to application advised at hearing:  None.				
	Decision (including reasons if different from those set out in report):  Granted, subject to conditions as set out below (see reasons for decision in Section 1).				

6.	<b>Seasonal variations / Non-standard timings</b>								
	<p><b><u>Late night refreshment (indoors) and Sale by Retail of Alcohol (On)</u></b></p> <table border="0"> <tr> <td data-bbox="268 315 347 353"><u>From</u></td> <td data-bbox="842 315 1114 353"><u>Proposed variation</u></td> </tr> <tr> <td data-bbox="268 394 767 501">These hours to be extended until 00:00 on Sundays preceding Bank Holiday Mondays.</td> <td data-bbox="842 394 1382 501">These hours to be extended until 00:30 on Sundays preceding Bank Holiday Mondays and public holidays.</td> </tr> </table> <p><b><u>Hours premises are open to the public</u></b></p> <table border="0"> <tr> <td data-bbox="268 651 347 689"><u>From</u></td> <td data-bbox="842 651 1114 689"><u>Proposed variation</u></td> </tr> <tr> <td data-bbox="268 730 767 837">These hours to be extended until 00:00 on Sundays preceding Bank Holiday Mondays.</td> <td data-bbox="842 730 1337 837">These hours to be extended until 00:30 on Sundays preceding Bank Holiday Mondays.</td> </tr> </table> <p><b><u>Late night refreshment (indoors), Sale by Retail of Alcohol (On) and Hours premises are open to the public</u></b></p> <p>Retain condition that 'The hours to be extended from the end of permitted hours on New Year's Eve until the start of permitted hours on New Year's Day'.</p>	<u>From</u>	<u>Proposed variation</u>	These hours to be extended until 00:00 on Sundays preceding Bank Holiday Mondays.	These hours to be extended until 00:30 on Sundays preceding Bank Holiday Mondays and public holidays.	<u>From</u>	<u>Proposed variation</u>	These hours to be extended until 00:00 on Sundays preceding Bank Holiday Mondays.	These hours to be extended until 00:30 on Sundays preceding Bank Holiday Mondays.
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These hours to be extended until 00:00 on Sundays preceding Bank Holiday Mondays.	These hours to be extended until 00:30 on Sundays preceding Bank Holiday Mondays.								
	<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>Granted, subject to conditions as set out below (see reasons for decision in Section 1).</p>								

<b>Conditions attached to the Licence</b>	
<b><u>Mandatory Conditions</u></b>	
1.	No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.

2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4.
  - (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
  - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
    - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;
      - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
      - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
    - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
    - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
    - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
    - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
6.
  - (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.



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

7. The responsible person must ensure that—

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

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

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

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

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

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

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

Where -

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

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

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

### **Additional Conditions**

9. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers

remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.

10. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
11. 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.
12. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
13. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
14. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 07.00 hours on the following day.
15. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 07.00 on the following day.
16. There shall be no striptease or nudity, and all persons shall be decently attired at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue licence.
17. A Challenge 21 or Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
18. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police. It must be completed within 24 hours of the incident and will record the following:
  - a) all crimes reported to the venue
  - b) all ejections of patrons
  - c) any complaints received concerning crime and disorder
  - d) any incidents of disorder
  - e) all seizures of drugs or offensive weapons
  - f) any faults in the CCTV system
  - g) any refusal of the sale of alcohol
  - h) any visit by a relevant authority or emergency service.
19. No deliveries to the premises shall take place between 23.00 and 07.00 on the following day.

20. The premises shall only operate as a restaurant
  - i. in which customers are shown to their table,
  - ii. where the supply of alcohol is by waiter or waitress service only,
  - iii. which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery,
  - iv. which do not provide any take away service of food or drink for immediate consumption,
  - v. which do not provide any take away service of food or drink after 23.00, and
  - vi. where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.
21. No licensable activities shall take place at the premises until the works 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.
22. The premises may remain open for the sale of alcohol and the provision of late night refreshment from the terminal hour for those activities on New Year's Eve through to the commencement time for those activities on New Year's Day.
23. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 120 persons.
24. After 23:00 hours patrons temporarily leaving the premises, e.g. to smoke, shall not be permitted to take drinks or glass containers outside with them.

#### **4 MARIAGE FRERES, 38 KING STREET, COVENT GARDEN, WC2**

##### **LICENSING SUB-COMMITTEE No. 3**

*Thursday 1st February 2018*

Membership: Councillor Melvyn Caplan (Chairman), Councillor Susie Burbridge and Councillor Karen Scarborough

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

Presenting Officer: Daisy Gadd

Relevant Representations: Environmental Health, and Licensing Authority.

Present: Mr Alun Thomas (Solicitor, Representing the Applicant), Mr Lucas Gonzalez (General Manager and Designated Premises Supervisor), Mr

<b>Mariage Freres, 38 King Street, Covent Garden, WC2 17/14697/LIPN</b>	
<b>1.</b>	<b>Sale by retail of alcohol (On and Off)</b>
	Monday to Saturday 10:00 to 23:00 Sunday 12:00 to 22:30
	Amendments to application advised at hearing:  None.
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee heard from Mr Thomas and Mr Gonzalez about the intended operation at Mariage Freres. There had been a significant refurbishment of the premises that had previously been The Africa Centre. Capital &amp; Counties Properties PLC is the landlord and Mr Thomas made the point that they have 24 hour security and CCTV covering this area.</p> <p>Mr Gonzalez explained that the concept was that ingredients were tea based and were healthy. There were more than 900 blends of tea from 60 different countries. Blends were used to create a recipe, including desserts. Food was required to match the tea based products.</p> <p>Mr Thomas stated that alcohol was not a significant part of the operation with the main use being retail. Mr Thomas and Mr Gonzalez clarified that on the ground floor there would be a retail space with sales of tea (including a tea wall with the 900 blends) and pastries for takeaway. The only alcohol sold on the ground floor would be for consumption off the premises in sealed containers. The plan was to sell champagne with infused syrup of tea to flavour it. There would be alcoholic products sold other than champagne. It was not intended to sell beer or whisky as off sales. There would be an emphasis on the tea based products. It would be necessary to go up the stairs through the retail area in order to obtain sales of alcohol for consumption on the premises. Access to on sales could not be made directly from the street. There would be staff on the ground floor.</p> <p>Mr Thomas confirmed that the first floor would be the tea room. There would be a maximum capacity of 100 on the first floor excluding staff. After 20:00 alcohol would be ancillary to a table meal with customers being seated and served by waiter or waitress service until Mariage Freres closed at 23:00. Mr Thomas made the point that whilst it was possible to have an alcoholic drink prior to 20:00 without it being ancillary to a table meal, it was expected that a large percentage of customers would still be having a meal. Alcohol would not be predominant. Mr Gonzalez added that the emphasis was on afternoon tea and</p>

tea based cuisine, competing with the hotels in London who provide the afternoon tea experience. The Applicant wanted to encourage families and did not want Mariage Freres to operate like a bar.

The Sub-Committee drew Mr Thomas' and Mr Gonzalez's attention to the fact that the Applicant could move on and be replaced by a new operator who would wish to operate it as a bar. Mr Thomas replied that he was willing to make some amendments to the proposed conditions. One was that there would be no pre-booked functions which could be accessed directly from the street. Another was that he was content that the licensable activities authorised by the licence would only be carried on at the premises by the Applicant. It would add a personal element to the licence and would mean that the licence would have to be varied before it could be operated by another licence holder. Mr Thomas also referred to the condition that 'the sale of alcohol on the premises shall at all times be ancillary to the main function of the premises as a tea retail shop' and said that if the Applicant or a new licence holder attempted to operate 38 King Street as a bar they would be in breach of this condition. The Sub-Committee noted that there was a proposed condition that 'no more than 15% of the sales area shall be used at any one time for the sale, exposure for sale, or display of alcohol'.

The Sub-Committee also noted that the condition proposed by Environmental Health and agreed by the Applicant for alcohol being ancillary to a table meal on the first floor was more in keeping with the Council's Model Condition 38 rather than the model restaurant condition MC66. Mr Thomas was asked whether his client was amenable to having MC66 apply on the first floor given that Mariage Freres is located in the West End Cumulative Impact Area. He replied that it was acceptable to the Applicant provided there was some flexibility, including in terms of takeaway, as MC66 as set out applies throughout the day. Customers would be shown to their table, alcohol would be supplied by waiter or waitress and food would be in the form of substantial table meals

Mr Gonzalez explained that the tea museum would be located on the second floor. Mariage Freres' art pieces would be kept in the museum. Tea masterclasses would be held there. External companies would be encouraged to have group activities there. He clarified that the second and fourth floors could be hired out for use by external companies but the Applicant would retain overall responsibility for the premises. The Applicant would still have control over the activities which would reflect their core values. Mr Thomas added that it was intended that there would be a maximum of 50 customers on each of the second and fourth floors. The second and fourth floors would be for booked events only.

The Sub-Committee wished to have clarification on the nature of the booked events on the second and fourth floors given that up to 100 people excluding staff would potentially be permitted in these locations. Mr Thomas responded that he envisaged a canapé type event where a waiter or waitress would provide a tea infused champagne. Mr Gonzalez commented that there would not be any events where attendees would be able to walk off the street and have a drink. It was envisaged there would be the option for external companies to hold conferences and give presentations with screens. Private afternoon teas could be held for 10-15 people. It was intended that there would be approximately 3 to

4 events held a week and the Applicant would be targeting afternoon events rather than prioritising evening events.

Mr Thomas advised that the existing licence for the Africa Centre would be surrendered if the current application was granted. Mr Thomas expressed the view that the current application was a significant improvement on the Africa Centre's operations and had a less intensive effect as he was aware that there had been problems relating to the events they held. Mariage Freres would not have regulated entertainment. He believed that in policy terms it should be considered that the current application was replacing the use of events that was present on the existing premises licence. Mr Thomas was of the view that the ground floor and basement where the Africa Centre held their events was no larger than the second floor.

The Police had withdrawn their representation prior to the meeting having agreed a proposed incident log condition with the Applicant. The Sub-Committee heard from Mr Nevitt on behalf of Environmental Health. He stated that one of the issues for Environmental Health was assessing whether the mixed use premises policy applied (COMB1). He queried what the primary use was. The Applicant's proposed condition had indicated that on sales were ancillary to the main function of the premises as a tea retail shop. However, the tea retail shop was only located on the first floor. Mr Nevitt recommended that the condition was amended to the main function of the premises being a tea retail shop and tea museum.

Mr Nevitt stated that the combined use premises policy and the criteria set out in paragraph 2.4.21 of the Council's Statement of Licensing Policy were linked in determining the application. 2.4.21 refers to the consumption of alcohol not becoming a significant part of the operation and customers not drinking heavily at later hours.

Mr Nevitt said that he was not concerned about the consumption of alcohol prior to 20:00 in the first floor tea room or off sales on the ground floor but he was concerned about the potential nature of the functions on the second and fourth floors. He advised that the conditions should require functions to be pre-booked at least 24 hours in advance and require details of the person booking it. Mr Thomas responded that he was content for the conditions to reflect these requirements.

Mr Nevitt also sought clarification as to whether vertical drinking was permitted at the functions and whether the Applicant was amenable to reducing the percentage of the sales area on the ground floor where off sales could be displayed or sold as it was a substantial area. The condition was currently proposing 15%. Mr Thomas offered 10% of the sales area.

The Sub-Committee was also addressed by Ms Pring on behalf of the Licensing Authority. She advised that their representation had been submitted on the basis it was an application for a new premises licence in the West End Cumulative Impact Area. Further information had been requested to establish whether the application would add to cumulative impact. She concurred with Mr Nevitt's comments on the relevance of combined use premises policy and the

criteria set out in paragraph 2.4.21 of the Council's Statement of Licensing Policy.

Ms Pring referred to the proposed hours being within the Council's Core Hours policy. She added that the Licensing Authority's primary concern was the functions on the second and fourth floors. She was keen to hear from the Applicant how it was intended to control the events and the number of events the Applicant intended to hold at 38 King Street. Ms Pring quoted paragraph 2.4.10 that 'persons leaving proprietary clubs and premises operating private functions will sometimes cause public nuisance or be involved in crime, either as perpetrators or victims' and paragraph 2.4.12 that 'in the cumulative impact areas premises which restrict access to general members of the public, such as proprietary clubs and premises used for private functions, will not be considered to be exceptions to cumulative impact area policies for that reason alone'. She stated that it was for Members to be satisfied that the application would not add to cumulative impact.

The Sub-Committee asked Mr Thomas a number of questions. These included whether he was willing to address concerns regarding a potential scenario where up to 100 people on the second and fourth floors would be engaged in vertical drinking. Mr Thomas made the point that the existing Africa Centre premises licence already permitted that activity. Mr Wroe referred to the limitations of the people who were permitted to be sold or supplied alcohol under the Africa Centre licence. They included directors, members of committee and staff of the Africa Centre, people attending conferences and functions or having a table meal at the restaurant. Mr Thomas was of the view that the list was sufficient to be comparable to what was being sought by the Applicant, particularly as the events did not have to be pre-booked.

Mr Thomas offered that the pre-booked events would be ancillary to the main function as a tea museum. The tea museum would always remain. The Sub-Committee asked Mr Thomas whether the Applicant would be amenable to limiting the events on the second and fourth floors. Mr Gonzalez had suggested they would take place three to four times a week. Mr Thomas requested that any restriction in events was on an annual basis rather than a weekly one and that it only applied to after 20:00. He added that he was keen to avoid applying for Temporary Event Notices.

It was agreed by Mr Thomas that, in the event the Sub-Committee was minded to grant the application, the plans would be updated on the second floor to remove the red line indicating the licensable area to the right of the stairs which was the roof and was not an area of access to the premises.

Mr Thomas in his summing up expressed the view that the application was compliant with all aspects of the Council's policy, including in terms of the combined use policy and also the pre-booked events because of the existing premises licence for the Africa Centre. Mr Panto advised that there was an over-riding policy that the Applicant needed to demonstrate that the application would not add to cumulative impact in the West End Cumulative Impact Area.

The Sub-Committee granted the application. The Sub-Committee considered



that the application would not add to cumulative impact and that the licensing objectives would be promoted. One significant aspect in the Sub-Committee reaching this decision was that licensable activities would conclude at 23:00. The Sub-Committee was reassured that the Applicant had agreed that licensing activities would only be authorised to be carried on by the Applicant. There was therefore a personal aspect to the application. There would be a requirement for the premises licence to be varied if it was no longer being operated by the current licence holder.

Conditions which were attached to the premises licence which promoted the licensing objectives included that no more than 10% of the sales area of the ground floor would be used at any one time for the sale, exposure for sale, or display of alcohol which had been agreed by the Applicant. As agreed between the Applicant and Environmental Health the first floor would become a restaurant after 20:00. A number of the aspects of the Council's model restaurant condition, MC66, were incorporated into the operation of the restaurant as agreed by the Applicant during the hearing.

There were also some restrictions placed on the functions on the second and fourth floors as the Sub-Committee, the Licensing Authority and Environmental Health shared concerns regarding the potential for issues arising from unlimited events. The functions would be pre-booked at least 24 hours in advance and functions after 20.00 hours would be restricted to a maximum of 150 days in a calendar year.

Mr Nevitt was keen that the Environmental Health Consultation Team made a final assessment on the capacity of the premises before licensable activities took place at the premises. The Sub-Committee amended the Council's Model Condition 90 taking into account that there would be a maximum of 250 persons in the whole premises at any time which had been agreed by Environmental Health. The Applicant had suggested that there would be no more than 100 persons on the first floor, 50 persons on the second floor and 50 persons on the fourth floor and these capacities for the floors were incorporated into the condition.

The Sub-Committee decided not to impose the amended conditions proposed by Environmental Health relating to the movement and collections of waste or recyclable materials, including bottles. These proposals were considered to be a relaxation of the conditions proposed by the Applicant that was not permitted without others having the opportunity to object. The Sub-Committee considered that the movement and collections of waste late at night would have the potential to undermine the licensing objectives.

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

Monday to Sunday 07:00 to 23:00

Amendments to application advised at hearing:

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

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

#### **Mandatory Conditions**

1. No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4.
  - (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
  - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
    - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;
      - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
      - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
    - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
    - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a

period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

- (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
- (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

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

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

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

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

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

7. The responsible person must ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—

- (i) beer or cider: ½ pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
- (iii) still wine in a glass: 125 ml;

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these

measures are available.

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

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

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

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

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

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

Where -

(i) P is the permitted price,

(ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence, or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

8(iii). Where the permitted price given by Paragraph 8(ii)(b) above would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-

paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

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

### **Additional Conditions**

9. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
10. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
11. There shall be no striptease or nudity, and all persons shall be decently attired at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue licence.
12. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.
13. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public. This staff member shall be able to show Police recent data or footage with the absolute minimum of delay when requested.
14. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
15. The sale of alcohol for consumption off the premises shall only be permitted on the ground floor.
16. There shall be no sales of alcohol for consumption on the premises on the ground floor.
17. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed in any part of the premises.

18. No more than 10% of the sales area of the ground floor shall be used at any one time for the sale, exposure for sale, or display of alcohol
19. The sale and consumption of alcohol on all floors of the premises shall at all times be ancillary to the main function of the premises as a retail tea shop and tea museum.
20. On the first floor the supply of alcohol for consumption on the premises shall be by waiter or waitress service only to persons seated at tables or bar counter.
21. There will be no direct access from the street to any area where alcohol is sold for consumption on the premises.
22. After 20:00 the sale of alcohol for consumption on the premises shall be limited as follows:
  - a) The first floor of the premises shall operate as a restaurant
    - i. in which customers are shown to their table,
    - ii. where the supply of alcohol is by waiter or waitress service only,
    - iii. which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery,
    - iv. where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.
  - b) On the second and fourth floor, by persons attending a pre-booked and bona fide private function or event by invitation only and to which members of the public are not admitted. A record of the person organising the event shall be kept at the premises and made available for immediate inspection by the Police or authorised officer of the Council. The event shall be pre-booked at least 24 hours in advance and limited to 150 days in any calendar year.
23. There shall be no sale or consumption of alcohol on the third floor or the basement of the premises.
24. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold for consumption on the premises.
25. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
26. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 07.00 hours on the following day.

27. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 07.00 on the following day.
28. No deliveries to the premises shall take place between 23.00 and 07.00 on the following day.
29. A Challenge 21 or Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
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. There will be no sale of alcohol until the premises have been assessed as satisfactory by the Environmental Health Consultation Team and this condition has been removed from the Licence. If there are minor changes to the layout during the course of construction new plans shall be provided when applying to remove this condition.
32. No licensable activities shall take at the premises until the capacity of the premises has been determined by the Environmental Health Consultation Team and the licensing authority has replaced this condition on the licence with a condition detailing the capacity so determined. Excluding staff, there shall be no more than 100 persons on the first floor, 50 persons on the second floor, 50 persons on the fourth floor and no more than 250 persons in the whole premises at any one time.
33. No licensable activities shall take place at the premises until premises licence 14/05543/LIPT (or such other number subsequently issued for the premises) has been surrendered.
34. There shall be no self-service of spirits on the premises, save for spirit mixtures less than 5.5% ABV.
35. 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.
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 incidents of disorder
  - (e) any faults in the CCTV

(f) any visit by a relevant authority or emergency service.

37. The licensable activities authorised by this licence shall only be carried on at the premises by Mariage Freres Royaume Uni Limited.

**5 23 GROSVENOR GARDENS, SW1**

**LICENSING SUB-COMMITTEE No. 3**

*Thursday 1st February 2018*

Membership: Councillor Melvyn Caplan (Chairman), Councillor Susie Burbridge and Councillor Karen Scarborough

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

Presenting Officer: Daisy Gadd

**23 Grosvenor Gardens, SW1  
17/14551/LIPV**

Application granted under delegated powers prior to the hearing as all representations had been withdrawn.