



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (3)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (3)** held on **Thursday 7th February, 2019**, Room 3.1, 3rd Floor, 5 Strand, London, WC2 5HR.

Members Present: Councillors Melvyn Caplan (Chairman), Susie Burbridge and Aicha Less

Also Present: Councillors

Apologies for Absence:

1 MEMBERSHIP

1,1 There were no changes to the membership.

2 DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1 ROADSTER CAFE, WESTAR HOUSE, 139-151 MARYLEBONE ROAD, LONDON, NW1 5QE

LICENSING SUB-COMMITTEE No. 3

Thursday 7th February 2019

Membership: Councillor Melvyn Caplan (Chairman), Councillor Susie Burbridge and Councillor Aicha Less.

Legal Adviser: Horatio Chance
Policy Officer: Kerry Simpkin
Committee Officer: Toby Howes
Presenting Officer: Kevin Jackaman

Relevant Representations: Environmental Health and 2 local residents.

Present: Simon Tong (Agent, representing the Applicant Company), Yuhua Yu (Designated Premises Supervisor, Applicant Company), Dave Nevitt (Environmental Health) and Richard Brown (Solicitor, Citizens Advice Bureau, representing Jane Ronge and Louise Mancini).

<p>Roadster Café, Westar House, 139-151 Marylebone Road, London, NW1 5QE (“The Premises”) 18/09700/LIPN</p>	
1.	<p>Sale by retail of alcohol: On sales</p>
	<p>Monday to Saturday: 10:00 to 19:00 Sunday: 12:00 to 19:00</p>
	<p>Amendments to application advised at hearing: None.</p>
	<p>Decision (including reasons if different from those set out in report): public nuisance, public safety, and protection of children from harm).</p> <p>Simon Tong (Agent, representing the Applicant) began by stating that the intention was to operate a café concurrently with a car showroom which shared the same building. It was submitted that the café would offer customers an additional experience for the car showroom customers, and also members of the public, to enjoy light refreshments and drinks including hot and alcoholic drinks. However, the intention was not to create a drinking establishment on the Premises but an enhanced experience when looking to purchase a showroom vehicle. The Sub-Committee noted that the Applicant had worked with the Police and Environmental Health to ensure the appropriate conditions were in place. In addition, the application was well within core hours.</p> <p>The Sub-Committee asked if customers would be permitted to take alcoholic drinks into the car showroom, and if not, what steps would be taken to prevent them from doing this. Clarification was also sought as to how the outside area would be used, how was it defined and how it was to be managed. It was also asked why the Applicant wished this outside area to be licensed. Further details were also sought as to what type of light refreshments would be available at the Premises.</p> <p>In reply to questions from the Sub-Committee, Mr Tong stated customers would not be permitted to take alcoholic drinks into the car showroom, and if they strayed away from the licensed area and towards the car showroom with alcoholic drinks, staff would be present to remind them where the designated areas for consumption of alcohol were. Mr Tong informed the Sub-Committee that the outside area would be used for customers when the weather was good to enjoy the sunshine and warmth and the use of this area would be carefully</p>

monitored by staff. However, most of the time, customers would be seated indoors. Mr Tong clarified that the outside area was defined as per the Land Registry plan, however the Applicant would not be using the whole of this area. The Sub-Committee noted that there was no physical barrier as such between the café and the car showroom. Mr Tong added that car showrooms did not attract a particularly large footfall, so it was not envisaged that the café would be busy with a large amount of customers

Yuhua Yu (Designated Premises Supervisor, Applicant Company) advised that the refreshments on offer would include sushi, sandwiches including toasted sandwiches, paninis and other light snacks. Cold food and cold and hot drinks, but not alcoholic drinks, could also be taken away.

Dave Nevitt (Environmental Health) addressed the Sub-Committee and advised that the outside area was small and physically opened onto the car showroom. Both areas had free access to W/Cs. Mr Nevitt stated that a condition had been agreed with the Applicant on the basis that alcohol can only be supplied by waiter/waitress services to customers seated at a table. As the application stood, customers could consume alcohol without it being ancillary to food in both the proposed indoors and outdoors licensed areas, however only on sales of alcohol were being sought. Mr Nevitt confirmed that he was happy with this arrangement and that the application was designed to attract a lunchtime and afternoon trade. The outside area was located on a busy road with a high ambient noise level and so Mr Nevitt did not have concerns that the use of the outside area would unduly impact upon residents. Mr Nevitt stated that there was a side entrance along Wynham Street which would need careful managing if it was used for deliveries and waste collections, as residential properties were nearby.

At this point, Mr Tong advised that both deliveries and waste collection would take place at a designated service area to the rear of the Premises.

Mr Nevitt replied that this was less likely to impact upon residents, although some residential properties would overlook this area. However, he felt that model conditions in respect of deliveries and waste collection would be sufficiently covered to deal with the relevant issues arising. Mr Nevitt stated that there was capacity for approximately 70 covers and the W/C provision was sufficient. In terms of policy, he noted that the Premises was not located in a cumulative impact area.

Richard Brown (Solicitor, Citizens Advice Bureau, representing Jane Ronge and Louise Mancini) then addressed the Sub-Committee and stated that the two residents he was representing lived in Knox Street. He commented that all streets south of Marylebone Road where the Premises was located were residential, hence the residents' concerns and therefore he felt an application of this type was inappropriate considering its location. It was stated that a number of residents had not been aware of the application or were not sure what was proposed. Mr Brown stated that the Premises had A3 planning use which did not allow for any primary cooking on site. He therefore queried why there were kitchens shown in the plans which could give rise to an unpermitted activity. In respect of the Premises' link to the car showroom, he stated that they were effectively part of the same building. The café was not only orientated towards

car showroom customers and office workers, but also the public in general and this could attract a number of customers to what is a residential area. The area was also particularly quiet at the weekend, yet the Applicant was proposing to be open during these times, whilst the nearby public house would be closed on these days.

Mr Brown asserted that the 70 covers the Premises would have meant there was potential for a lot of people to be dispersing south down residential streets after they left the café. He acknowledged that the hours proposed were modest, however there was nothing to stop the Applicant in submitting a variation to extend these hours and there was potential for the Premises to be drinks led. Mr Brown sought details on staff numbers and who would operate the café. The outside area where drinking and smoking could take place may also lead to littering and he asked what preventative measures did the Applicant have in place to address these specific issues. He contended that waste collections and deliveries would impact upon residents and he queried why waste collection would be permitted at later hours in the evening according to the current conditions proposed when the Premises would close at 19:00hrs. Mr Brown felt consumption of alcohol should be an ancillary activity to others such as a table meal and he went further to suggest that the whole building should be ancillary to its use as a car showroom. In respect of the tables and chairs in the outside area, Mr Brown felt that this would attract passers-by and he suggested that there be a condition stating that this furniture should be removed by an appropriate terminal hour. He also suggested that model condition 24 be added requiring the Applicant to provide a telephone number of the manager of the premises to residents and also a condition that staff remind customers to be quiet when leaving the premises as this would be more effective than solely displaying notices making such a request.

The Sub-Committee noted that the primary cooking issue raised by Mr Brown was a planning matter and therefore not relevant to licensing. Further clarification was sought regarding the café operator and its relationship with the car showroom, staff numbers and arrangements for the outside area in dealing with smoking and potential littering. The Sub-Committee asked if the Applicant would consider agreeing to the building being ancillary to its main use as a car showroom. Clarification was also sought as to whether the café could use the same waste collector used by the car showroom and would the Applicant agree to a condition that the tables and chairs be removed from the outside area when the Premises closed.

The Legal Adviser to the Sub-Committee asked what training staff would undertake to ensure that customers did not take alcoholic drinks into unlicensed parts of the building.

In reply to the questions raised, Mr Tong advised that the plans were out of date and there was no intention to carry out primary cooking on site. The Sub-Committee were advised that the total number of staff at the Premises would be around six to eight persons with those involved in serving food and drink preparation around two or three. The outside area would be regularly monitored and the frontage cleaned which in any case was desirable in order to protect the image of the car showroom and the MG car brand that it represented. Ashtrays

would also be installed for smokers. Mr Tong advised that the operator of the café was part of the same company that managed the car showroom, but they operated as separate businesses. In respect of the nearby public house, Mr Tong asserted that this was much closer to residential properties than the Premises and he referred to Mr Nevitt's point that the Premises was located along a road with a high ambient noise (Marylebone Road) and so its activities were unlikely to impact upon residents. Mr Tong stated that as the building provided retail services, it was important that both the car showroom and the Premises were open at the weekend, as it would be for other retailers, such as a clothes shop. The proposed hours were in accordance with those suggested by both the Police and Environmental Health and were well within core hours. Mr Tong clarified that there was no physical barrier between the café and the car showroom. The Sub-Committee noted this and was reassured by the undertakings the Applicant gave in relation to staff properly monitoring and managing both areas effectively so there would be no breaches of the licensing objectives. In this connection the Sub-Committee decided to impose a condition on the Premises Licence (appearing as condition 23 below) to the effect that "*Notices shall be prominently displayed on each table stating that no alcohol shall be taken into the car showroom area at all times*". The Sub-Committee took the view that the licensing objectives would be promoted with this condition imposed on the Premises Licence but did insist that the Applicant would have to manage the situation efficiently when it came to customers potentially straying into those unlicensed areas of the Premises where licensable activities were not permitted for the system to work effectively and the rules properly enforced by members of staff.

Mr Tong advised that the café would use the same waste collector as used by the car showroom and he agreed on behalf of the Applicant to a condition preventing waste collection between 20:00 and 08:00 as acceptable. Staff training would be tailored to ensure the licensing objectives were met and would be on-going, whilst a training manual would also be produced and adhered to by staff. The waiters/waitresses would also remind customers of the designated areas for consuming alcohol when they served drinks at their tables and car showroom staff would also be reminded that customers were not to take alcoholic drinks in there. Mr Tong indicated on behalf of the Applicant that a condition requiring that tables and chairs be removed from the outside area when the Premises closed as acceptable and he advised that these could be brought inside the Premises, adjacent to the access point. The Sub-Committee imposed Condition 22 below on the Premises Licence which states that all outside tables and chairs are to be removed by 19:00hrs daily.

The Sub-Committee granted the application, subject to additional conditions, including model condition 24 relating to the Applicant providing a telephone number of the manager of the premises to residents and model condition 20 stating that all tables and chairs shall be removed from the outside area by 19:00hrs, as agreed by Mr Tong on behalf of the Applicant at the hearing. The Sub-Committee added another condition stating that notices shall be prominently displayed on each table stating that no alcohol shall be taken into the car showroom at all times in order to help ensure that this did not happen. Conditions relating to deliveries and waste collections were amended to prevent these activities taking place between 20:00hrs and 08:00hrs following Mr Tong

	<p>indicating his approval on behalf of the Applicant of these changes at the hearing.</p> <p>In determining the application, the Sub-Committee acknowledged that the Premises was not located in a cumulative impact area, the proposals for licensable activities were well within core hours, the Police had withdrawn their representation and Environmental Health had indicated that they were content with the application. The Sub-Committee considered that the conditions it has imposed on the Premises Licence are appropriate and proportionate and would address residents' concerns and assist the Applicant in upholding the promotion of the licensing objectives (prevention of crime and disorder, prevention of public nuisance, public safety, and protection of children from harm) and accordingly the application was granted.</p>
2.	Hours premises are open to the public
	<p>Monday to Saturday: 10:00 to 19:00 Sunday: 12:00 to 19:00</p>
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below (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</p>

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 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.
- 10. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
- 11. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
- 12. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 20.00 hours and 08.00 hours on the following day.
- 13. No deliveries to the premises shall take place between 20.00 and 08.00 on the

following day.

14. 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.
15. 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.
16. 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.
17. 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.
18. A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
19. 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, searching equipment or scanning equipment
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.
20. 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.

21. The supply of alcohol shall be by waiter or waitress service only, and to patrons seated at a table.
22. All tables and chairs shall be removed from the outside area by 19:00 each day.
23. Notices shall be prominently displayed on each table stating that no alcohol shall be taken into the car showroom area at all times.
24. A direct telephone number for the manager of the premises shall be publically available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.

The Meeting ended at 11.34 am

CHAIRMAN: _____

DATE _____