



CITY OF WESTMINSTER

# MINUTES

## Licensing Sub-Committee (2)

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (2)** held on **Thursday 2nd May, 2019**, Room 18.01-03, 18th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6QP.

**Members Present:** Councillors Tim Mitchell (Chairman), Heather Acton and Aicha Less

#### 1 MEMBERSHIP

1.1 There were no changes to the membership.

#### 2 DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

#### 1 170 GREAT PORTLAND STREET, LONDON, W1W 5QB

### LICENSING SUB-COMMITTEE No. 2

*Thursday 2<sup>nd</sup> May 2019*

Membership: Councillor Tim Mitchell (Chairman), Councillor Heather Acton and Councillor Aicha Less

Legal Adviser: Barry Panto

Policy Adviser: Kerry Simpkin

Committee Officer: Tristan Fieldsend

Presenting Officer: Michelle Steward

Relevant Representations: The Fitzrovia Neighbourhood Association

Present: Mr Alun Thomas (Solicitor, representing the Applicant), Mr John Wiltshire (Operations Director for Aqua Brit Ltd) and Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project, representing the Fitzrovia Neighbourhood Association)

**170-172 Great Portland Street, London, W1W 5QB (“The Premises”)  
19/02649/LIPN**

**1. Sale by Retail of Alcohol – On and Off Sales**

Monday to Thursday: 10:00 to 23:30

Friday to Saturday: 10:00 to 00:00

Sunday: 12:00 to 22:30

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

From the end of permitted hours on New Year’s Eve to the start of permitted hours on New Year’s Day.

On Sundays prior to bank holidays 12:00 to 00:00.

Amendments to application advised at hearing:

Mr Thomas agreed that a proposed condition prohibiting any sales of alcohol for consumption off the premises after 23:00 could be amended so as to apply after 22:00.

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

The Sub-Committee considered an application by Aqua Brit Ltd (“The Applicant”) for a new premises licence in respect of 170-172 Great Portland Street, London, W1W 5QB.

The Licensing Officer introduced the application and confirmed that Environmental Health had withdrawn their representation following a reassessment of the application.

In response to a question from the Sub-Committee the Applicant advised that the address for the Premises should read 170-172 Great Portland Street.

Mr Thomas, representing the Applicant, advised that Aqua Brit Ltd already operated a restaurant/bar in Westminster which was located within the West End Cumulative Impact Area (CIA). This Premises had been operating for 10 years during which no complaints or issues relating to its operation had arisen. It also operated 2 restaurants within the Shard which had 24 hours licences, and these also had not been the source of any issues. Additional restaurants were also currently operated in Hong Kong, New York, Miami and Dubai. It was intended to operate the Premises before the Sub-Committee as a restaurant providing a mixture of Japanese and Chinese food.

Mr Thomas explained that the application was for a reinstatement of a licence which had lapsed on 26 August 2018 following the bankruptcy of the previous tenant. Planning permission had recently been re-granted for the Premises with the main difference being the extension of the hours authorised for licensable activities to the Council’s core hours. The proposed opening hours would be in line with those granted through the planning permission. The applicant was

simply seeking to reinstate the lapsed licence in accordance with the Council's Statement of Licensing Policy and would also be subject to additional model conditions.

The Council's policy highlighted that any premises located in a CIA, which this operation was not, whose licence had lapsed would normally be reinstated if it had not been lapsed for a long period of time. The Sub-Committee was advised that the Premises had not previously been the source of any issues and the proposed conditions reflected good practice. In terms of the hours requested Mr Thomas advised that applications requesting core hours for licensable activities were generally granted. As this application was not located within a CIA the application had to be judged on its merits and as such there was no presumption against granting the licence. Also, it was suggested that the operation of the Premises could not add to cumulative impact in the area as premises had existed and traded on the site for 25 years. The Premises were located on Great Portland Street, a busy commercial street which was not heavily residential in nature and it was highlighted that only one representation remained. Environmental Health (EH) had withdrawn their representation and had acknowledged that the application was similar to the lapsed licence but would actually have more restrictive conditions placed on it. EH had also noted that the Fitzrovia Neighbourhood Forum was requesting that the full model restaurant condition be placed on the licence but stated that this was not required by policy and was not on the previous licence. It was also highlighted that no representations had been received by either the Police or the Licensing Authority.

Mr Thomas advised that the application on the terms sought was consistent with the re-granting of a licence and due to the proposed model conditions and core hours sought would be in line with Council policy. If it was accepted that the starting point for the application was the reinstatement of the lapsed licence, then it was considered that the only difference between both parties was the extension in hours for licensable activities to core hours. Conditions relating to the collection of waste and deliveries would be added to the licence preventing them from taking place between the hours of 17:00 and 08:00 as granted through planning permission. It was also proposed for additional conditions to be placed on the licence requiring all outside tables and chairs to be rendered unusable or removed by 22:00 each day. They would also ensure there was adequate control over patrons smoking outside the Premises, so they didn't cause any nuisance or obstruction of the public highway. In terms of food deliveries from the Premises the Sub-Committee was informed that discussions were currently ongoing with providers about how this would be undertaken in order to avoid any disruption to local residents. Proposals including ensuring delivery companies did not use motorcycles or that the Premises would provide their own bicycles to its employees to provide deliveries were being evaluated. In response to a suggestion from the Council's Legal Adviser the Applicant agreed that if the Sub-Committee was minded to grant the application a condition could be placed on the licence requiring delivery drivers to be quiet and not create any nuisance.

Mr Thomas noted the representation submitted by the Fitzrovia Neighbourhood Forum. In response to the concern that the application would lead to an

increase in bar use at the Premises the Sub-Committee was informed that the Premises were for A3 use only and therefore its predominant activity was the supply of hot food. The previous licence permitted the sale of alcohol without food, but the Sub-Committee was assured that the application before it would not operate as an alcohol-led bar. The hours for the sale of alcohol were within core hours, it was recognised that the opening hours were beyond core hours however these were consistent with what was granted under planning permission. The concerns raised in the representation over external tables and chairs had been addressed with the proposed condition requiring them to be removed or rendered unusable after 22:00 hours.

Mr Brown, from the Citizens Advice Bureau Licensing Advice Project, representing the Fitzrovia Neighbourhood Forum, addressed the Sub-Committee. The Sub-Committee was advised that the application was not a reinstatement of the previous licence which had lapsed as the hours requested were an extension on what was previously permitted. It was this extension in hours permitting bar use which was of primary concern to residents. It was recognised that the Premises had been granted A3 use under planning permission and as such the original representation had therefore requested that the full model restaurant condition should be added to the licence. It was now felt however that in order to reach a compromise with the Applicant this would not be necessary and model condition 38 would now be accepted on three of the four areas which would be hatched on the updated plans. Model condition 38 required the supply of alcohol to be ancillary to customers taking a table meal. It was suggested that the area of these Premises which would be cross hatched could be used to serve alcohol without food until 23:00 hours. The Premises were large in nature and Mr Brown considered that its proposed closing hour of 00:30 Monday to Saturday without any restaurant conditions attached to the licence meant it could potentially operate to later hours as a large bar. It was recognised that it was not proposed for these Premises to operate in this fashion, however in future if there was a change in operator this could potentially be the outcome. Planning permission had granted the closing hour of 00:30 but it had also granted these Premises to be used for A3 use and therefore it would be appropriate to ensure a condition be included making the sale of alcohol ancillary to taking a table meal. Mr Brown then provided an overview of the different policies which could apply to the application. Finally, in terms of the external tables and chairs the applicant's proposal to reduce the terminal hour permitted to 22:00 hours was welcomed. However, to provide the necessary protection to residents it was suggested that any alcohol consumed in this area should be ancillary to customers taking a table meal.

The Sub-Committee expressed concern that the entrance/exit for these Premises located on Bolsover Street had the potential to cause nuisance to local residents. Mr Thomas highlighted that there was a condition on the planning permission requiring customers to leave these Premises via Great Portland street only after 22:30 hours. He was content for that to be included as a condition on the premises licence. This would also prevent customers from using Bolsover Street for smoking after 22:30 and the Sub-Committee noted the proposed conditions suggested by the applicant with regards to supervising any smokers leaving and re-entering the Premises. The Council's Legal Adviser confirmed that the Premises had current planning permission permitting the use

of external tables and chairs until 22:00 hours up to 30 April 2020. This consisted of 8 tables and 24 chairs in three areas of Great Portland Street and 6 tables and 12 chairs for Bolsover Street. If the Sub-Committee was minded to grant the application Mr Thomas confirmed that the applicant would accept a condition on the licence requiring any customers drinking or smoking outside these Premises to do so in an orderly manner and ensure there was no nuisance or obstruction to the public highway.

Mr Thomas advised that there were two areas which had not yet been agreed with the Fitzrovia Neighbourhood Association. Firstly, it had been requested that the external seating area be subject to model condition 38 but the applicant requested that this not be the case. Secondly, it was suggested that the café/bar area which was cross-hatched on the plans be closed from 23:00 hours but the Sub-Committee was advised it would be impractical to close this one area in the Premises. If the Sub-Committee thought it was appropriate to impose model condition 38 on the hatched areas on the plan it was requested that the cross hatched area not be restricted to a terminal hour of 23:00 hours. As these Premises were located outside the CIA the Sub-Committee had to assess the application on its merits and decide if it would promote the licensing objectives. Mr Thomas advised that the additional conditions agreed with the responsible authorities were appropriate for the style of operation intended and would ensure the licensing objectives were promoted.

In response to a question from the Sub-Committee Mr Thomas confirmed that a capacity for the Premises had not yet been agreed. A works condition would be added to the licence ensuring no licensable activities could take place at the Premises until its capacity had been determined by Environmental Health. It was noted that the capacity proposed in the operational management strategy that was presented by the applicant when seeking planning permission was for 240 seats, but the nature of the operation would ensure a staggered dispersal from the Premises. The applicant also had significant experience of successfully managing premises with larger capacities.

After careful consideration, the Sub-Committee agreed to grant the application subject to several amendments. Members noted that references had been made to the planning permission granted for the Premises but stressed that the Sub-Committee's decision had been taken based on the licensing objectives and not based on the planning permission. It was recognised that there were similarities between the lapsed licence and the application before it, but the proposed licence was not identical and could not be considered a simple reinstatement. The Sub-Committee highlighted that the proposed opening hours applied for were longer than on the previous licence and were in excess of core hours by one-hour Monday to Thursday. Therefore, in order to provide the applicant with the degree of flexibility they were requesting for the Premises, whilst ensuring local residents were afforded the necessary protection, the Sub-Committee felt it necessary to impose restrictions on the sale of alcohol. Those areas designated as hatched on the plans would have model condition 38 imposed on them. This required the supply of alcohol in those areas to be to a person seated taking a table meal and for consumption by such a person as ancillary to their meal. The cross-hatched area could be drink led until 23:00 but after that time model condition 38 would also be imposed on this area. The Sub-

	<p>Committee considered these restrictions necessary to provide the operation with a degree of flexibility, ensure it did not become a drink-led bar and also minimise any potential impact on local residents. The Sub-Committee also had regard to the fact the Premises were not located within a CIA and therefore they had to assess the application on its merits and have regard to the relevant policies.</p> <p>Concerns raised concerning deliveries to the Premises and the collection of waste were noted and Members were pleased that the applicant had agreed that these would not take place between the hours of 17:00 and 08:00. Also, any issues around the use of the Bolsover Street entrance/exit would be addressed through a condition prohibiting its use by customers after 22:30 hours. These restrictions all provided reassurance that any potential disturbance to residents would be mitigated appropriately. A particular concern raised by the Fitzrovia Residents Association related to the detrimental impact any takeaway deliveries could have on the local area. The Sub-Committee noted that the Applicant was currently in discussions with delivery companies regarding using bicycles to minimise not only any noise disruption but also to reduce their environmental impact. The Sub-Committee welcomed these discussions but to protect residential amenity it was considered appropriate to include a condition on the licence requiring the Applicant to encourage delivery drivers not to leave their engines running and encourage them to use quieter vehicles. Restrictions on the use of the outside tables and chairs were considered, however the Applicant's agreement to scale back the terminal hour for their use to 22:00 hours was welcomed and ensured it would be not be necessary to impose model condition 38 on them regarding the consumption of alcohol.</p> <p>Having taken into account all the evidence (with consideration being given to the representation received from the Fitzrovia Residents Association), the Sub-Committee was satisfied that the application was suitable for the local area and had addressed the concerns raised. The applicant had demonstrated that the application was appropriate, and the conditions proposed would ensure the promotion of the licensing objectives.</p>
<p><b>2.</b></p>	<p><b>Late Night Refreshment – Indoors</b></p> <p>Monday to Thursday: 23:00 to 23:30 Friday to Saturday: 23:00 to 00:00</p> <p><b>Seasonal Variations/Non-Standard Timings:</b></p> <p>From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.</p> <p>On Sundays prior to bank holidays 23:00 to 00:00.</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>The Sub-Committee granted the application (see reasons for decision in Section 1).</p>
<b>3.</b>	<p><b>Hours Premises are Open to the Public</b></p> <p>Monday to Saturday: 07:00 to 00:30  Sunday: 07:00 to 23:00</p> <p><b>Seasonal Variations/Non-Standard Timings:</b></p> <p>From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.</p> <p>On Sundays prior to bank holidays 07:00 to 00:00.</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>The Sub-Committee granted the application (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.	<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</p>

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.

#### **Conditions Consistent with the Operating Schedule**

9. 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.
10. All sales of alcohol for consumption off the premises shall either be in sealed containers, or to persons seated at the designated external seating area(s) subject to them being appropriately authorised for the use of tables and chairs on the highway.
11. There shall be no sales of alcohol for consumption off the premises after 22:00.
12. 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.

13. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
14. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
15. 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.
16. No collections of waste or recycling materials (including bottles) from the premises shall take place between 17.00 and 08.00 on the following day.
17. No deliveries to the premises shall take place between 17.00 and 08.00 on the following day.
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. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
20. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 17.00 hours and 08.00 hours on the following day.
21. 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.
22. 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.

23. 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.
24. No licensable activities shall take place 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.
25. 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.
26. All outside tables and chairs shall be rendered unusable or removed by 22:00 each day.
27. 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.
28. After 22:30 customers shall only be permitted to enter or leave the premises via Great Portland Street.
29. Delivery drivers will be given clear written instructions to use their vehicles in a responsible manner so as not to cause a nuisance to any residents or generally outside the licensed premises; not to leave engines running when the vehicles are parked; and not to obstruct the highway. The licence holder will positively encourage delivery drivers to use quieter vehicles that are less likely to cause a nuisance such as bicycles.
30. The supply of alcohol at the premises in the areas hatched on the plan shall only be to a person seated taking a table meal there and for consumption by such a person as ancillary to their meal.
31. From 23.00, the supply of alcohol at the premises in the area cross hatched on the plan shall only be to a person seated taking a table meal there and for consumption by such a person as ancillary to their meal.

The Meeting ended at 12.00 pm

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

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