



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (5)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (5)** held on **Thursday 25th April, 2019**, Rooms 18.01 & 18.03, 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Murad Gassanly, Jim Glen and Aziz Toki

1 MEMBERSHIP

1.1 There were no changes to the membership.

2 DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1 BAGATELLE, BASEMENT AND GROUND FLOOR DOVER HOUSE, 34 DOVER STREET, LONDON, W1S 4NG

The application was withdrawn by the applicant.

2 WINGSTOP RESTAURANTS, BASEMENT TO SECOND FLOOR, 138 SHAFTESBURY AVENUE LONDON, W1D 7EA

LICENSING SUB-COMMITTEE No. 5

Thursday 25th April 2019

Membership: Councillor Murad Gassanly (Chairman), Councillor Jim Glen and Councillor Aziz Toki

Legal Adviser: Horatio Chance
Committee Officer: Tristan Fieldsend
Presenting Officer: Michelle Steward

Relevant Representations: The Licensing Authority and Environmental Health

Present: Ms Lana Tricker (Solicitor, representing the Applicant), Mr Herman Sahota (Applicant), Ms Sumeet Anand-Patel (LT Law), Miss Daisy Gadd (Licensing Authority) and Mr Maxwell Koduah (Environmental Health)

**Wingstop Restaurants, Basement to Second Floor, 138 Shaftesbury Avenue, London, W1D 7EA (“The Premises”)
19/00950/LIPV**

1. Sale by Retail of Alcohol

Current:

Both on and off the Premises.

Monday to Saturday: 11:00 to 23:00
Sunday: 10:00 to 22:30

Proposed:

As change, however extended hours will relate to on sales only.

Monday to Saturday: 11:00 to 00:00
Sunday 10:00 to 22:30

Amendments to application advised at hearing:

None.

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

The Sub-Committee considered an application by Lemon Pepper Holdings Ltd for a variation of a premises licence in respect of Wingstop Restaurants, Basement to Second Floor, 138 Shaftesbury Avenue, London, W1D 7EA.

The Licensing officer introduced the application and confirmed that the Police had withdrawn their representation following the agreement of conditions with the Applicant. It was confirmed that the Premises was located within the West End Cumulative Impact Area (CIA). It was also confirmed that the residential representation received had also been withdrawn following the Applicant’s agreement to remove the extension of hours on Sundays for on sales of alcohol.

Ms Tricker, representing the Applicant, explained that the licence had originally been granted in March 2018. The application before the Sub-Committee was to vary the licence and this largely consisted of two areas. The first area concerned those activities permitted on the Premises. It was proposed to permit late night refreshment on the Premises from 23:00 hours to 00:00 hours Monday to Saturday. The hours for the provision of the sale of alcohol on the Premises were also proposed to be extended from 23:00 hours to 00:00 hours Monday to Saturday with no change on Sundays. The second area related to those activities permitted off the Premises, where it was proposed to allow the provision of late night refreshment from 23:00 hours to 00:00 hours Monday to Saturday. Other aspects of the variation included an extension of the opening hours to 00:00 Monday to Saturday and a change to the waste collection condition. The SIA condition proposed by the Police had been agreed with the applicant. No changes to the capacity of the Premises were requested.

Ms Tricker advised that the sale of alcohol was currently heavily restricted by the conditions on the licence and it was not proposed for these to be relaxed. Only three types of beer were on offer and sales of alcohol formed a very small part of the operation, consisting of only 1-2% of total turnover. The Premises did not

contain a bar or holding bar, no alcohol was on display, there was no external advertising of alcohol and a Challenge 25 policy was enforced. Any on sales of alcohol were ancillary to customers purchasing a substantial meal and being seated. Off sales of alcohol were ancillary to customers purchasing a takeaway meal, which could not be consumed in the immediate vicinity of the Premises. Adding the full restaurant model condition 66 to the licence could not be agreed however due to the nature of the operation as the consumption of chicken wings did not involve the use of cutlery. The Sub-Committee noted that there was no proposal to extend the hours for off sales of alcohol.

Ms Tricker informed the Sub-Committee that the Premises was located in an exceptionally busy area but due to the nature of the operation, it would have minimal impact on local residents. Four letters of support for the application had been submitted by local businesses as the Premises was considered to have had a positive impact on the area. Only one representation from a resident had been received and this had been withdrawn following the agreement of hours for sales of alcohol on Sundays. There was no record of any crime and disorder occurring at the Premises and this was highlighted through the Police's withdrawal of their representation. The Sub-Committee was advised that numerous Temporary Event Notices (TENS) had also been operated over the previous Christmas period to 00:00 hours without incident. Environmental Health had suggested a condition be added to the licence preventing any off sales of late night refreshment after 23:00 hours. Ms Tricker explained that this time would not work operationally, however if the Sub-Committee was minded to grant the application a reduction to 23:30 hours would be accepted. It was submitted that the Premises was a well-run operation, with no history of any issues emanating from it. The hours for the on sales of alcohol would be to core hours Friday and Saturday with only a 30-minute extension sought for Monday to Thursday. Concerning late night refreshment, an additional hour beyond core hours was being sought Monday to Saturday.

Miss Daisy Gadd, representing the Licensing Authority, confirmed that their representation was maintained, as the Premises was located within the CIA. It was recognised that the licence restricted on sales of alcohol to customers seated and taking a substantial table meal only. However, the licence did not currently benefit from a takeaway provision, which the application was seeking. Given the description of the Premises provided by the Applicant, the Sub-Committee was referred to the Council's fast food policy. The Applicant had also applied for hours outside of the Council's core hours and was therefore subject to policy FFP2 which recommended applications be refused in the CIA other than for variation applications within core hours. Even if the application was reduced to within core hours, it was still a requirement for the applicant to demonstrate there were exceptional circumstances as to why it should be granted.

Mr Koduah, representing Environmental Health, provided the definition of a takeaway premises as stated in the Council's Statement of Licensing Policy and how there was a presumption to refuse such applications located within a CIA. The application had the likely effect of causing an increase in public nuisance through noise and litter and this would be exacerbated when trading beyond 23:30 hours. Environmental Health (EH) had therefore proposed a condition to

be added to the licence restricting no sales of hot food or drink for consumption off the premises after 23:00 hours. Mr Koduah was of the opinion that this condition would sufficiently mitigate the issue of any potential public nuisance, however the applicant had not accepted this condition. If the Sub-Committee was minded to grant the application it was advised that the proposed condition could be amended to read 23:30 hours.

In response to questions from the Sub-Committee Ms Tricker explained that the application could be considered an exception to policy as policy FFP2 that related to fast food premises was concerned with aspects such as crime and disorder and littering. It was submitted that these aspects of the policy did not apply to this application as the Police had withdrawn their representation and expressed no concerns over potential crime and disorder at the Premises. No littering concerns emanating from the Premises had also been expressed and this all provided a sound evidential basis to grant the application under exceptional circumstances. Only one residential objection had been received and this had been resolved through the scaling back of the proposed hours for the sale of alcohol on Sundays. No objections had been received to the proposed hours on Mondays to Saturdays. The Sub-Committee was advised that the Premises was a food-led establishment with sales of alcohol only forming a very small part of the business and the Sub-Committee was advised that there would be no impact on the surrounding area.

After carefully considering the application the Sub-Committee agreed to grant the application subject to conditions. It was noted that the Premises was located within a CIA and therefore exceptional circumstances had to be shown as to why the application should be granted and that each case had to be treated on its individual merits. However, the Sub-Committee had regard to the fact that the Police had withdrawn their representation following the agreement of an SIA condition with the applicant. The Sub-Committee was of the opinion that imposing this particular condition on the licence would have the effect of promoting the crime and disorder licensing objective. Furthermore, the Police had raised no concerns relating to crime and disorder and the Premises could be considered a well-run operation, which was not causing any concern. Only one residential objection had been received and this had been resolved by the applicant through the reduction in hours on Sundays. In terms of the hours for the sale of alcohol, there would be no changes to off sales. Hours for on sales of alcohol would be extended by one hour from Monday to Saturday but this was considered acceptable in the full set of circumstances of the case due to the extensive conditions imposed on the licence, which had the overall effect of promoting the licensing objectives. This included the provision that the sale of alcohol for consumption on the Premises would only be to those customers seated taking a substantial meal. The introduction of late night refreshment was also considered and the applicant's agreement to reduce the terminal hour to 23:30 hours for consumption off the Premises provided reassurance that it would have minimal impact on the local area. The Sub-Committee also agreed to amend the waste collection condition on the licence permitting rubbish to be placed outside between 00:00 hours and 06:00 hours as this coincided with the Council's waste collection times.

Whilst it was recognised that the Premises was located within a CIA, the nature

	of the operation and the conditions imposed on the licence were restrictive enough to ensure that the Premises would not add to cumulative impact in the CIA, was suitable for the local area and ultimately promoted the licensing objectives. The Sub-Committee therefore granted the application accordingly.				
2.	Late Night Refreshment – On the Premises <table border="0"> <tr> <td><u>Current:</u></td> <td><u>Proposed:</u></td> </tr> <tr> <td>Not currently licensed for late night refreshment.</td> <td>Monday to Saturday: 23:00 to 00:00</td> </tr> </table>	<u>Current:</u>	<u>Proposed:</u>	Not currently licensed for late night refreshment.	Monday to Saturday: 23:00 to 00:00
<u>Current:</u>	<u>Proposed:</u>				
Not currently licensed for late night refreshment.	Monday to Saturday: 23:00 to 00:00				
	Amendments to application advised at hearing: None.				
	Decision (including reasons if different from those set out in report): The Sub-Committee granted the application, see the reasons for the decision in Section 1.				
3.	Late Night Refreshment – Off the Premises <table border="0"> <tr> <td><u>Current:</u></td> <td><u>Proposed:</u></td> </tr> <tr> <td>Not currently licensed for late night refreshment.</td> <td>Monday to Saturday: 23:00 to 00:00</td> </tr> </table>	<u>Current:</u>	<u>Proposed:</u>	Not currently licensed for late night refreshment.	Monday to Saturday: 23:00 to 00:00
<u>Current:</u>	<u>Proposed:</u>				
Not currently licensed for late night refreshment.	Monday to Saturday: 23:00 to 00:00				
	Amendments to application advised at hearing: The applicant accepted an amended condition proposed by Environmental health that there would be no sales of hot food or hot drink for consumption off the Premises after 23:30 hours.				
	Decision (including reasons if different from those set out in report): The Sub-Committee granted the application; see the reasons for the decision in Section 1.				
4.	Conditions being Varied, Added or Removed <table border="0"> <tr> <td><u>Current:</u></td> <td><u>Proposed:</u></td> </tr> <tr> <td>No rubbish, including bottles, shall be moved, removed or placed in outside areas between 2300 hours and 0600 hours or as in compliance with Westminster City Council's own waste</td> <td>No rubbish, including bottles, shall be moved, removed or placed in outside areas between 0000 hours and 0600 hours or as in compliance with Westminster City Council's own waste</td> </tr> </table>	<u>Current:</u>	<u>Proposed:</u>	No rubbish, including bottles, shall be moved, removed or placed in outside areas between 2300 hours and 0600 hours or as in compliance with Westminster City Council's own waste	No rubbish, including bottles, shall be moved, removed or placed in outside areas between 0000 hours and 0600 hours or as in compliance with Westminster City Council's own waste
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	contractor collection hours.	contractor collection hours.
	Amendments to application advised at hearing: None.	
	Decision (including reasons if different from those set out in report): The Sub-Committee granted the application; see the reasons for the decision in Section 1.	
5.	Hours Premises are Open to the Public	
	<u>Current:</u> Monday to Saturday: 10:00 to 23:30 Sunday: 10:00 to 22:30	<u>Proposed:</u> Monday to Saturday: 10:00 to 00:00 Sunday: 10:00 to 22:30
	Amendments to application advised at hearing: None.	
	Decision (including reasons if different from those set out in report): The Sub-Committee granted the application; see the reasons for the decision in Section 1.	

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

Conditions attached after a hearing by the licensing authority

- 9. The sale of alcohol for consumption on the premises shall only be to persons purchasing a substantial table meal there and as an ancillary to that meal, which is to be eaten seated at a table or counter in the premises.
- 10. 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.
- 11. No super-strength beer, lagers, ciders or spirit mixtures of 5.5% ABV (alcohol by volume) or above shall be sold at the premises
- 12. There shall be no self service of alcohol.
- 13. 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

14. 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.
15. 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.
16. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.
17. No rubbish, including bottles, shall be moved, removed or placed in outside areas between 0000 hours and 0600 hours or as in compliance with Westminster City Council's own waste contractor collection hours.
18. No deliveries of alcohol to the premises shall take place between 23:00 hours and 06:00 hours on the following day
19. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
20. Persons temporarily leaving the premises onto the public highway for the purposes of smoking shall not take any drinks with them.
21. 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.
22. The premises licence holder shall ensure that any patrons smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.
23. 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.
24. 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.

25. The approved arrangements at the premises, including means of escape provisions, emergency warning equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.
26. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.
27. All emergency doors shall be available at all material times without the use of a key, code, card or similar means.
28. All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.
29. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
30. Curtains and hangings shall be arranged so as not to obstruct emergency safety signs or emergency equipment.
31. All fabrics, curtains, drapes and similar features including materials used in finishing and furnishing shall be either non-combustible or be durably or inherently flame-retarded fabric. Any fabrics used in escape routes (other than foyers), entertainment areas or function rooms, shall be non-combustible.
32. Flashing or particularly bright lights on or outside the premises shall not cause a nuisance to nearby properties, save insofar as they are necessary for the prevention of crime.
33. 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.
34. 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.

35. 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.
36. All sales of alcohol for consumption off the premises shall be in sealed containers and ancillary to a takeaway meal only, and shall not be consumed on the premises or in the immediate vicinity of the premises.
37. The sale of alcohol shall be limited to a selection of 3 beers.
38. 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.
39. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times
40. No licensable activities shall take at the premises until the capacity of the premises has been assessed by the Environmental Health Consultation Team and a condition detailing the capacity so determined has replaced this condition on the Licence. The capacity to be determined shall not exceed 99 persons.
41. There shall be no licensable activity in the basement or on the second floor of the premises.
42. On Fridays and Saturdays, from 22:00 until close, there shall be a minimum of 1 SIA door supervisor on duty at the premises. They shall wear either a high visibility yellow jacket or vest.
43. There shall be no sales of hot food or hot drink for consumption off the premises after 23.30 hours.
44. There shall be no supply of alcohol for consumption off the premises after 23:00 hours Monday to Saturday and 22:30 on Sunday

The Meeting ended at 10.36 am

CHAIRMAN: _____

DATE _____