



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (4)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (4)** held on **Thursday 18th February, 2021**, This will be a Microsoft Teams virtual meeting.

Members Present: Councillors Karen Scarborough (Chairman), Richard Elcho and Aziz Toki

Officer Support:

Legal Advisor:	Horatio Chance
Policy Officer:	Aaron Hardy
Committee Officer:	Cameron MacLean
Presenting Officer:	Kevin Jackaman

1. MEMBERSHIP

There were no changes to the Membership of the Sub-Committee.

For the purposes of this meeting, the Chairman, Cllr Scarborough, proposed that Cllr Elcho be appointed Substitute Chairman. Cllr Toki seconded the nomination and Cllr Elcho was duly appointed Substitute Chairman.

2. DECLARATIONS OF INTEREST

There were no Declarations of Interest.

1. 10.00 AM: MEDITERRANEAN CAFE, 18 BERWICK STREET, LONDON W1F 0PU AND VIOLETS (AKA BAR DU MARCH), 19 BERWICK STREET, LONDON W1F 0PX

Present:

Licensing Authority

1. James Hayes, Team Manager (Central East) - Applicant
2. Tony Miah, City Inspector

Environmental Health Service

Ian Watson, Environmental Health Officer

Metropolitan Police Service

1. PC Bryan Lewis
2. PC Steve Muldoon

3. PC Kenny Brown

Legal Representative

For the Premises Licence Holder

1. Gary Grant, Counsel - for the Premises Licence Holder
2. Thomas O'Maoileoin, Solicitor, for the Premises Licence Holder

Supporting the Review

1. Richard Brown, Citizens Advice Westminster, Licensing Project, representing -
 - Ulrike Schmidt (objector)
 - Jane Doyle, Soho Society (objector)
2. Andrew Murray (objector)

Supporting the Premises

1. Sonya Posavec
2. Peter Lawson
3. Suzanna Hamilton
4. David Crossinggum
5. Robert Morgan
6. Richard Smith
7. David Woodley
8. Daniel Hueskes
9. Sophie Scholl

FULL DECISION

Application for A Review of Premises Licence – Mediterranean Café, 18 Berwick Street, London W1F 0PU [20/11371/LIREVP]

Premises

Mediterranean Café
18 Berwick Street
London
W1F 0PU

Applicant

Med Café Soho Limited

Activities and Hours

Playing of Recorded Music

Unrestricted

Late Night Refreshment

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

Seasonal Timings

The terminal hour for Late night refreshment on New Year's Eve is extended to 05:00 on New Year's Day.

Private Entertainment consisting of dancing, music, or other entertainment of a like kind for consideration and with a view to profit

Unrestricted

Sale by Retail of Alcohol (On and off sales)

Monday to Saturday: 10:00 to 00:00
Sunday: 12:00 to 23:30

Sale by Retail of Alcohol:

Alcohol may be sold or supplied:

- (a) On weekdays, other than Christmas Day, Good Friday or New Year's Eve: from: 10:00 to 00:00
- (b) On Sundays, other than Christmas Day or New Year's Eve, and on Good Friday: 12:00 to 23:30
- (c) On Christmas Day: 12:00 to 22:30
- (d) On New Year's Eve, except on a Sunday: 10:00 to 23:00
- (e) On New Year's Eve on a Sunday: 12:00 to 22:30
- (f) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).

Opening Hours of the Premises

Monday to Saturday: 10:00 to 00:30
Sunday: 12:00 to 00:00

The Premises currently benefits from:

Places: 22 tables: 8 chairs: 22
heaters: 4 gazebos

Monday to Sunday: 18:00 to 23:00

Cumulative Impact Area?

The Premises is located within the West End Cumulative Impact Zone

Ward

West End

SUMMARY OF APPLICATION

This is an application for a Review of the Premises at Mediterranean Café, 18 Berwick Street, London W1F 0PU ("The Premises") under the Licensing Act

2003 ("The Act"). The Premises operate as a restaurant situated in the West End area of the *West End Cumulative Impact Zone*. The Premises has had the benefit of a Premises Licence since 2005. It is also linked to the adjoining Premises 19 Berwick Street which was under the same Review and dealt with in the same hearing. The Applicant holds both Premises, however, 2 Decisions have been prepared by the Sub-Committee due to the fact that the Premises are separate but effectively operate as one. The conditions also appear differently for each Premises. For the avoidance of doubt the Sub-Committee's reasoning for both Decisions is mutatis mutandis for both Decisions.

The Premises operates under licences 20/03474/LIPV and 20/03478/LIPV. **The Designated Premises Supervisor is Mr Ali Aksu.** The Sub-Committee in its determination of the matter considered all of the Agenda Papers to include further additional papers produced by the Licence Holder which contained a written submission, various witness statements together with a list of conditions agreed with the Responsible Authorities.

The two identical Review applications, made on behalf of the Licensing Authority, follow allegations, primarily, that during the current Covid-19 pandemic the licence holder did not take sufficient steps to minimise people congregating outside, or sufficiently enforce social distancing guidance, breached conditions on the licences (including trading beyond permitted hours and use of tables and chairs outside), failed to comply with certain Covid-19 related regulations applicable to licensed Premises resulting in the Licence Holder being served with a Prohibition Notice.

There is also a history of noise complaints mainly relating to the playing of loud music. Some of these date back to 2018, including issues relating to the unauthorised use of tables and chairs outside, selling alcohol without it being ancillary to food and trading after hours, but the core of the more serious issues that led to the review applications being instigated arose during the pandemic.

REPRESENTATIONS RECEIVED

- The Environmental Health Service, as a Responsible Authority supported the Review application.
- The Metropolitan Police Service as a Responsible Authority supported the Review application.
- The Licensing Authority Service received 66 representations from interested parties both supporting the Review and supporting the Premises.

SUMMARY OF KEY ISSUES RAISED IN RELATION TO BREACHES OF THE LICENSING OBJECTIVES AND VARIOUS CONDITIONS

Prevention of Public Nuisance - Noise Complaints:

- The incident history provided runs for the period 23 April 2018 up to 6 July 2020. Due to the ongoing nature of the complaints and the licence holder's inability to resolve the issue following advice from Council Officers, **a Noise Abatement Notice was served in February 2018. Following the service of the noise abatement notice, the council continued to receive noise complaints from the Premises, reflecting the licence holder's unwillingness or inability to prevent issues of public nuisance.**

Prevention of Public Nuisance, Prevention of Crime and Disorder, Public Safety – Failure to comply with licence conditions and unlicensed tables and chairs

- The Licence Holder has shown an inability to comply with conditions on their Premises licence. In spite of being provided support and guidance on how to operate in accordance with the licence, they continue to operate in a manner that demonstrates he is unwilling or unable to comply with the conditions on the licence.

Prevention of Public Nuisance, Prevention of crime and Disorder, Public Safety- Coronavirus Regulations

- The Council and the Metropolitan Police Service have been called to deal with gatherings outside the Premises in breach of the regulations introduced following the Coronavirus Pandemic. The Premises operated during the emergency period, but the licence holder failed to comply with all requirements of the various coronavirus regulations. The Licence Holder was served with a **Prohibition Notice on the 23 May 2020 under The Health Protection (Coronavirus, Restrictions) due to authorised officers observing customers being served drinks for consumption in the immediate vicinity of the Premises.**

POLICY POSITION

- Appendix 4 of the Statement of Licensing Policy (“SLP”) on Pages 120-121. CD1, PS1, PN1 and CH1 on Pages 27-42 of the SLP.

REVISED HOME OFFICE GUIDANCE (APRIL 2018)

- Paragraphs 11.1-11.29 on Pages 89-94.

SUBMISSIONS AND REASONS

Mr Jackaman the Presenting Officer outlined to the Sub-Committee the applications for a review of the licences for the Mediterranean Café and Violets which have been brought by the Licensing Authority, represented by Mr James Hayes the Team Manager (Central East). It was stated that the Premises Licence Holder in respect of both Premises is Mr Ali Aksu. The parties in attendance at the hearing were all confirmed.

Mr James Hayes on behalf of the Licensing Authority stated to the Sub-Committee that the decision taken by the service to bring the reviews was not one taken lightly, and this measure is really only used as a last resort once all avenues have failed with the licence holder. He advised that there have been ongoing issues related to the Premises operation and in particular the Premises causing noise by way of public nuisance. Mr Hayes stated that the Premises had been found on a number of occasions to be trading far beyond its permitted hours coupled generally with not following the conditions on the licence. Mr Hayes said that the service felt that it had done all it could to help try and resolve these issues before bringing a review application before the Sub-Committee. He advised that a great deal of advice and guidance had been given to the licence holder in order to rectify the issues but that no satisfactory resolutions could be found that would promote the licensing objectives. Mr

Hayes said that it was on this basis the service felt it was necessary and proportionate to submit these 2 review applications.

He confirmed that the issues raised, have generally been accepted by the Licence Holder as a clear reflection of the types of issues that have been experienced over time. He then went on to state that with regard to public nuisance, there have been a series of complaints in relation to noise nuisance which date back to 2018. In 2018 the Premises was served with a noise abatement notice. It was confirmed that officers did on at least one occasion observe what would be a statutory nuisance – i.e., that the noise experienced by officers would have a level significant enough to be deemed unreasonable to a nearby property.

Mr Hayes stated that in addition to the noise nuisance the late trading is a big issue. The Sub-Committee was advised that in 2020 officers have found that the Premises to be trading beyond its permitted hours on three separate occasions. It was stated that the Licence Holder was present at the Premises when these inspections had taken place and therefore it is his direct involvement which have led to our concerns.

Mr Hayes then went on to state that more recently, the issues have been around gatherings outside the Premises and people found drinking out on the streets near to the Premises. Mr Hayes said that it was the repetitive nature of these visits which had an effect on resources. The Sub-Committee was advised that in May 2020, three visits were undertaken to the Premises namely on the 18, 19 and 22 May.

Mr Hayes said that the service has tried to offer advice and guidance to the licence holder in order that he can comply with the Covid-19 Regulations and again there was a failure on his part to abide by these rules and as a result a Prohibition Notice was served on the 23 May 2020. Mr Hayes further stated that following on from this notice, the service still continued to receive serious concerns about the gathering of people outside the Premises. He stated that the Premises may have been operating lawfully in terms of the coronavirus regulations, but the Premises continued to cause a nuisance which went to the heart of the public nuisance licensing objective.

Mr Hayes advised also that the Off-sales conditions have not been complied with and those concerns are set on page 59 of the Agenda Report, emphasising that it was the repetitive nature of the complaints. Mr Hayes did say that in defence to the licence holder and the one positive step that should be highlighted, is that he has tried to address some of these concerns since a review application was submitted, and he participated in a mediation session with officers to help resolve some of the key issues. This forum identified steps which could be taken if the Sub-Committee are minded not to revoke the licence. This would include Mr Aksu being removed as the licence holder.

Mr Hayes said that he would be seeking for the licence to be suspended whilst the new Designated Premises Supervisor had been appointed and put in place. He also stated that 20 new conditions would be proposed to be put on the licence. These conditions before the Sub-Committee have been taken from the Model Pool of Conditions and hoped they would rectify the issues.

Mr Miah City Inspector advised the Sub-Committee that he had been dealing with the licence holder for the last two years. During that time period he said

that he had relayed to the licence holder the seriousness of adhering to the conditions on the licence and any long-term failures would result in the licence being revoked. This had been communicated to him verbally and in emails. Mr Miah said that he continues to push the boundaries which has lead matters getting to this stage of a review hearing.

P.C Bryan Lewis on behalf of the MPS addressed the Sub-Committee. He advised that the MPS supports the applications to review the Premises licences and the actions the Licensing Authority have taken thus far. He confirmed that 4 statements were submitted as part of the evidence. PC Lewis said that he had not dealt with the Premises before, however, according to their records he found from November 2019-November 2020 there have been 14 complaints to the MPS about the two Premises. The Sub-Committee was referred to a schedule of the calls appearing on page 160 of the Agenda Papers. These complaints were large groups gathering outside the Premises and paying for alcohol. There was no social distancing, and these happened during the lockdown period.

PC Lewis stated that the Premises were not proactive in getting people to leave the area once they had purchased their off sales of alcohol. This resulted in police officers attending to disburse the groups by potentially putting their lives at risk.

PC Lewis then referred to a Statement by his colleague – he said this statement relates to events which took place on the 28 November 2020 where a large group of people congregated outside the Premises. He said that he had previously spoken to the operator and raised concerns of their specific conduct as they were not dispersing people when leaving the Premises.

PC Steve Muldoon Dedicated Ward Officer for Soho addressed the Sub-Committee. PC Muldoon advised that he has been dealing with the licence holder Mr Aksu for the last 2 years and knows him very well. He said that part of his role is to deal with incidents that arise overnight and to respond accordingly. He stated that the MPS have a Social Media Account and people can tweet us any issues. He advised that numerous complaints have been received regarding gatherings taking place outside the Premises. PC Muldoon advised that the Premises were the first one's open around during the first Covid-19 lockdown. He said that within the first month or two of the lockdown, the Premises was one of the only places you could buy a drink and there ended up over 100 people outside the Premises.

PC Muldoon advised that when he first spoke to Mr Aksu, he was initially very engaging and tried to resolve the issues. He did employ a security guard which was noted by the MPS, however the issues never stopped because the Security Guards were not moving or encouraging people to move on. PC Muldoon stated that during the first lockdown, bottle tops were not being put on drinks so people would not leave the Premises and again encourage people to stand around and loiter. It was hard to control when there were over 50 people and only two Officers. The Sub-Committee was advised further that there had been ongoing meetings with Mr Aksu which became more frequent (over 30 times during lockdown). PC Muldoon said that we could not get him to address the issues to the gatherings outside of the Premises. PC Muldoon said that the staff were not willing to engage with us and were not telling customers to leave the lids on their drinks. PC Muldoon went onto state that there are a lot of

residents that live nearby and are affected by this and that residents feared leaving their homes as they didn't want to walk past all the people. PC Muldoon concluded by saying that he had lost count the number of times the MPS had visited the bar.

PC Kenny Brown on behalf of the MPS stated that he could only reiterate what his colleagues had said but wanted to point out that even visible officers in uniform were not able to disperse large crowds. PC Brown said that he noticed people urinating in the street.

Mr Watson on behalf of the Environmental Health Service addressed the Sub-Committee. He stated that the 2 reviews came as no surprise to the EHS due to the level of engagement we have had with the Premises in the last 3 years. Mr Watson advised that he has had several meetings with the Premises to establish what outcomes they were seeking. Following these meetings, a mediation session took place between all parties on the 28 Jan 2021 to look at possible outcomes pending the review hearing. Mr Watson stated that Mr Grant mentions that most of the nuisance complaints were before 22:00 which is correct appearing on page 144 of the Agenda Papers but this was specific complaint made by an office worker. Mr Watson assisted the Sub-Committee further by confirming that a noise abatement notice was served in 2018 as had been stated earlier, which is purely served on statutory nuisance. It is not served because there are continuous noise complaints. It is at a specific time the noise nuisance was notice. There were no breaches of the notice so there was no prosecution. In relation to a complaint by an office worker Mr Watson stated that noise affecting the office worker would have been a statutory nuisance. There were quite a few complaints of noise breakout. However, not all noise breakout is a nuisance. The Sub-Committee noted that there was a recurring theme of the issues here.

Mr Brown on behalf of Westminster (CAB) addressed the Sub-Committee. He stated that the licence holder is generally in agreement and that is why he went to the mediation session. The concerns surround the issues of the breaches of the terminal hour, breach of conditions and breach of coronavirus regulations. Mr Brown advised that there does seem to be an issue with the repetition of complaints. He added that both Premises are popular, and Mr Aksu should be given credit to that, but it does not outweigh the complaints. It is clear that everyone wants to see a popular well-run eatery rather than closed down Premises and are not asking for revocation of the licence. We do believe some sanctions should be given. We largely agree with the approach of resolution in the documentation. In particular we agree with the removal of the DPS and restriction to off-sales.

Mr Brown requested that the Sub-Committee consider amendments to the conditions. He said that in relation to Condition 17 – residents feel 10 is too many and propose 6. In relation to Condition 31 – Variation of MC66 – losing the hours before 18:00.

Mr Brown stated that looking at a modest reduction to the hours and he would like the two Premises to have the same hours. They do have different timings and conditions and feel these should be the same. He said that his proposal would be for a reduction to the terminal hours to be core hours.

Ulrike Schmidt in support of the Review addressed the Sub-Committee. Ms Schmidt advised that she knows the licence holder to be a hardworking and pleasant individual. However, the licence holder has not followed the social distancing rules and consequently has put lives at risks. She maintained that lots of people are gatherings in narrow pathways and was creating a hazard due to how overcrowded it was becoming. The Sub-Committee was advised that Local residents were having to make detours to avoid going near Berwick Street. Many of the concerns mentioned at the time proved accurate. Ms Schmidt advised that within days, Violets were giving out alcohol without it being ancillary to a meal, blaring out music and trading beyond their permitted hours. People gathering outside the Premises – you could not distinguish what Premises they were customers of. The licence holder was adding tables and chairs and claiming public highway as if it was part of his Premises. It was stated that this encroachment happened well before the Covid-19 pandemic. The incompetence of the licence holder to manage the Premises adequately is the reason why I fully agree with all conditions.

Jane Doyle in support of the Review addressed the Sub-Committee. Ms Doyle confirmed that she supported what the Council have said and the actions they have taken. She stated that on occasions she had been outside with the police and witnessed what has happened. There is loud music being played outside and is therefore in agreement with the hours being reduced to core hours.

Andrew Murray in support of the Review addressed the Sub-Committee. Mr Murray said that he had been friendly with the licence holder for many years. He said there seems to be broad agreement with the review itself. People should be free to support or object to reviews. Mr Murray said he was concerned that even with a great deal of redacting it was very obvious who he was from reading the additional submission. He said he was not concerned about himself, but worried about how this would affect other people. He said in the background section about myself, it is true about the number of children I have, number of rooms etc. However, A lot of the other facts are false. This may deter people from submitting representations. Mr Murray requested whether the submission can be removed.

At that point the Chairman sought advice from the Legal Advisor to the Sub-Committee. The Legal Advisor confirmed that the Council is a Data Controller for the purposes of Data Protection/GDPR requirements and any personal data linking a person to an individual should all be redacted. The Chairman on behalf of the Sub-Committee apologised for any personal information that may not have been properly redacted in the documentation. The Council does have robust procedures in place to ensure that this does not happen.

Due to some inappropriate comments being left in the Teams Chat facility the Legal Advisor reminded that those parties attending and participating were in a public hearing and were to be respectful at all times by observing the Sub-Committee rules and procedures. All parties were advised that the Chairman has the discretion to remove any person if they continue to be discourteous or cause offence in anyway.

Mr Murray continued with his submissions and advised the Sub-Committee that the hospitality at the Premises is great. However, it is a residential street and noise does impact people. Mr Murray said that he lived on floor 16 and you will be surprised at how much the noise still impacts us. Mr Murray said that he has

tolerated all sorts of issues and had concerns with the Mediterranean Café to continue trading due to the management. The breach of Coronavirus regulations was very serious. Also placing chairs out for people who were only meant to be taking away was really serious. Mr Murray said that he really wanted the business to continue but measures need to be put in place to satisfy the residents.

Mr Lawson in support of the Premises addressed the Sub-Committee. Mr Lawson advised that he was a local resident and lived in the centre of Soho. He said that he would like to start by correcting something Mr Murray just mentioned, he said table and chairs need to be taken in by 22:00 hours and this instead should have been 23:00 hours. Mr Lawson said that the Premises are very special to the local community. He added they are much more than a café bar/restaurant, they are a community asset. This is why this review has sparked such a level of interest. The licence holder is a long-standing member of our local community. He does go out his way to make the Premises inviting to us all. Mr Lawson stated that over the last year, he has seen a much stronger community spirit arising from Covid lockdowns from residents meeting on the alfresco tables in Premises in Berwick Street. In terms of the noise complaints, Mr Lawson stated that from his own observations, and since the update of the southern end of Berwick Street, there has been an increase use of the cut through route. He felt that this has made the area safer. Mr Lawson stated that a lot of the noise has been blamed on the Premises and rather it could be the increase of people walking through the area. He said that the 2 Premises are very long standing and have existed for the 30 plus years he has been living in Soho.

Turning to the proposed conditions Mr Lawson said that he did not think he could support some of them. In regard to condition 31 – substantial food after 18:00. He advanced the argument that a lot of the community spirit was created by being able to sit outside in the sunshine with a beer. If this is taken away from us, then people won't visit as they may not want a full meal. In terms of the staggering of the hours, this is a sensible thing to do so that people are staggered when leaving the Premises and would aid a proper dispersal.

Sonya Posavec in support of the Premises addressed the Sub-Committee. Ms Posavec stated that she had known the licence holder for a long time and knew him to be a very kind and responsible man. She said that he always asks his customers what he needs to improve and was open to feedback from customers. Ms Posavec said that she did not believe he has been dismissive of any complaints and has taken them seriously. She said that he had even asked her what he should consider doing when he has received a complaint. Ms Posavec said all this man has done his whole life is to support the local community and that she had not seen anything out of the ordinary here. Ms Posavec stated that she would not want to eat or drink somewhere that is breaching any regulations. Ms Posavec stated that she had not experienced any of the nuisance or anti-social behaviour that had been complained of and this was confirmed by the fact that her windows are directly facing the Premises and have not been impacted by noise.

Mr Crossinggum in support of the Premises addressed the Sub Committee. Mr Crossinggum advised that he was not a resident of Soho but has known the

licence holder for many years. He said that he echoed the previous comments about how friendly he is and that the Premises is a well-run establishment.

Mr Crossinggum stated that he hoped the 2 Premises can continue to operate and that the area would not be the same without these Premises.

Mr Morgan in support of the Premises addressed the Sub-Committee. Mr Morgan said that he echoed a lot of what has been said about the licence holder, he said it is sometimes difficult to determine who is causing the noise nuisance. He regarded the licence holder to be very friendly and helpful. Mr Morgan also said that he did not like going to places where he felt challenged or uncomfortable. Mr Morgan advised the Sub-Committee that the picture that has been painted is not one he recognises on his visits to the Premises. Mr Morgan stated that this seems to be unfair on someone who is such a great asset to this community.

Sophie Scholl in support of the Premises addressed the Sub-Committee. Ms Scholl advised that she was a resident living only 15 metres away from the Premises. Ms Scholl said that Berwick street is known for its vibrant environment. Ms Scholl stated that the 2 Premises were being actively managed during the pandemic period – from what I saw living there, I did see the licence holder asking people not to gather around and he did employ security. Social distancing was enforced, and his efforts should be recognised.

Daniel Hueskes in support of the Premises addressed the Sub-Committee. Mr Hueskes advised that he lives on Berwick Street, only 10 metres away from Violets and the Med Café. He said there is always a certain level of noise associated with this street. He mentioned an occasion where he happened to be walking past Berwick Street with police speaking to the licence holder and stressing that the people gathering outside were not customers of the Premises. Mr Hueskes said that there also seems to be a suggestion about the licence holder's ability to manage the Premises. He was the only one who hired a security guard to ensure Covid-19 measures were followed. There seems to be suggestions of people being awoken by the noise, how can you tell the noise was coming from the Premises? Mr Hueskes is not saying these complaints should not happen, but does not think the Premises should be singled out. He stated that noise can be heard, and it is not immediately apparent where it is coming from so it's important for the Sub-Committee to understand the dynamics of the road and should be looked at as a whole.

Mr Grant on behalf of the Licence Holder addressed the Sub-Committee. Mr Grant said that the Sub-Committee had heard a great deal of evidence but felt the need to put matters into some context. He accepted that the Sub-Committee had read the papers but that two Premises are being reviewed here. He said that he was under a duty to respond to all of the elements. Mr Grant said that Revocation is of course a power within the discretion of the Sub-Committee, however, no parties would seek to have this occur. Mr Aksu is not a perfect operator and he could improve his compliance and ability to control people especially through the pandemic. Mr Grant stated that the thrust of the authorities' position is fair in the circumstances. He stated that where official action is taken, Mr Aksu responds positively. He has complied with the abatement notice.

Mr Grant stated that in June 2020 he hired door supervisors to control the congregation of people. Within a week of this review application being launched, Mr Aksu voluntarily seized all off-sales and removed all tables and chairs in order to deal with direct the causes of this review. The Sub-Committee was advised that on the 16 Dec 2020 Mr Aksu voluntarily closed the Premises, and this was before the Government lockdown. He has now been closed for 2 months. He applied for tables and chairs licences in July 2020. Mr Grant said that on 4 December he did apply for a placement licence which is enforced until April 2021. On 21 December 2020 whilst the Premises were closed, he hired a trainer who trained all of his staff.

Mr Grant contended that the reality is this – there is a surge of people needing to socialise and congregate. The Premises became one of the Premises that residents visited as hot spot. Mr Aksu was not alone when not being able to control the crowds. He has been working 16 hours a day to try and control both Premises and to live up to the highest level of compliance. He could have done more and should have but wants to be given the opportunity to put things right. Mr Grant stated that 82-86% of residents are in favour of these Premises.

Mr Grant stated when it comes to noise complaints, only 2 related to incidents after 22:00 hours. There is no evidence for the hours to be reduced to core hours. He said that the Sub-Committee has heard evidence from the Police that the Premises do not attract violent behaviour. The outcome in this case is broadly agreed by all Responsible Authorities, the Licence Holder, and the local residents.

Mr Grant advised that Mr Aksu has not sufficiently been able to control both of the Premises as this is too much work. However, in response he would like to remove himself as DPS and would like to hire a new experienced DPS. He will engage with the Police to see if this DPS is suitable. The Police are the only person that can reject a DPS.

Mr Grant commented upon the Conditions for both Premises and drew the following to the attention of the Sub-Committee:

MEDITERRANEAN CAFÉ CONDITIONS

1. Conditions 1 - 2 – are already on the current licence.
2. Condition 13 – Deals with the noise. Primary issue with the noise complaints over the last few years.
3. Condition 3 – CCTV – I have been asked by PC Lewis to insert at line 4. *'The CCTV shall cover the external table area'*.
4. Condition 17 – Mr Brown – we agree to limit the smokers outside to 6 persons.

VIOLET'S CONDITIONS

1. Condition 1-3 - are the same as above.
2. Condition 13-21 and Condition 24- 31 and condition 33 are all brand new conditions.
3. Condition 13 – same CCTV condition as above and should include the amendment.

4. Condition 24 – Smokers to be limited to 6 persons
5. Condition 31 – Save for take away food for immediate consumption off the Premises before 18:00.

The Legal Advisor to the Sub-Committee also confirmed with the parties the proposed amendments made to the conditions.

Mr Grant stated that in relation to the closing times and core hours – if you look at the Violets licence (proposed condition 19). The effect of this condition is to slice off 30 minutes to the terminal hour. It would put the hours of both Premises the same and this was noted by the Sub-Committee.

Mr Aksu addressed the Sub-Committee and stated that all staff are going to have regular training. He said that he was struggling to handle the long hours in running the Premises but from now on he will be more careful and be focused on delivering better management practices. Mr Aksu said that a new DPS is to be appointed and that the Premises is currently recruiting for that position. Mr Aksu did state that the last 6 months of the Covid Period had been difficult and that he has learnt a lot. He admitted that he had taken his eye off the ball and things had deteriorated but new staff are joining which will help and free up his time.

REASONS OF THE SUB-COMMITTEE

The Sub-Committee considered the application for Review by the Licensing Authority Service a very serious matter indeed. It concluded having heard the evidence that the Licence Holder failed to manage his Premises in an efficient and effective manner that would help lead to the promotion of the licensing objectives. The Sub-Committee were given examples where the MPS had attended the Premises and the Licence Holder could not give reasonable explanation as to why the Premises were trading beyond the permitted hours granted by the licences and why sales of alcohol had taken place. The Sub-Committee has to take a dim view as this practice fails to promote the licensing objectives. It was clear that despite being offered advice time and time again by the Responsible Authorities Mr Aksu fell well below the required standard of an experienced Operator. The Sub-Committee sympathises that at the moment these are trying times for the hospitality sector due to the current Covid-19 pandemic but this is still even more reason why Premises should operate their Premises well and in accordance with the promotion of the licensing objectives.

The Sub-Committee's role is to ensure that the Premises are adhering to its licensing conditions and the promotion of the licensing objectives and to establish how best that is to be achieved going forward and find solutions where possible. It was noted that the Licence Holder had a great deal of support from local residents and was impressionable with the Soho community and considered an Asset given the number of years of operation from the Premises. However, this does not detract from the fact that he must behave responsibly and run the Premises well. This approach does not make proper commercial sense. An Operator when realising matters are going wrong cannot simply bury their head in the sand and think that matters will go away without seeking the necessary professional advice to help improve the running of the business.

The Sub-Committee noted that the licence holder and his staff had undertaken recent training provided by an external trainer and was persuaded that the proposed measures to turn the practices of the business around would be implemented as soon as possible. This was confirmed that a new DPS would be appointed should the licence be allowed to continue.

The Sub-Committee realises its powers under the Act are wide but has to take a balanced and proportionate approach when determining the individual merits of the matter. In this respect the Sub-Committee had regard to paragraphs 11.1 – 11.29 of the Home Office Guidance, in particular paragraph 11.20 which states “In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review”.

The Sub-Committee did not feel that revocation of the licence was a proportionate and appropriate step it should take in this matter given the consensus of opinion by all parties that this should not happen. Instead, it decided that the licence should be suspended pending the removal of the current DPS Mr Aksu until such time as a new DPS is found bearing in mind that any suspension cannot last for more than 3 months in any event. Mr Grant advised that the Premises was closed and had been since December of last year so any suspension should reflect this time period.

The Sub-Committee accepted the various undertakings given by Mr Aksu when he was questioned regarding the various improvements and staff changes, he would implement in the running of the Premises going forward that would promote the licensing objectives as well as following the conditions on both licences in order that they are maintained. This gave the Sub-Committee confidence and reassurance that he had taken on board the serious nature of the matter and was prepared to change matters otherwise his failure to do so could have devastating consequences long term for the Premises. The Sub-Committee acknowledged and accepted that he had spent a number of years building the business to what it was today so that it was successful.

The Sub-Committee noted that both Premises are popular and have done a great deal for the community so as to foster good relations with local residents and customers.

The Sub-Committee welcomed his personal guarantee that he would work productively with the Responsible Authorities in order that good working relationships are maintained.

The Sub-Committee considered the proposed Conditions offered which would negate the concerns raised by the objectors and ultimately have the effect of promoting the licensing objectives. The Sub-Committee was of the view that the removal of Mr Aksu as the current DPS, a suspension of the licence and imposing new conditions by bringing the licence up to date from an enforcement perspective was appropriate and proportionate and would help promote the licensing objectives in particular the public nuisance licensing objective.

THE FOLLOWING CONDITIONS IN ADDITION TO THE MANDATORY CONDITIONS APPLICABLE TO THIS TYPE OF APPLICATION WERE IMPOSED BY THE COMMITTEE AFTER A HEARING:

- ***Suspension with immediate effect of the Premises Licence until an application for the variation of the Designated Premises Supervisor has been granted. (This can only be for a period not exceeding 3 months from the date of this Decision)***
 - ***Removal with immediate effect of the Designated Premises Supervisor, Mr Ali Aksu.***
1. The number of persons permitted in the Premises at any one time (including staff) shall not exceed 100 persons.
 2. 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.
 3. 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 including the external table area will be covered enabling full 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 preceding 31-day period.
 4. 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 absolute minimum of delay when requested.
 5. There shall be a personal licence holder other than Mr Ali Aksu on duty at all times when the Premises are authorised to sell alcohol.
 6. Notices shall be prominently displayed at all exits requesting patrons respect the needs of the local residents and businesses and leave the area quietly.
 7. 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.
 8. 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 a PASS Hologram.
 9. All emergency exit doors shall be available at all material times without the use of a key, code, card, or similar means.

10. The consumption of alcohol on the Premises shall cease and all customers to be off the Premises no later than 30 minutes after the end of the permitted hours for the sale by retail of alcohol on the Premises.
11. A full itemised list of all purchases shall be provided to customers. The correct date and time of service shall be included. Copies of this list shall be made available upon request by an authorised officer of the City Council or the Police.
12. All sales of alcohol for consumption off the Premises shall be in either:
 - (a) bottles of wine in sealed containers only, and shall not be consumed on the Premises or
 - (b) consumed by persons who are seated in an area appropriately authorised for the use of tables and chairs on the highway and bona fide taking a substantial table meal there, and where the consumption of alcohol by such persons is ancillary to taking such a meal, and where the supply of alcohol is by waiter or waitress service only.
13. Loudspeakers shall not be located at the entrance or outside the Premises building.
14. 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.
15. All windows and external doors shall be kept closed after 21:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.
16. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
17. Patrons permitted to temporarily leave and then re-enter the Premises, e.g., to smoke, shall be limited to 6 persons at any one time.
18. 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.
19. No waste or recyclable materials, including bottles, shall be moved, removed from, or placed in outside areas between 23.00 hours and 08.00 hours on the following day.
20. No deliveries to the Premises shall take place between 23.00 and 08.00 on the following day.
21. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
22. No collections of waste or recycling materials (including bottles) from the Premises shall take place between 23.00 and 08.00 on the following day.
23. All new members of staff responsible for selling or supplying alcohol shall receive training in the Licensing Act 2003 in terms of the licensing objectives, offences committed under the Act and conditions of the Premises licence.

24. All staff responsible for selling or supplying alcohol shall receive refresher training in the Licensing Act 2003 at intervals of no more than 12 months.
25. Written records of staff training in the Licensing Act 2003 shall be retained and made available to police and authorised officers of the Licensing Authority on request.
26. 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.
27. An incident log shall be kept at the Premises, and be made available on request to an authorised officer of the City Council or the Police, which will record the following:
 - (a) all crimes reported to the venue
 - (b) 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.
 - (i) any faults in the cash register or payment machines
28. 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 takeaway service of food or drink for immediate Consumption before 18:00,
 - (v) which do not provide any takeaway 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.

Notwithstanding this condition customers are permitted to take from the Premises part consumed and resealed bottles of wine supplied ancillary to their meal.

INFORMATIVE

The Licence Holder is recommended to obtain independent advice as to the running of a Premises having regard to the Licensing regime under the Act to help assist him in his understanding of the licensing objectives and how in turn that is to be reinforced in the day to day running of the Premises to include management, training of staff, and compliance with conditions.

**The Licensing Sub-Committee
18 February 2021**

FULL DECISION

Application for A Review of Premise Licence- Violets (Formally Bar Du Marche), Basement & Ground Floor, 19 Berwick Street, London W1F 0PX [20/03474/LIPV]

Premises

Violets (formally Bar Du Marche)
Basement & Ground Floor
19 Berwick Street
London
W1F 0PX

Respondent

Med Café Soho Limited

Activities and Hours

Late Night Refreshment

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

Seasonal Timings: On New Year's Eve from midnight to the commencement of permitted hours on New Year's

Sale by Retail of Alcohol

Monday to Friday: 10:00 to 00:00
Saturday: 11:00 to 00:00
Sunday: 12:00 to 23:30

Seasonal Timings: On New Year's Eve from midnight to the commencement of permitted hours on New Year's Day.

Opening Hours

Monday to Saturday: 10:00 to 01:00
Sunday: 12:00 to 00:00

Cumulative Impact Area?

The Premises is located within the West End Cumulative Impact Zone

Ward

West End

Summary of Application

This is an application for a Review of the Premises at Violets (formally Bar Du Marche) Basement & Ground Floor, 19 Berwick Street, London, W1F 0PX 20/03474/LIPV ("The Premises") under the Licensing Act 2003 ("The Act"). The Premises operate as a bar situated in the West End area of the *West End*

Cumulative Impact Zone. The Premises has had the benefit of a Premises Licence since 2010. It is also linked to the adjoining Premises 18 Berwick Street which was under the same Review and dealt with in the same hearing. The Applicant holds both Premises, however, 2 Decisions have been prepared by the Sub-Committee due to the fact that the Premises are separate but effectively operate as one. The conditions also appear differently for each Premises. For the avoidance of doubt the Sub-Committee's reasoning for both Decisions is mutatis mutandis for both Decisions.

The Premises operates under licences 20/03474/LIPV and 20/03478/LIPV. **The Designated Premises Supervisor is Mr Ali Aksu.** The Sub-Committee in its determination of the matter considered all of the Agenda Papers to include further additional papers produced by the Licence Holder which contained a written submission, various witness statements together with a listed of conditions agreed with the Responsible Authorities.

The two identical Review applications, made on behalf of the Licensing Authority, follow allegations, primarily, that during the current Covid-19 pandemic the licence holder did not take sufficient steps to minimise people congregating outside, or sufficiently enforce social distancing guidance, breached conditions on the licences (including trading beyond permitted hours and use of tables and chairs outside), failed to comply with certain Covid-19 related regulations applicable to licensed premises resulting in the Licence Holder being served with a Prohibition Notice.

There is also a history of noise complaints mainly relating to the playing of loud music. Some of these date back to 2018, including issues relating to the unauthorised use of tables and chairs outside, selling alcohol without it being ancillary to food and trading after hours, but the core of the more serious issues that led to the review applications being instigated arose during the pandemic.

Representations Received

1. The Environmental Health Service, as a Responsible Authority supported the Review application.
2. The Metropolitan Police Service as a Responsible Authority supported the Review application.
3. The Licensing Authority Service received 66 representations from interested parties both supporting the Review and supporting the Premises.

SUMMARY OF KEY ISSUES RAISED IN RELATION TO BREACHES OF THE LICENSING OBJECTIVES AND VARIOUS CONDITIONS

Prevention of Public Nuisance - Noise Complaints:

- The incident history provided runs for the period 23 April 2018 up to 6 July 2020. Due to the ongoing nature of the complaints and the licence holder's inability to resolve the issue following advice from Council Officers, ***a Noise Abatement Notice was served in February 2018. Following the service of the noise abatement notice, the council continued to receive noise complaints from the premises, reflecting the licence holder's unwillingness or inability to prevent issues of public nuisance.***

Prevention of Public Nuisance, Prevention of Crime and Disorder, Public Safety – Failure to comply with licence conditions and unlicensed tables and chairs

- The Licence Holder has shown an inability to comply with conditions on their premises licence. In spite of being provided support and guidance on how to operate in accordance with the licence, they continue to operate in a manner that demonstrates he is unwilling or unable to comply with the conditions on the licence.

Prevention of Public Nuisance, Prevention of crime and Disorder, Public Safety- Coronavirus Regulations

- The Council and the Metropolitan Police Service have been called to deal with gatherings outside the Premises in breach of the regulations introduced following the Coronavirus Pandemic. The Premises operated during the emergency period, but the licence holder failed to comply with all requirements of the various coronavirus regulations. The Licence Holder was served with a **Prohibition Notice on the 23 May 2020 under The Health Protection (Coronavirus, Restrictions) due to authorised officers observing customers being served drinks for consumption in the immediate vicinity of the premises.**

Policy Position

- Appendix 4 of the Statement of Licensing Policy (“SLP”) on Pages 120-121. CD1, PS1, PN1 and CH1 on Pages 27-42 of the SLP.

Revised Home Office Guidance (April 2018)

- Paragraphs 11.1-11.29 on Pages 89-94.

SUBMISSIONS AND REASONS

Mr Jackaman the Presenting Officer outlined to the Sub-Committee the applications for a review of the licences for the Mediterranean Café and Violets which have been brought by the Licensing Authority, represented by Mr James Hayes the Team Manager (Central East). It was stated that the Premises Licence Holder in respect of both premises is Mr Ali Aksu. The parties in attendance at the hearing were all confirmed.

Mr James Hayes on behalf of the Licensing Authority stated to the Sub-Committee that the decision taken by the service to bring the reviews was not one taken lightly and this measure is really only used as a last resort once all avenues have failed with the licence holder. He advised that there have been ongoing issues related to the Premises operation and in particular the premises causing noise by way of public nuisance. Mr Hayes stated that the Premises had been found on a number of occasions to be trading far beyond its permitted hours coupled generally with not following the conditions on the licence. Mr Hayes said that the service felt that it had done all it could to help try and resolve these issues before bringing a review application before the Sub-Committee. He advised that a great deal of advice and guidance had been given to the licence holder in order to rectify the issues but that no satisfactory resolutions could be found that would promote the licensing objectives. Mr

Hayes said that it was on this basis the service felt it was necessary and proportionate to submit these 2 review applications.

He confirmed that the issues raised, have generally been accepted by the Licence Holder as a clear reflection of the types of issues that have been experienced over time. He then went on to state that with regard to public nuisance, there have been a series of complaints in relation to noise nuisance which date back to 2018. In 2018 the Premises was served with a noise abatement notice. It was confirmed that officers did on at least one occasion observe what would be a statutory nuisance – i.e., that the noise experienced by officers would have a level significant enough to be deemed unreasonable to a nearby property.

Mr Hayes stated that in addition to the noise nuisance the late trading is a big issue. The Sub-Committee was advised that in 2020 officers have found that the Premises to be trading beyond its permitted hours on three separate occasions. It was stated that the Licence Holder was present at the Premises when these inspections had taken place and therefore it is his direct involvement which have led to our concerns.

Mr Hayes then went on to state that more recently, the issues have been around gatherings outside the Premises and people found drinking out on the streets near to the Premises. Mr Hayes said that it was the repetitive nature of these visits which had an effect on resources. The Sub-Committee was advised that in May 2020, three visits were undertaken to the Premises namely on the 18, 19 and 22 May.

Mr Hayes said that the service has tried to offer advice and guidance to the licence holder in order that he can comply with the Covid-19 Regulations and again there was a failure on his part to abide by these rules and as a result a Prohibition Notice was served on the 23 May 2020. Mr Hayes further stated that following on from this notice, the service still continued to receive serious concerns about the gathering of people outside the Premises. He stated that the Premises may have been operating lawfully in terms of the coronavirus regulations, but the Premises continued to cause a nuisance which went to the heart of the public nuisance licensing objective.

Mr Hayes advised also that the Off-sales conditions have not been complied with and those concerns are set on page 59 of the Agenda Report, emphasising that it was the repetitive nature of the complaints. Mr Hayes did say that in defence to the licence holder and the one positive step that should be highlighted, is that he has tried to address some of these concerns since a review application was submitted, and he participated in a mediation session with officers to help resolve some of the key issues. This forum identified steps which could be taken if the Sub-Committee are minded not to revoke the licence. This would include Mr Aksu being removed as the licence holder.

Mr Hayes said that he would be seeking for the licence to be suspended whilst the new Designated Premises Supervisor had been appointed and put in place. He also stated that 20 new conditions would be proposed to be put on the licence. These conditions before the Sub-Committee have been taken from the Model Pool of Conditions and hoped they would rectify the issues.

Mr Miah City Inspector advised the Sub-Committee that he had been dealing with the licence holder for the last two years. During that time period he said

that he had relayed to the licence holder the seriousness of adhering to the conditions on the licence and any long-term failures would result in the licence being revoked. This had been communicated to him verbally and in emails. Mr Miah said that he continues to push the boundaries which has led matters getting to this stage of a review hearing.

P.C Bryan Lewis on behalf of the MPS addressed the Sub-Committee. He advised that the MPS supports the applications to review the premises licences and the actions the Licensing Authority have taken thus far. He confirmed that 4 statements were submitted as part of the evidence. PC Lewis said that he had not dealt with the Premises before, however, according to their records he found from November 2019-November 2020 there have been 14 complaints to the MPS about the two premises. The Sub-Committee was referred to a schedule of the calls appearing on page 160 of the Agenda Papers. These complaints were large groups gathering outside the Premises and paying for alcohol. There was no social distancing, and these happened during the lockdown period.

PC Lewis stated that the Premises were not proactive in getting people to leave the area once they had purchased their off sales of alcohol. This resulted in police officers attending to disperse the groups by potentially putting their lives at risk.

PC Lewis then referred to a Statement by his colleague – he said this statement relates to events which took place on the 28 November 2020 where a large group of people congregated outside the Premises. He said that he had previously spoken to the operator and raised concerns of their specific conduct as they were not dispersing people when leaving the Premises.

PC Steve_Muldoon Dedicated Ward Officer for Soho addressed the Sub-Committee. PC Muldoon advised that he has been dealing with the licence holder Mr Aksu for the last 2 years and knows him very well. He said that part of his role is to deal with incidents that arise overnight and to respond accordingly. He stated that the MPS have a Social Media Account and people can tweet us any issues. He advised that numerous complaints have been received regarding gatherings taking place outside the Premises. PC Muldoon advised that the Premises were the first one's open around during the first Covid-19 lockdown. He said that within the first month or two of the lockdown, the Premises was one of the only places you could buy a drink and there ended up over 100 people outside the Premises.

PC Muldoon advised that when he first spoke to Mr Aksu, he was initially very engaging and tried to resolve the issues. He did employ a security guard which was noted by the MPS, however the issues never stopped because the Security Guards were not moving or encouraging people to move on. PC Muldoon stated that during the first lockdown, bottle tops were not being put on drinks so people would not leave the Premises and again encourage people to stand around and loiter. It was hard to control when there were over 50 people and only two Officers. The Sub-Committee was advised further that there had been ongoing meetings with Mr Aksu which became more frequent (over 30 times during lockdown). PC Muldoon said that we could not get him to address the issues to the gatherings outside of the Premises. PC Muldoon said that the staff were not willing to engage with us and were not telling customers to leave the lids on their drinks. PC Muldoon went onto state that there are a lot of

residents that live nearby and are affected by this and that residents feared leaving their homes as they didn't want to walk past all the people. PC Muldoon concluded by saying that he had lost count the number of times the MPS had visited the bar.

PC Kenny Brown on behalf of the MPS stated that he could only reiterate what his colleagues had said but wanted to point out that even visible officers in uniform were not able to disperse large crowds. PC Brown said that he noticed people urinating in the street.

Mr Watson on behalf of the Environmental Health Service addressed the Sub-Committee. He stated that the 2 reviews came as no surprise to the EHS due to the level of engagement we have had with the Premises in the last 3 years. Mr Watson advised that he has had several meetings with the Premises to establish what outcomes they were seeking. Following these meetings, a mediation session took place between all parties on the 28 Jan 2021 to look at possible outcomes pending the review hearing. Mr Watson stated that Mr Grant mentions that most of the nuisance complaints were before 22:00 which is correct appearing on page 144 of the Agenda Papers but this was specific complaint made by an office worker. Mr Watson assisted the Sub-Committee further by confirming that a noise abatement notice was served in 2018 as had been stated earlier, which is purely served on statutory nuisance. It is not served because there are continuous noise complaints. It is at a specific time the noise nuisance was notice. There were no breaches of the notice so there was no prosecution. In relation to a complaint by an office worker Mr Watson stated that noise affecting the office worker would have been a statutory nuisance. There were quite a few complaints of noise breakout. However, not all noise breakout is a nuisance. The Sub-Committee noted that there was a recurring theme of the issues here.

Mr Brown on behalf of Westminster (CAB) addressed the Sub-Committee. He stated that the licence holder is generally in agreement and that is why he went to the mediation session. The concerns surround the issues of the breaches of the terminal hour, breach of conditions and breach of coronavirus regulations. Mr Brown advised that there does seem to be an issue with the repetition of complaints. He added that both Premises are popular, and Mr Aksu should be given credit to that, but it does not outweigh the complaints. It is clear that everyone wants to see a popular well-run eatery rather than closed down premises and are not asking for revocation of the licence. We do believe some sanctions should be given. We largely agree with the approach of resolution in the documentation. In particular we agree with the removal of the DPS and restriction to off-sales.

Mr Brown requested that the Sub-Committee consider amendments to the conditions. He said that in relation to Condition 17 – residents feel 10 is too many and propose 6. In relation to Condition 31 – Variation of MC66 – losing the hours before 18:00.

Mr Brown stated that looking at a modest reduction to the hours and he would like the two premises to have the same hours. They do have different timings and conditions and feel these should be the same. He said that his proposal would be for a reduction to the terminal hours to be core hours.

Ulrike Schmidt in support of the Review addressed the Sub-Committee. Ms Schmidt advised that she knows the licence holder to be a hardworking and pleasant individual. However, the licence holder has not followed the social distancing rules and consequently has put lives at risks. She maintained that lots of people are gatherings in narrow pathways and was creating a hazard due to how overcrowded it was becoming. The Sub-Committee was advised that Local residents were having to make detours to avoid going near Berwick Street. Many of the concerns mentioned at the time proved accurate. Ms Schmidt advised that within days, Violets were giving out alcohol without it being ancillary to a meal, blaring out music and trading beyond their permitted hours. People gathering outside the premises – you could not distinguish what premises they were customers of. The licence holder was adding tables and chairs and claiming public highway as if it was part of his premises. It was stated that this encroachment happened well before the Covid-19 pandemic. The incompetence of the licence holder to manage the premises adequately is the reason why I fully agree with all conditions.

Jane Doyle in support of the Review addressed the Sub-Committee. Ms Doyle confirmed that she supported what the Council have said and the actions they have taken. She stated that on occasions she had been outside with the police and witnessed what has happened. There is loud music being played outside and is therefore in agreement with the hours being reduced to core hours.

Andrew Murray in support of the Review addressed the Sub-Committee. Mr Murray said that he had been friendly with the licence holder for many years. He said there seems to be broad agreement with the review itself. People should be free to support or object to reviews. Mr Murray said he was concerned that even with a great deal of redacting it was very obvious who he was from reading the additional submission. He said he was not concerned about himself, but worried about how this would affect other people. He said in the background section about myself, it is true about the number of children I have, number of rooms etc. However, A lot of the other facts are false. This may deter people from submitting representations. Mr Murray requested whether the submission can be removed.

At that point the Chairman sought advice from the Legal Advisor to the Sub-Committee. The Legal Advisor confirmed that the Council is a Data Controller for the purposes of Data Protection/GDPR requirements and any personal data linking a person to an individual should all be redacted. The Chairman on behalf of the Sub-Committee apologised for any personal information that may not have been properly redacted in the documentation. The Council does have robust procedures in place to ensure that this does not happen.

Due to some inappropriate comments being left in the Teams Chat facility the Legal Advisor reminded that those parties attending and participating were in a public hearing and were to be respectful at all times by observing the Sub-Committee rules and procedures. All parties were advised that the Chairman has the discretion to remove any person if they continue to be discourteous or cause offence in anyway.

Mr Murray continued with his submissions and advised the Sub-Committee that the hospitality at the Premises is great. However, it is a residential street and noise does impact people. Mr Murray said that he lived on floor 16 and you will be surprised at how much the noise still impacts us. Mr Murray said that he has

tolerated all sorts of issues and had concerns with the Mediterranean Café to continue trading due to the management. The breach of Coronavirus regulations was very serious. Also placing chairs out for people who were only meant to be taking away was really serious. Mr Murray said that he really wanted the business to continue but measures need to be put in place to satisfy the residents.

Mr Lawson in support of the Premises addressed the Sub-Committee. Mr Lawson advised that he was a local resident and lived in the centre of Soho. He said that he would like to start by correcting something Mr Murray just mentioned, he said table and chairs need to be taken in by 22:00 hours and this instead should have been 23:00 hours. Mr Lawson said that the Premises are very special to the local community. He added they are much more than a café bar/restaurant, they are a community asset. This is why this review has sparked such a level of interest. The licence holder is a long-standing member of our local community. He does go out his way to make the Premises inviting to us all. Mr Lawson stated that over the last year, he has seen a much stronger community spirit arising from Covid lockdowns from residents meeting on the alfresco tables in premises in Berwick Street. In terms of the noise complaints, Mr Lawson stated that from his own observations, and since the update of the southern end of Berwick Street, there has been an increase use of the cut through route. He felt that this has made the area safer. Mr Lawson stated that a lot of the noise has been blamed on the Premises and rather it could be the increase of people walking through the area. He said that the 2 premises are very long standing and have existed for the 30 plus years he has been living in Soho.

Turning to the proposed conditions Mr Lawson said that he did not think he could support some of them. In regard to condition 31 – substantial food after 18:00. He advanced the argument that a lot of the community spirit was created by being able to sit outside in the sunshine with a beer. If this is taken away from us, then people won't visit as they may not want a full meal. In terms of the staggering of the hours, this is a sensible thing to do so that people are staggered when leaving the Premises and would aid a proper dispersal.

Sonya Posavec, in support of the Premises addressed the Sub-Committee. Ms Posavec stated that she had known the licence holder for a long time and knew him to be a very kind and responsible man. She said that he always asks his customers what he needs to improve and was open to feedback from customers. Ms Posavec said that she did not believe he has been dismissive of any complaints and has taken them seriously. She said that he had even asked her what he should consider doing when he has received a complaint. Ms Posavec said all this man has done his whole life is to support the local community and that she had not seen anything out of the ordinary here. Ms Posavec stated that she would not want to eat or drink somewhere that is breaching any regulations. Ms Posavec stated that she had not experienced any of the nuisance or anti-social behaviour that had been complained of and this was confirmed by the fact that her windows are directly facing the Premises and have not been impacted by noise.

Mr Crossinggum in support of the Premises addressed the Sub Committee. Mr Crossinggum advised that he was not a resident of Soho but has known the

licence holder for many years. He said that he echoed the previous comments about how friendly he is and that the Premises is a well-run establishment.

Mr Crossinggum stated that he hoped the 2 premises can continue to operate and that the area would not be the same without these premises.

Mr Morgan in support of the Premises addressed the Sub-Committee. Mr Morgan said that he echoed a lot of what has been said about the licence holder, he said it is sometimes difficult to determine who is causing the noise nuisance. He regarded the licence holder to be very friendly and helpful. Mr Morgan also said that he did not like going to places where he felt challenged or uncomfortable. Mr Morgan advised the Sub-Committee that the picture that has been painted is not one he recognises on his visits to the Premises. Mr Morgan stated that this seems to be unfair on someone who is such a great asset to this community.

Sophie Scholl in support of the Premises addressed the Sub-Committee. Ms Scholl advised that she was a resident living only 15 metres away from the Premises. Ms Scholl said that Berwick street is known for its vibrant environment. Ms Scholl stated that the 2 premises were being actively managed during the pandemic period – from what I saw living there, I did see the licence holder asking people not to gather around and he did employ security. Social distancing was enforced, and his efforts should be recognised.

Daniel Hueskes in support of the Premises addressed the Sub-Committee. Mr Hueskes advised that he lives on Berwick Street, only 10 metres away from Violets and the Med Café. He said there is always a certain level of noise associated with this street. He mentioned an occasion where he happened to be walking past Berwick Street with police speaking to the licence holder and stressing that the people gathering outside were not customers of the Premises. Mr Hueskes said that there also seems to be a suggestion about the licence holder's ability to manage the Premises. He was the only one who hired a security guard to ensure Covid-19 measures were followed. There seems to be suggestions of people being awoken by the noise, how can you tell the noise was coming from the Premises? Mr Hueskes is not saying these complaints should not happen, but does not think the Premises should be singled out. He stated that noise can be heard, and it is not immediately apparent where it is coming from so it's important for the Sub-Committee to understand the dynamics of the road and should be looked at as a whole.

Mr Grant on behalf of the Licence Holder addressed the Sub-Committee. Mr Grant said that the Sub-Committee had heard a great deal of evidence but felt the need to put matters into some context. He accepted that the Sub-Committee had read the papers but that two Premises are being reviewed here. He said that he was under a duty to respond to all of the elements. Mr Grant said that Revocation is of course a power within the discretion of the Sub-Committee, however, no parties would seek to have this occur. Mr Aksu is not a perfect operator and he could improve his compliance and ability to control people especially through the pandemic. Mr Grant stated that the thrust of the authorities' position is fair in the circumstances. He stated that where official action is taken, Mr Aksu responds positively. He has complied with the abatement notice.

Mr Grant stated that in June 2020 he hired door supervisors to control the congregation of people. Within a week of this review application being launched, Mr Aksu voluntarily seized all off-sales and removed all tables and chairs in order to deal with direct the causes of this review. The Sub-Committee was advised that on the 16 Dec 2020 Mr Aksu voluntarily closed the Premises, and this was before the Government lockdown. He has now been closed for 2 months. He applied for tables and chairs licences in July 2020. Mr Grant said that on 4 December he did apply for a placement licence which is enforced until April 2021. On 21 December 2020 whilst the Premises were closed, he hired a trainer who trained all of his staff.

Mr Grant contended that the reality is this – there is a surge of people needing to socialise and congregate. The Premises became one of the Premises that residents visited as hot spot. Mr Aksu was not alone when not being able to control the crowds. He has been working 16 hours a day to try and control both Premises and to live up to the highest level of compliance. He could have done more and should have but wants to be given the opportunity to put things right. Mr Grant stated that 82-86% of residents are in favour of these Premises.

Mr Grant stated when it comes to noise complaints, only 2 related to incidents after 22:00 hours. There is no evidence for the hours to be reduced to core hours. He said that the Sub-Committee has heard evidence from the Police that the Premises do not attract violent behaviour. The outcome in this case is broadly agreed by all Responsible Authorities, the Licence Holder, and the local residents.

Mr Grant advised that Mr Aksu has not sufficiently been able to control both of the Premises as this is too much work. However, in response he would like to remove himself as DPS and would like to hire a new experienced DPS. He will engage with the Police to see if this DPS is suitable. The Police are the only person that can reject a DPS.

Mr Grant commented upon the Conditions for both Premises and drew the following to the attention of the Sub-Committee:

Mediterranean Café Conditions

1. Conditions 1 - 2 – are already on the current licence.
2. Condition 13 – Deals with the noise. Primary issue with the noise complaints over the last few years.
3. Condition 3 – CCTV – I have been asked by PC Lewis to insert at line 4. *'The CCTV shall cover the external table area'*.
4. Condition 17 – Mr Brown – we agree to limit the smokers outside to 6 persons.

Violets Conditions

1. Condition 1-3 - are the same as above.
2. Condition 13-21 and Condition 24- 31 and condition 33 are all brand new conditions.
3. Condition 13 – same CCTV condition as above and should include the amendment.

4. Condition 24 – Smokers to be limited to 6 persons
5. Condition 31 – Save for take away food for immediate consumption off the premises before 18:00.

The Legal Advisor to the Sub-Committee also confirmed with the parties the proposed amendments made to the conditions.

Mr Grant stated that in relation to the closing times and core hours – if you look at the Violets licence (proposed condition 19). The effect of this condition is to slice off 30 minutes to the terminal hour. It would put the hours of both premises the same and this was noted by the Sub-Committee.

Mr Aksu addressed the Sub-Committee and stated that all staff are going to have regular training. He said that he was struggling to handle the long hours in running the Premises but from now on he will be more careful and be focused on delivering better management practices. Mr Aksu said that a new DPS is to be appointed and that the Premises is currently recruiting for that position. Mr Aksu did state that the last 6 months of the Covid Period had been difficult and that he has learnt a lot. He admitted that he had taken his eye off the ball and things had deteriorated but new staff are joining which will help and free up his time.

REASONS OF THE SUB-COMMITTEE

The Sub-Committee considered the application for Review by the Licensing Authority Service a very serious matter indeed. It concluded having heard the evidence that the Licence Holder failed to manage his Premises in an efficient and effective manner that would help lead to the promotion of the licensing objectives. The Sub-Committee were given examples where the MPS had attended the Premises and the Licence Holder could not give reasonable explanation as to why the Premises were trading beyond the permitted hours granted by the licences and why sales of alcohol had taken place. The Sub-Committee has to take a dim view as this practice fails to promote the licensing objectives. It was clear that despite being offered advice time and time again by the Responsible Authorities Mr Aksu fell well below the required standard of an experienced Operator. The Sub-Committee sympathises that at the moment these are trying times for the hospitality sector due to the current Covid-19 pandemic but this is still even more reason why premises should operate their premises well and in accordance with the promotion of the licensing objectives.

The Sub-Committee's role is to ensure that the Premises are adhering to its licensing conditions and the promotion of the licensing objectives and to establish how best that is to be achieved going forward and find solutions where possible. It was noted that the Licence Holder had a great deal of support from local residents and was impressionable with the Soho community and considered an Asset given the number of years of operation from the Premises. However, this does not detract from the fact that he must behave responsibly and run the Premises well. This approach does not make proper commercial sense. An Operator when realising matters are going wrong cannot simply bury their head in the sand and think that matters will go away without seeking the necessary professional advice to help improve the running of the business.

The Sub-Committee noted that the licence holder and his staff had undertaken recent training provided by an external trainer and was persuaded that the proposed measures to turn the practices of the business around would be implemented as soon as possible. This was confirmed that a new DPS would be appointed should the licence be allowed to continue.

The Sub-Committee realises its powers under the Act are wide but has to take a balanced and proportionate approach when determining the individual merits of the matter. In this respect the Sub-Committee had regard to paragraphs 11.1 – 11.29 of the Home Office Guidance, in particular paragraph 11.20 which states

“In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review”.

The Sub-Committee did not feel that revocation of the licence was a proportionate and appropriate step it should take in this matter given the consensus of opinion by all parties that this should not happen. Instead, it decided that the licence should be suspended pending the removal of the current DPS Mr Aksu until such time as a new DPS is found bearing in mind that any suspension cannot last for more than 3 months in any event. Mr Grant advised that the Premises was closed and had been since December of last year so any suspension should reflect this time period.

The Sub-Committee accepted the various undertakings given by Mr Aksu when he was questioned regarding the various improvements and staff changes, he would implement in the running of the Premises going forward that would promote the licensing objectives as well as following the conditions on both licences in order that they are maintained. This gave the Sub-Committee confidence and reassurance that he had taken on board the serious nature of the matter and was prepared to change matters otherwise his failure to do so could have devastating consequences long term for the Premises. The Sub-Committee acknowledged and accepted that he had spent a number of years building the business to what it was today so that it was successful.

The Sub-Committee noted that both Premises are popular and have done a great deal for the community so as to foster good relations with local residents and customers.

The Sub-Committee welcomed his personal guarantee that he would work productively with the Responsible Authorities in order that good working relationships are maintained.

The Sub-Committee considered the proposed Conditions offered which would negate the concerns raised by the objectors and ultimately have the effect of promoting the licensing objectives. The Sub-Committee was of the view that the removal of Mr Aksu as the current DPS, a suspension of the licence and imposing new conditions by bringing the licence up to date from an enforcement perspective was appropriate and proportionate and would help promote the licensing objectives in particular the public nuisance licensing objective.

THE FOLLOWING CONDITIONS IN ADDITION TO THE MANDATORY CONDITIONS APPLICABLE TO THIS TYPE OF APPLICATION WERE IMPOSED BY THE COMMITTEE AFTER A HEARING:

- ***Suspension with immediate effect of the Premises Licence until an application for the variation of the Designated Premises Supervisor has been granted. (This can only be for a period not exceeding 3 months from the date of this Decision)***
 - ***Removal with immediate effect of the Designated Premises Supervisor, Mr Ali Aksu.***
1. The basement bar counter will be used as a servery only.
 2. Loudspeakers shall not be located in the entrance lobby or outside the premises building. They shall also not be located or attached in any way as to produce music which would emanate from the venue.
 3. 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 in the vicinity.
 4. The number of persons permitted on the premises at any one time (excluding staff) shall not exceed: Ground Floor - 30 persons Basement - 30 persons.
 5. Substantial food and non-intoxicating beverages shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
 6. No amplified music shall be played on the premises.
 7. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
 8. No striptease, no nudity, and all persons on the premises to be decently attired at all times.
 9. Any entertainment, performance, service, or exhibition involving nudity or sexual stimulation which would come within the definition of a sex establishment in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Greater London Council (General Powers) Act 1986 (whether or not locally adopted), shall not be provided.
 10. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
 11. No rubbish, including bottles, shall be moved, removed, or placed in outside areas between 23:00 hours and 08:00 hours.
 12. No deliveries to the premises shall take place between 23:00 hours and 08:00 hours on the following day.
 13. 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 including the external table area will be covered enabling full 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 preceding 31-day period.

14. 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 absolute minimum of delay when requested.
15. There shall be a personal licence holder other than Mr Ali Aksu on duty at all times when the premises are authorised to sell alcohol.
16. 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 a PASS Hologram.
17. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall not be permitted to take drinks or glass containers with them.
18. All emergency exit doors shall be available at all material times without the use of a key, code, card, or similar means.
19. The consumption of alcohol on the premises shall cease and all customers to be off the premises no later than 30 minutes after the end of the permitted hours for the sale by retail of alcohol on the premises.
20. All sales of alcohol for consumption off the premises shall be in either: (a) bottles of wine in sealed containers only, and shall not be consumed on the premises or (b) consumed by persons who are seated in an area appropriately authorised for the use of tables and chairs on the highway and bona fide taking a substantial table meal there, and where the consumption of alcohol by such persons is ancillary to taking such a meal, and where the supply of alcohol is by waiter or waitress service only.
21. A full itemised list of all purchases shall be provided to customers. The correct date and time of service shall be included. Copies of this list shall be made available upon request by an authorised officer of the City Council or the Police.
22. 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.
23. All windows and external doors shall be kept closed after 21:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.
24. Patrons permitted to temporarily leave and then re-enter the premises, e.g., to smoke, shall be limited to 6 persons at any one time.

25. No waste or recyclable materials, including bottles, shall be moved, removed from, or placed in outside areas between 23.00 hours and 08.00 hours on the following day.
26. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 08.00 on the following day.
27. All new members of staff responsible for selling or supplying alcohol shall receive training in the Licensing Act 2003 in terms of the licensing objectives, offences committed under the Act and conditions of the premises licence.
28. All staff responsible for selling or supplying alcohol shall receive refresher training in the Licensing Act 2003 at intervals of no more than 12 months.
29. Written records of staff training in the Licensing Act 2003 shall be retained and made available to police and authorised officers of the Licensing Authority on request.
30. 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.
31. After 18:00 hours 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 takeaway service of food or drink for immediate consumption,
 - (v) which do not provide any takeaway 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. Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.
32. Notwithstanding the condition above, alcohol may be sold for consumption without a table meal or by waiter/waitress service for persons attending a pre-booked private function or event to which members of the public are not admitted. For all pre-booked private functions or events:
 - I. Alcohol shall only be sold for consumption by persons attending a pre-booked and bona fide private function or event to which members of the public are not admitted. A register of people attending the event shall be kept at the premises and made available for immediate inspection by police or an authorised officer of the council;

- II. There shall be no more than 26 days per annum and a written record shall be kept at the premises be made available for inspection by police or an authorised officer of the Council;
 - III. May only take place in the basement;
 - IV. Shall end and persons shall have left the premises by 22:30 hours Sunday; 23:30 hours Monday to Thursday and 00:00 Friday and Saturday;
 - V. Must be booked at least 24 hours in advance; and
 - VI. Substantial food shall be made available and provided at all times.
33. An incident log shall be kept at the premises, and be made available on request to an authorised officer of the City Council or the Police, which will record the following:
- a. all crimes reported to the venue
 - b. 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
 - i. any faults in the cash register or payment machines

INFORMATIVE

The Licence Holder is recommended to obtain independent advice as to the running of a Premises having regard to the Licensing regime under the Act to help assist him in his understanding of the licensing objectives and how in turn that is to be reinforced in the day to day running of the Premises to include management, training of staff, and compliance with conditions.

The Licensing Sub-Committee
18 February 2021

2. 3.00 PM: MEETING TO BE RECONVENED IF THE BUSINESS OF THE SUB COMMITTEE IS NOT CONCLUDED BY 2.00 PM.

As the Sub Committee had concluded its business by 1.00 PM, there was no requirement for the Sub Committee to adjourn the meeting and reconvene in the afternoon.

The Meeting ended at 1.00 pm

CHAIRMAN: _____

DATE _____

