



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (4)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (4)** held on **Thursday 27th May, 2021**, This will be a virtual meeting.

Members Present: Councillor Karen Scarborough, Councillor Susie Burbridge and Councillor Rita Begum.

1. MEMBERSHIP

1.1 THERE WERE NO CHANGES.

2. DECLARATIONS OF INTEREST

2.2 There were no declarations of interest.

2. 10 AM: THE CUCKOO CLUB - PREMISES LICENCE VARIATION

2.1 THIS APPLICATION WAS DEFERRED.

3. 1 PM: BALANS CAFE –PREMISES LICENCE VARIATION

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 4 **Thursday 27 May 2021**

Membership: Councillor Karen Scarborough (Chairman), Councillor Susie Burbridge and Councillor Rita Begum

Officer Support: Legal Advisor: Vivienne Walker
Policy Officer: Kerry Simpkins
Committee Officer: Sarah Craddock
Presenting Officer: Karyn Abbot

Application for Variation of Premises Licence – Balans Café 34-34A,34B Old Compton Street, London W1D 4TR and 23A-23B Frith Street, London W1D 4TP – 21/00693/LIPV

Premises

Balans Café
34 Old Compton Street
London
W1D 4TR

Applicant

Running Hare Restaurants Ltd
Represented by Mr Thomas O'Maolieoin (Thomas and Thomas)
David Taylor and Kieran Crosby (representing Running Hare Restaurants Ltd)

Cumulative Impact Area

West End

Ward

West End

Summary of Application

This is an application for a variation of a Premises Licence under the Licensing Act 2003 ("The Act"). The Premises are comprised of 34-34A and 34B Old Compton Street and 23A-23B Frith Street being the licensed Premises ("The Premises"), this effectively means that there are three units in the Premises. The Premises operate as a restaurant and café. The Premises have had the benefit of a Licence (20/06321/LIPT) since 2015. Currently 23-23B Frith Street are not used by customers after midnight.

The purpose of the application was to amalgamate the hours for Late Night Refreshment in all parts of the Premises Monday to Sunday 23:00 to 05:00 hours and to extend the hours for sale of alcohol in all parts of the Premises Monday to Saturday 10:00 to 01:00 hours and Sunday 12:00 to 01:00 hours.

Proposed Activities and Hours

To amalgamate the hours for Late Night Refreshment in all parts of the Premises

Monday to Sunday 23:00 to 05:00

To extend the hours for Sale of Alcohol in all parts of the Premises

Monday to Sunday 10.00 to 01:00 and Sunday 12:00 to 01:00

Representations Received

- Metropolitan Police Service (PC Adam Deweltz)
- Environmental Health Service ("EHS") (Maxwell Koduah)

- Licensing Authority (Michelle Steward)
- The Soho Society and two local residents objected to the application
- Five local residents in support of the application

Summary of issues raised by objectors

- The application as presented would have the likely effect of causing an increase in Public Nuisance and may affect Public Safety within the area. The application is also not within the Council's Core Hours Policy.
- The surrounding area already experienced noise and disruption from the many licensed premises in the vicinity and the granting of this application would only exacerbate the current issues arising.

Policy Position

Under policy HRS1 applications for hours within the Council's core hours policy would generally be granted, subject to not being contrary to other policies in the Statement of Licensing Policy.

DECISION

Having carefully considered the committee papers and the submissions made by all of the parties, both orally and in writing, **the Committee has decided**, after taking into account all of the individual circumstances of this case and the promotion of the four licensing objectives to grant the application subject to additional and amended conditions and an amendment to the hours requested.

The Sub-Committee heard a description of the proposal from Mr O'Maolieoin. The Sub-Committee was advised that the Premises comprised of 34-34A and 34B Old Compton Street and 23A-23B Frith Street being the licensed Premises ("The Premises"), which effectively meant that there were three units in the Premises. The Sub-Committee noted that the Premises operated as a restaurant and café and had had the benefit of a Licence (20/06321/LIPT) since 2015.

Mr O'Maolieoin explained that various areas of the current licence came about by the way the original premises at 34 Old Compton Street had been expanded into 34B Old Compton Street and 23 Frith Street. The Sub-Committee noted that the current Premises Licence permitted various timings for the different parts of the Premises and that 34A Old Compton Street and 23-23B Frith Street were not used by customers after midnight. Licensable activities after midnight would only be available at 34-34A Old Compton Street.

Mr O'Maolieoin advised that the applicant wished to have just one address (34 Old Compton Street) and one licence and set of conditions for the Premises. The Sub-Committee noted that the purpose of the application was to amalgamate the hours for Late Night Refreshment in all parts of the Premises and to extend the hours for sale of alcohol in all parts of the Premises

Mr O'Maolieoin stated that local residents had written in support of the Premises as it had not caused noise nuisance or issues in the area. He outlined the conditions that had been agreed with the Responsible Authorities and that were attached at pages 4 to 6 of the additional papers. Mr O'Maolieoin, in particular, highlighted the following conditions that would be added to the Premises Licence to alleviate the residents and Responsible Authorities concerns as well as promote the four licencing objectives:

- a personal licence holder would be on duty on the premises at all times when alcohol was being sold
- the Premises would have a Dispersal Policy
- no alcohol would be consumed more than 30 minutes after the permitted terminal hour for the sale and supply of alcohol
- there would be at least 1 SIA door supervisor on duty from 23:00 until 05:00
- that the model restaurant condition 66 would remain on the licence

Mr O'Maolieoin advised that the Premises must demonstrate that it would not add to existing cumulative impact however it did not need to demonstrate exceptional circumstances as it was remaining as a restaurant. He further advised that there had been no complaints about noise nuisance. He then highlighted that the hours of operation and capacity would remain the same so there would be zero cumulative impact and referred to the Licensing Authority's view of the policy 'that cumulative impact in the Cumulative Impact Areas arises mainly from the numbers of pubs and bars, music and dance premises and fast-food premises.

In response to questions from the Sub-Committee, Mr O'Maolieoin advised that the dispersal policy had already been presented to the Licensing Authority and the suggested condition from the Police regarding the 30 minutes of drinking up time was so customers could not sit drinking alcohol on the premises all night. He confirmed that the SIA would be on duty until all the customers had left the Premises and would also help with limiting the number of people smoking outside of the Premises. He confirmed that the Premises already operated as a restaurant with a capacity of 50 patrons with alcohol being ancillary to a substantial table meal and this would not change.

The Sub-Committee referred to the Premises' floor plans and discussed the layout, entrance and exit points and staffing numbers. For the avoidance of any confusion, the Applicant agreed to provide a revised plan for approval of the Premises to the Licensing Authority prior to the issuing of the varied Premises Licence.

Mr Koduah, representing Environmental Health Service, confirmed that the Premises had not received any public nuisance complaints, that the number of persons permitted in the Premises at any one time (excluding staff) should not exceed 50 persons and that a condition regarding queuing (wording taken from the dispersal policy) should be added to the Premises licence if the application was granted. He suggested that no more than 5 smokers should be allowed to leave and re-enter the Premises at any one time.

Ms Steward, representing the Licensing Authority, explained that the Licensing Authority had maintained their representation on policy grounds (CIPI and HRS1) as

the application was requesting hours outside of the Council's core hours policy. She confirmed that the Licensing Authority welcomed the dispersal policy and the additional conditions proposed, however the applicant needed to demonstrate in accordance with CIPI how the application did not add to cumulative impact in the West End stress area. It is therefore for the Sub-Committee to decide on this application based on the evidence to determine whether the Applicant has proven exceptionality as required by the terms of the SLP policy.

PC Adam Deweltz, representing the Metropolitan Police, explained that the Police had maintained their representations on the grounds of crime and disorder and to support the Council's Licensing Policy. He advised that Old Compton Street was saturated with Premises so allowing Balans to extend their hours would add to the Cumulative Impact in the area and have the potential to increase crime and disorder due to vulnerable intoxicated people picked out for violent and sexual crimes. He advised that he welcomed the dispersal policy, the presence of the SIA and that the Premises was continuing to operate as a restaurant. He further advised that the proposed conditions went some way to alleviate the Police's concerns however the Police remained concerned with the application.

In response to questions, Mr O'Maolieoin advised the Sub-Committee that the Applicant was happy to include the suggested conditions regarding capacity, smoking and queuing on the Premises Licence.

Mr Brown of the Citizens Advice Bureau, representing the Soho Society and one resident, highlighted that the location of the Premises was on a very busy corner which made it a hot spot for crime and disorder. He advised that the Soho Society did not oppose Late Night Refreshment up to midnight or an extension in line with the City Council's 'core hours' for those parts of the Premises which did not benefit from 'core hours' at present. However, the Soho Society did oppose to any time above or beyond core hours for the sale of alcohol as their biggest concern was the increase in alcohol sales and the potential for an increase in crime and disorder in the area. He emphasised that the representations were no reflection on the operating of the premises but the saturation of licenced premises in the Old Compton Street area.

Mr Brown referred to page 14, paragraph 6.4 of his additional information and emphasised and read out 'When considering applications for the sale of alcohol after 12am where representations are made on the grounds of prevention of crime and disorder or public nuisance the council will take into account the increased likelihood of crime and disorder and the greater disturbance from activities late at night'. He added that an extension in hours would allow more people to drink late at night which would add to the cumulative impact in the area as it would attract people to that corner of Old Compton Street. He stated that if the application were to be granted the Soho Society would welcome the 30-minute drinking up condition being included on the Premises Licence.

Ms Jane Doyle, representing the Soho Society, advised that she lived on Frith Street and emphasised that Old Compton Street was the number one crime spot in Soho. She advised that it was difficult to understand the operation of the Premises, the application was against the Council's Licensing Policy and if granted would increase

noise nuisance and potentially crime and disorder in the area. She added that she would prefer to see four, not five, people outside smoking at any one time.

Ms Saule Juknevičiute, a local resident, expressed that she had lived in Frith street for six years and Soho was already very busy and saturated with Licensed Premises. She outlined that there was often street partying along with the problems associated with it. She emphasised that she was not against the sale of food but was opposed to the extension to the sale of alcohol which would increase the stress of residents and the work carried out by the Police.

In response to questions from the Sub Committee, the Applicant advised that there were no patrons vertically drinking at the bar as all alcohol was ancillary to a substantial table meal. He further advised that the table and chairs situated outside the Premises ceased at 11pm and agreed an undertaking to submit a revised Premises plan. He highlighted that five local residents had made representations in support of the application.

The Sub-Committee then briefly discussed with Mr O'Maolíeoin and Mr Brown the possibility of amending the hours for the sale of alcohol to 00:30 hours.. Mr Brown advised that the objectors remained opposed to any change other than to Core Hours. The Applicant decided not to amend his application.

The Sub-Committee carefully considered the application and noted that the Premises was located within the West End Cumulative Impact Area and therefore the Applicant had to demonstrate that it would not add to cumulative impact in the West End stress area. The Sub-Committee considered that the Premises would be operating as a restaurant and alcohol would be ancillary to a substantial table meal. The capacity of 50 patrons (excluding staff) at the Premises at any one time would remain the same. The conditions agreed with the Responsible Authorities were considered appropriate and this included having 30 minutes drinking up time, a SIA on duty until all the patrons had left the Premises and a dispersal policy. A further agreed condition included no queuing outside of the Premises.

The Committee noted that no noise complaints had been made against the Premises. Whilst some local residents expressed concerns about the noise that may be caused, the Committee concluded that the lack of previous complaints alongside the dispersal policy and the additional conditions that would alleviate residents' concerns.

The Committee decided that the Applicant had provided valid reasons as to why the granting of the application would not add to negative cumulative impact in the Cumulative Impact Area and would promote the licensing objectives. Therefore, having taken into account all the evidence (with consideration being given to the representations received from local residents), the Sub-Committee was satisfied that the application was suitable for the local area and had addressed the concerns raised. The applicant had demonstrated that the application was appropriate, with the conditions proposed restrictive enough to ensure that it promoted the licensing objectives and would allay the fears of local residents. The Sub-Committee therefore granted the application accordingly.

The application is granted as follows:

1. **To grant permission for Late Night Refreshment** Monday to Sunday: 23:00 to 05:00 hours.
2. **To grant permission for the Sale of Alcohol** Monday to Saturday: 10:00 to 00:00 hours and Sunday: 12:00 to 00:00 hours.
3. The Premises address on the varied Licence shall be known as 34-34A Old Compton Street, London W1D 4TR.
4. The areas known as 34b Old Compton Street and 23a-23b Frith Street are not licensed beyond 10:00 to 23:30 Monday to Thursday, Friday to Saturday 10:00 to 00:00, Sunday 12:00 to 22:30.
5. That the varied Licence is subject to any relevant mandatory conditions.
6. That the existing conditions on the Licence shall apply in all respects except in so far as they are varied by this Decision.
7. That the varied Licence is subject to the following additional conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

The application is granted subject to the following conditions in addition to the Mandatory conditions applicable to this type of application:

Conditions imposed by the Committee after a hearing

8. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises are 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.
9. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
10. 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 (save for consumption at tables and chairs outside the premises granted by a temporary licence under the City of Westminster Act 1990)

(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.

11. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
12. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 50 persons.
13. No draught beer shall be sold or supplied at the premises.
14. The sale and supply of alcohol for consumption off the premises shall be restricted to alcohol 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.
15. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
16. 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.
17. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
18. No waste or recyclable materials, including bottles, shall be moved, removed from, or placed in outside areas between 23.00 hours and 07.00 hours on the following day.
19. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 07.00 on the following day.

20. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.
21. A Challenge 21 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
22. No deliveries to the premises shall take place between 23.00 and 07.00 on the following day.
23. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police, 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 or searching equipment or scanning equipment
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.
24. There shall be a personal licence holder on duty on the premises at all times when the premises are authorised to sell alcohol.
25. A copy of the premises Dispersal Policy will be available at the premises for inspection by a Police Officer and/or an authorised Officer of Westminster City Council.
26. No alcohol shall be consumed more than 30 minutes after the permitted terminal hour for the supply of alcohol.
27. The premises shall ensure that there is at least 1 SIA door supervisor on duty from 23:00 hours until all patrons leave the Premises.
28. 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.
29. All windows and external doors shall be kept closed after 23:00 hours except for the immediate access and egress of persons.
30. All outside tables and chairs shall be rendered unusable by 23.00 hours each day.

31. No fumes, steam or odours shall be emitted from the licensed premises so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated.
32. 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.
33. Patrons shall not be permitted to queue outside the Premises.
34. There shall be no off sales of alcohol from the Premises after 23:00 hours.
35. Patrons permitted to temporarily leave and then re-enter the premises, e.g., to smoke shall be limited to 4 persons.
36. The variation to the Premises Licence will not take effect until the revised plan of the entire premises is approved by the Licensing Authority.

INFORMATIVE

The Solicitor for the Applicant gave an Undertaking to submit to the Licensing Authority a revised plan of the area licensed for the consumption of alcohol to be shown hatched. He confirmed that the hatched area will then be known as 34-34A Old Compton Street, London W1D 4TR.

This is the Full Decision of the Licensing Sub- Committee which takes effect forthwith.

**Licensing Sub-Committee
27 May 2021**

The Meeting ended at 4.40 pm