



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (2)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (2)** held on **Thursday 10th June, 2021**, This will be a MS Teams virtual meeting.

Members Present: Councillors Tim Mitchell (Chairman), Susie Burbridge and Aziz Toki

1. MEMBERSHIP

1.1 THERE WERE NO CHANGES OF MEMBERSHIP.

2. DECLARATIONS OF INTEREST

2.1 THERE WERE NO DECLARATIONS OF INTEREST.

1 Order of Proceedings

2. 10.00 AM: THE LONDONER HOTEL, 32 LEICESTER SQUARE, LONDON WC2H 7DX

2.1 THIS APPLICATION WAS DEFERRED TO A LATER DATE.

3. 1.00 PM: NO. 1 MARSHALL STREET LONDON W1F 9BA

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 3

Thursday 10 June 2020

Membership: Councillor Tim Mitchell (Chairman) Councillor Susie Burbridge and Councillor Aziz Toki

Application for a New Premises Licence in respect of Third Man Records 1 Marshall Street London W1F 9BA 21/01208/LIPN

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

FULL DECISION

Premises

Third Man Records 1 Marshall Street London W1F 9BA

Applicant

Ms Camille Augarde represented by Mr Alun Thomas.

Cumulative Impact Area

The Premises is within the West End Cumulative Impact Zone.

Ward

West End.

Summary of Application

The Sub-Committee has determined an application for a New Premises Licence under the Licensing Act 2003 ("The Act"). The Premises intends to trade as a record retail shop on both the ground and basement floors. The Applicant has applied for the Retail Sale of Alcohol (On and Off Sales) Monday to Saturday 10:00 to 21:00 hours and Sunday 12:00 to 21:00 and Opening Hours Monday to Saturday 08:00 to 21:00 and Sunday 10:00 to 21:00 hours.

The Sub-Committee was informed that there would be no direct access from the street to the basement area of the Premises. The provision of licensable activities will be ancillary to the main function of the Premises as a record retail shop. The Premises are within the West End Ward and West End Cumulative Impact Zone.

The Sub-Committee noted that the Applicant would be selling its own original craft beer (4.2%) ABV with a very limited supply on other alcohol this could also include the applicants branded Gin. The merchandise would be its own branding consisting of records and books. The Applicant confirmed that there is to be no food offer.

The Sub-Committee noted also that no more than 15% of the sales area is to be used at any one time for the sale, exposure for sale, or display of alcohol and that the storage of beer in sealed containers was likely to be upstairs behind the counter.

The Sub-Committee also noted the following submissions in support of the application from the Applicant: -

- The number of pre-book private events had yet to be confirmed, however, this was likely to be no more than up to two events per month which included poetry readings.

- Promotions would primarily take place in the basement area of the Premises together with live music the latter being deregulated and not a licensable activity for the purposes of this application.
- As per conditions 18 and 21 below the capacity figure for the Premises is to be discussed upon inspection of the completed works by the Environmental Health Service although the Sub-Committee did note that the basement could hold up to 60 patrons.
- Alcohol would be sold to persons that are seated and this is reflected in Condition 20 below along with off sales of alcohol to be in sealed containers specified below also at Condition 20.

Activities and Hours applied for

Sale by retail of alcohol [On and Off sales]

Monday to Saturday 10:00 to 21:00 hours

Sunday 12:00 to 21:00 hours

Seasonal Variation: None

Hours premises are open to the public

Monday to Saturday 08:00 to 21:00 hours

Sunday 10:00 to 21:00 hours

Seasonal Variation: None

Representations received

- Metropolitan Police Service (PC Cheryl Boon) Withdrawn.
- Environmental Health Service (Sally Fabbriatore)
- The Licensing Authority (Michelle Steward)
- 6 local residents all citing concerns regarding public nuisance and crime and disorder.

Summary of issues raised by objectors

- The Supply of Alcohol may have the likely effect of causing an increase in Public Nuisance in the cumulative impact zone and may impact on Public Safety.
- The venue is situated within the Cumulative Impact Area and it is our belief that if granted the application would undermine the Licensing Objectives in relation to The Prevention of Crime and disorder.

- The Licensing Authority encourages the applicant to provide further submissions as to how the premises will not add to cumulative impact in the West End cumulative impact area, in accordance with policy PB1 and CIP1.
- This is a residential street, with many occupants in houses and flats. We already have to deal with the noise and crowds that mingle here and pass by due to numerous licensed premises that are directly on this stretch such as the Old Coffee House Pub, or within a few paces, including Sticks N Sushi, Yeni, Bob Bob Ricard, Inko Nito and the Sun and Seven Cantons However, at least the current licensed premises are run by professionals in the restaurant and pub sector who have some respect for the neighbourhood.
- As a neighbour around the corner who already has to deal with crowds of drunk people in Soho which will be exacerbated by Westminster's plan to turn Soho into a 24/7 entertainment centre post pandemic by extending alcohol licenses, I don't see why retail units need to sell alcohol with plenty of existing pubs and bars. This would also seem to be counter-productive to supporting current establishments in Soho.

Policy Position

Policies HRS1, CIP1, OS1 (B) and PB1 (B) apply under the City Council's Statement of Licensing Policy ("SLP").

DECISION AND REASONS

Mr Kevin Jackaman presenting officer confirmed that this was an application for a new premises licence for the premises at **1 Marshall Street London W1F 9BA. The application has been made by Camille Augarde. The applicant has applied for the supply of alcohol from 10.00 to 09:00 hours Monday to Saturday and 12:00 to 09:00 hours Sunday. Full details can be found at page 52 on the report. Representations have been received by the EHS (Mr Nevitt) and the Licensing Authority (Ms Abbott). There have also been 6 representations received by interested parties none of whom are in attendance. One representation was withdrawn following the agreement of additional conditions. In addition, the Metropolitan Police Service has also withdrawn its representation following the agreement of conditions.** The Premises is situated within the West End ward and fall within the West End CIA. An additional written submission had been received from the applicant and this was circulated in advance to the Sub-Committee.

Mr Alun Thomas Solicitor acting on behalf of the applicant addressed the Sub-Committee. Mr Thomas stated that the proposed use is as a retail record shop. There was some secrecy in terms of the actual brand due to commercially sensitive reasons. The Premises will be a record shop selling records, branded merchandise. It is very popular in the US and the applicant is trying to share that concept here in the UK. In terms of the sale of alcohol it will be one brand of alcohol, a beer of 4.2% abv which is dispensed in the basement and by way of off-sales in sealed containers. Mr Thomas advised that the Premises will only operate during normal retail hours until 21:00 hours and conditions have been agreed with the EHS. It was noted by the Sub-Committee that the applicant had sent out a stakeholder

consultation letter and as a result of that, one interested party has withdrawn its representation.

The agreed conditions include that the provision of licensable activities is ancillary to the use of the retail shop. There is no self-service of alcohol. The supply of alcohol on the Premises shall only be given to customers that are seated except when there is a private function. Mr Thomas stated that there would be no hiring out of the Premises by the applicant but instead will be the sort of functions ancillary to a record shop. The functions will primarily take place in the basement and people leaving the premises to smoke are not permitted to take any drinks with them. He confirmed also that it is a seated venue except if there is an event. The capacity of the basement is 30 which will be confirmed upon works in due course.

Mr Thomas advised that the interested parties had been written to and the following issues remain: -

- The need for a retail store, this is not a licensable objective.
- The second issue raised was competition to a neighbouring business - again this is not a licensable function of objection.
- The cumulative impact of street drinking – we are limited to the one brand and the off-sales will all be in sealed containers.
- We have restricted deliveries to the usual model condition between 11-8pm. I hope this concern is more or less satisfied.
- We have agreed a condition in relation to servicing and collection of waste.

Mr Thomas then went onto address the issue of policy. He advised that the application came within policy in terms of the off sales. In so far as the application being an exception under PB1, Paragraph F84 on page 91 of the SLP provides as follows: -

“The recent cumulative impact assessment identified that the incident rates associated with cumulative impact increase rapidly from 9pm. Although there is a general presumption to refuse applications of dancing venues/alcohol venues an exception may be permitted to applications which have a terminal hour of no later than 9pm and meet the other hours”

Mr Thomas said that dealing with the point of exceptionality he was of the opinion that the 9pm criteria was met, and alcohol is only served to customers seated or served during a prebooked event on the premises and off the premises in sealed containers. There is an ancillary condition so the use can only be of that of a retail shop. He went onto explain that there is a relatively small capacity in the basement and emphasised that this was similar to the previous policy that recognised retail shops generally were an exception where they met similar criteria to these. The new policy does not set out what those exceptional reasons may be.

Mr Thomas confirmed that capacity and the works condition will be discharged upon inspection and this cannot be done yet as the fit out hasn't been finalised due to the current situation with Covid. There is only one concern raised about sound escaping. As it is a record shop, we want to sell records, there will be music both in the basement and on the ground floor. These activities are subject to the exemption in the Live Music Act and the level of music on the ground floor will be consistent with what you would consider as background music. If there is a function in the basement, then the music will be louder, but we are doing a substantial amount of acoustic works to reduce any noise escaping. These works can be inspected by Mr Nevitt of the EHS in due course.

Mr Nevitt appearing on behalf of the EHS addressed the Sub-Committee. Mr Nevitt said that the reason why EHS have maintained a representation was because there are representations from local residents, and we wanted to ensure their concerns were addressed. I understand they are not present today.

Mr Nevitt advised that the applicant has agreed to a number of EH conditions and these have already been confirmed by Mr Thomas. It is true to say that the basement does have good acoustic integrity, but this will be checked at final inspection once the works are finished. The capacity will also be assessed accordingly, and we are happy to check the smoking area too. The playing of live and or recorded music for the hours applied for are deregulated so they do not need to seek any permissions for those. Mr Nevitt stated that dealing with Off-sales Model Condition 29 could be imposed on the licence should the Sub-Committee grant the application.

Mr Nevitt stated that he would leave the Licensing Authority to comment specifically upon the policy considerations but did refer to the previous 2016 policy which made some practical comments about these types of applications. It did recognise where alcohol is ancillary to other uses of the premises and not associated with sustained or high alcohol consumption till later hours may not be likely to add to cumulative impact. There was some commentary in the previous policy that alcohol off-sales is not the main activity and the shop activity is more likely to be the main activity and 20:00 hours was the time when that was deemed to be the appropriate closing time which has now been moved to 21:00 hours by the new SLP.

Mr Nevitt stated that the proposed personal condition limiting the main activity of the Premises as a record retail shop with alcohol as ancillary to the main use maybe acceptable in terms of cumulative impact.

Ms Abbott appearing on behalf of the Licensing Authority addressed the Sub-Committee and acknowledged that the Premises is a retail record shop who want a license for on and off sales of alcohol. Ms Abbott advised that the application does fall under Policy PB1 and Para F84 on page 91 of the SLP as pointed out by Mr Thomas would apply. Ms Abbott confirmed that the applicant has agreed various conditions with EH and the Police and has agreed to condition 9. Ms Abbott concluded by saying that the applicant does need to address the exceptional circumstances to allow the Sub-Committee to be satisfied that this application satisfies Policy PB1.

The Sub-Committee realises that each application must be considered on its individual merits. It was satisfied that the Premises would be restricted to a record retail shop. It welcomed the personal condition the applicant had provided in this respect which reassured the Sub-Committee that the supply of alcohol would be ancillary to the Premises main activity as a record retail shop and as result would not become drink led and that the planned pre-booked private events would be those of the type restricted as presented in Mr Thomas's submissions.

Based on the evidence the Sub-Committee was persuaded that exceptional reasons had been proven by the applicant and the application therefore met the policy requirements falling under Paragraph F84. The Sub-Committee exercised its discretion when looking at the merits of the application and the specific wording of paragraph F84 when reaching its decision. It decided to take a flexible and reasonable approach when interpreting the policy and how that would translate on a practical level when looking at the impact of the West End Cumulative Impact Zone because the hours applied for fell within the 9pm cut off time.

The Sub-Committee noted that the basement area where live music was to take place would be adequately sound proofed and appropriate conditions have been

imposed on the licence to safeguard the promotion of the public nuisance licensing objective.

The Sub-Committee noted also that the supply of alcohol would be limited to the applicants crafted beer and gin and that alcohol would not be sold above 5.5% ABV and that the conditions requiring customers to be seated and for Off Sales to be in sealed containers would all be complied with and enforced.

The Sub-Committee was satisfied that the application was suitable for the local area and had addressed the concerns raised given the applicants various undertaking and guarantees to ensure that the Premises when selling alcohol would be well managed to promote the licensing objectives.

The Sub-Committee concluded that the conditions it had imposed on the Licence would mitigate the concerns of those who had objected particularly allaying the fears of those residents. The Sub-Committee considered it important to stress this specific point for the residents who had objected but were not present at the hearing as they may not have had the opportunity to listen to the oral evidence put forward by the applicant and the Responsible Authorities during the live broad cast of the hearing.

Having carefully considered the committee papers and the submissions made by all of the parties, both orally and in writing, **the Sub-Committee has decided**, after taking into account all of the individual circumstances of this case and the promotion of the four licensing objectives: -

1. **To grant permission for the Sale by Retail of Alcohol (On and Off) the Premises Monday to Saturday 10:00 to 21:00 hours and Sunday 12:00 to 21:00 hours. There are no seasonal variations.**
2. **To grant permission for the Hours the Premises are Open to the Public Monday to Saturday 08:00 to 21:00 and Sunday 10:00 to 21:00 hours. There are no seasonal variations.**
3. That the Licence is subject to any relevant mandatory conditions.
4. That the Licence is subject to the following additional conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

Conditions imposed by the Committee after a hearing

5. The provision of licensable activities will be ancillary to the main function of the premises as a record retail shop.
6. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.

7. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
8. 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.
9. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
10. All sales of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the premises.
11. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
12. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between (23.00) hours and (07.00) hours on the following day.
13. 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.
14. No deliveries to the premises shall take place between (23.00) and (07.00) on the following day.
15. 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 the PASS Hologram.
16. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the premises by the police or an authorised officer of the City Council at all times whilst the premises is open.
17. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police. It must be completed within 24 hours of the incident and will record the following:
 - a) all crimes reported to the venue
 - b) all ejections of patrons
 - c) any complaints received concerning crime and disorder
 - d) any incidents of disorder
 - e) all seizures of drugs or offensive weapons
 - f) any faults in the CCTV system
 - g) any refusal of the sale of alcohol
 - h) any visit by a relevant authority or emergency service.
18. No licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.
19. There shall be no self-service of alcohol.
20. The supply of alcohol for consumption on the premises shall only be to seated customers or to those attending a private pre-booked function.

21. Excluding staff, the capacity of the premises for licensable activities shall be limited to (a) TBC seated persons inside the premises or (b) TBC persons attending a private pre-booked function.
22. 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.
23. No super-strength beer, lagers, ciders or spirits mixtures of 5.5% ABV (alcohol by volume) or sold for consumption off the premises, except for premium beers and ciders supplied in glass bottles.

If problems are experienced, then an application for a Review of the Premises licence can be made.

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

**The Licensing Sub-Committee
10 June 2021**

The Meeting ended at 2.45 pm

CHAIRMAN: _____

DATE _____