



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (4)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (4)** held on **Thursday 2nd September, 2021**, This will be a MS Teams virtual meeting.

Members Present: Councillors Karen Scarborough (Chairman), Richard Elcho and Maggie Carman

1. MEMBERSHIP

THERE WERE NO CHANGES TO THE MEMBERSHIP.

2. DECLARATIONS OF INTEREST

THERE WERE NO DECLARATIONS OF INTEREST.

1 Licensing Applications

2. 10 AM: OYSTERMEN, KIOSK AT APPLE MARKET, COVENT GARDEN, LONDON WC2E 8RD

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 4 ("The Committee")

Thursday 2 September 2021

Membership: Councillor Karen Scarborough (Chairman) Councillor Richard Elcho and Councillor Maggie Carman

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Kerry Simpkin
Committee Officer: Georgina Wills
Presenting Officer: Jessica Donavon

Application for a New Premises Licence in respect of Oystermen Kiosk At Apple Market North Hall Market Building WC2E 8RD 21/03914/LIPN

Present: Alun Thomas (Legal Representative, Oystermen Events LTD), Matt Lovell, (Owner and Director, Oystermen Events LTD), Rob Hampton (Owner and Director, Oystermen Events LTD) and Karyn Abbott (Licensing Authority)

FULL DECISION

Premises

Oystermen Kiosk At Apple Market North Hall Market Building WC2E 8RD

Applicant

Oystermen Events LTD

Cumulative Impact Area

West End

Ward

St James's

Summary of Application

The Sub-Committee has determined an application for a New Premises Licence under the Licensing Act 2003 ("The Act"). The Premises proposes to operate as a restaurant kiosk within Apple Market, Covent Garden. The Premises are within the St James's Ward and located within the West End Cumulative Impact Zone. The Special Consideration does not apply. On original submission of the application, the Applicant applied for late night refreshment Monday to Thursday from 23:00 to 23:30, and Friday and Saturday from 23:00 to 00:00. This has since been withdrawn and does not form part of this application. The Applicant also applied for the sale by retail of alcohol (both on and off the premises) Monday to Thursday from 09:00 to 23:30, Friday to Saturday from 09:00 to 00:00 and Sunday from 09:00 to 22:30. These hours have since been amended and are specified below. The opening hours have also been amended on Friday and Saturday from 09:00 to 00:00 to 09:00 to 23:30, as specified below. The Applicant has also had the benefit of 8 TENS for the periods July 2020 – May 2021. There is a resident count of 18.

Activities and Hours applied for

Hours premises are open to the public:

Monday to Saturday 09:00 to 23:30
Sunday 09:00 to 22:30

Sale by Retail of Alcohol – both on and off sales:

Monday to Saturday 09:00 to 23:00
Sunday 09:00 to 22:30

Representations Received:

- Metropolitan Police (PC Nicole Sondh) (**Withdrawn**)
- Environmental Health (Ian Watson) (**Withdrawn**)
- Licensing Authority (Michelle Steward)
- 8 Local Residents (**five residents Withdrew**)

Summary of issues raised by objectors:

- The applicant will need to satisfy the concerns of the Licensing Authority by demonstrating that the application will not add to cumulative impact if granted. It will be for Licensing Sub-Committee Members to determine this application, given its location within the West End Cumulative Impact area and the proposed hours of operation.
- There is no need for any more licensed drinking in this area. The area is extremely well served currently in the respect. Another issue is that the site is blocking access to the apple market where the landlords prohibit the consumption of alcohol. The fact that this will also block access to the apple market will adversely affect the market traders. It is not right nor proper for one business to be granted a license to then negatively impact access to many market traders. Once again there are ample licensed venues in the area. There is no need for yet another
- The CGCA objects to the grant of a Licence a Kiosk for Oystermen situated at the West End of the Apple Market on the terms applied for. This is because we believe it will harm the Licensing Objectives related to public nuisance and crime and disorder. Our concerns relate to the proposed hours of operation and to the conditions, especially those related to off-sales. We also have concerns about the design and positioning kiosk and its related seating area with its barriers and umbrellas the kiosk is already operating. The operation, and especially off-sales, are already giving rise to public nuisance (see off-sales section below). We are unclear on whether the current operation is appropriately licensed either through a premises licence or a (series of) TEN and whether it is complying with the relevant conditions. We would appreciate understanding this and if it is not appropriately licensed what enforcement action has already been taken by the Licensing Authority.

Policy Position:

Policies CIP1 and RNT1 of the City Council's Statement of Licensing Policy apply.

SUBMISSIONS AND REASONS

The Sub-Committee considered an application by Oystermen Events LTD for a New Premises Licence in respect of Oystermen Kiosk At Apple Market North Hall Market Building WC2E 8RD. The Presenting Officer introduced the application and advised that the Premises sought to operate as a restaurant kiosk within Apple Market, Covent Garden. There were additional representations received from the Applicant and these were circulated to all parties.

Mr Alun Thomas Solicitor appearing on behalf of the Applicant advised that the Applicants operated a Restaurant in Henrietta Street, Covent Garden and that the Premises site was offered by their landlord. Mr Thomas advised that a substantial menu would be on offer and that food was not to be prepared at the site but only reheated. The food preparation will take place at the main restaurant at Henrietta Street. The external seating area of the kiosk was reported to be small and could seat up to 20 patrons in total. Mr Thomas advised that the Application met the RNTI policy as it intended to operate as a restaurant and the Premises operational hours had been amended to ensure it was within Westminster's core hours. He advised that alcohol would be served to seated patrons only and a waited service was to be in place. The Sub-Committee was advised that there was no evidence that the Premises would add to the cumulative impact. Mr Thomas reminded the Sub-Committee that central and eastern Covent Garden was found to have less cumulative impact. He commented that Capco Covent Garden had on sight security and CCTV in the vicinity and this ensured that there was low crime and public nuisance.

Mr Thomas advised that all 'off sales' would be in sealed containers up to 23:00 and unsealed before 21:00, that there would be a maximum of four sales per customer, and that consumption would not be permitted in the immediate area of the Premises. These operations were reported to be in line with the Business and Planning Act 2020 and would cease in September 2022. The Sub-Committee was advised that the above factors were found to be satisfactory by Environmental Health and The Covent Garden Community Association (CGCA) who had both withdrawn their representations.

Mr Thomas advised that there had been consultations with Apple Market Traders and that the Premises floor plan had been amended to ensure there is access to the market during the later opening hours. The Apple Market Trade Association following amendments to the Premises plans withdrew their representation. Mr Thomas reminded the Sub-Committee that the Metropolitan Police had also withdrawn their representation.

In response to the Sub-Committee, Mr Matt Lovell, Owner and Director of Oystermen Events LTD, advised that they were experiencing staff shortages and it was proposed for up to two or three staff members to be always on site. He advised this was to ensure that customers are attended to, and a high standard of customer service is offered. The Premises was closed for a short period due to staff shortages. Mr Lovell advised that a small selection of alcohol beverages would be on offer and the Premises space was limited. He commented that the Premises offerings would be of a 'high end' nature and that food offerings would be paired with alcohol beverages.

The Sub-Committee was advised that there would be two menus on offer and that a printed menu of the main restaurant would be provided and publicised at the Premises so customers would be clear on the precise food offer. Mr Thomas advised that the Premises had operated under Temporary Events Notices (TENs) and there were no complaints received during these periods. Mr Thomas reminded the Sub-Committee that there would be no vertical drinking in the Premises and advised that restaurants do not add to cumulative impact in particular premises which are well operated. The Sub-Committee were reminded that the Landlords for the Covent

Garden Estate closely monitored the vicinity and put in measure to deter public nuisance and anti-social behaviour in the area. Mr Thomas advised that all operations would cease at 23:00hrs and commented that findings from cumulative impact assessments indicated that a majority of nuisances occurred after 00:00. He commented that 'off sales' had been accepted by the CGCA and Environmental Health. The Sub-Committee were advised that 'footfall' in the Covent Garden area had been reduced due to the Covid-19 Pandemic.

In response to the Sub-Committee, Mr Thomas advised that the CGCA were satisfied with the proposed conditions and that nearby premises licensable activities were more expansive and that provision of 'off sales' offered by the Applicant would ensure that the Kiosk was able to compete with competitors. He advised that there were adequate public toilets in the vicinity and that further conveniences were available at the main restaurant at Henrietta site. There will be signage in the Premises which provides information about public toilets.

Following questions from the Sub-Committee, Mr Rob Hampton, Owner and Director Oystermen Events LTD advised that food would be promoted, and staff had been trained to up sale products in particular when lighter offerings are requested with alcohol beverages. He informed that lighter offerings were viewed as accompaniments and that staff are trained to interact with patrons and encouraged to promote the offerings on the menu. This was to ensure that sales are maximised. In response to the Sub-Committee, Mr Thomas advised that it was unusual for patrons to order lighter offerings from the menu and advised that individuals would be informed that the Kiosk operated as a restaurant. Mr Thomas advised that alcohol would be ancillary to food and that Model Condition 38 (MC38) had been adopted.

Ms Karyn Abbott, appearing on behalf of the Licensing Authority advised that Policy RNT1 applied and that the Premises operated as a restaurant. Ms Abbott advised that there were concerns on whether the food offer could be viewed as a 'substantial meal'. There were concerns that lighter food offerings would be sold with alcohol beverages. She advised that the reduction in hours and withdrawal of late-night refreshments was welcomed and that 'off sales' will operate in line with the Business and Planning Act 2020. Ms Abbott advised that the Sub-Committee need to be satisfied that the Application would not add to cumulative impact if granted and that the operations would comply with the Model Restaurant Condition.

In response to proposed conditions from the Legal Advisor to the Sub-Committee, Mr Thomas advised that conditions which stipulate for two members of staff to be present at the Kiosk at all times and for a direct telephone contact number for the manager at the premises to be made public (MC24) would be accepted. Mr Thomas advised the Policy Officer to the Sub-Committee that the Applicant would agree to notices which informed customers that alcohol needed to be accompanied with food are displayed in the seating area so as to avoid any confusion.

Mr Thomas advised that the Premises was in a prominent location and could be easily regulated on whether they were complying with set conditions. He advised that Environmental Health had withdrawn their application and were satisfied with the 'off sales and provisions for public toilets. Mr Thomas advised that the Landlords were responsible and monitored the activities of tenants and the use of their premises. The Applicant has a 'rolling tenancy' with CAPCO and would be monitored by Apple

Market Trade Association. Mr Thomas advised that the Applicant was a good operator and had not added towards the cumulative impact during their operations. He informed that the Premises was small and their 'off sales' provisions was to ensure that they could compete with competitors. The Applicant had also agreed to series of conditions which limited their 'off sale' provisions.

Conclusion

The Sub-Committee decided that the Applicant had provided valid reasons as to why the granting of the application would promote the licensing objectives.

The Sub-Committee realises that it has a duty to consider each application on its individual merits and concluded based on the evidence before it that the application would not add to cumulative impact when considering the likely impact the application would have on the West End Cumulative Impact Zone, noting that premises that operate as a restaurant do not have to prove an exception as provided for under Paragraph D25 on page 29 of the SLP so there is no presumption to refuse such an application.

The Sub-Committee noted that both the Police and Environmental Health had both withdrawn their objections after agreeing conditions. Likewise, 5 out of the 8 local residents who had objected withdrew their objections which included the Covent Garden Community Association. This reassured and gave confidence to the Sub-Committee that the Applicant was flexible in their approach when dealing with all parties and was therefore able to compromise when it came to revisions to the application in terms of reduced hours for the sale of alcohol, opening hours together with the withdrawal of Late Night Refreshment.

The Sub-Committee was further reassured and took comfort from the fact that the Applicant had operated under the TENS regime without complaint and that the restaurant had limited covers in any event so would not be overcrowded with customers. The Sub-Committee noted that the Applicant held a lease from Shaftesbury's as Landlord who were well versed in the local area when it came to operating licensing premises in a responsible manner by having the necessary safeguards in place that would help promote the licensing objectives.

The Sub-Committee noted that the local area was managed and served well with adequate security provided by CAPCO taking account also of the CCTV conditions now imposed on the premises licence which would help promote the public nuisance and crime and disorder licensing objectives and mitigate the concerns raised by the Responsible Authorities and local residents.

The Sub-Committee noted the undertaking from the Applicant that the Premises would be laid out as a restaurant so as not to confuse customers. This was to ensure that the Premises would be food and not bar led and that customers when purchasing alcohol would have to do so on the strict understanding that this was to be with a substantial table meal in accordance with the restaurant conditions imposed on the Premises Licence as specified below in conditions 6 and 7 and condition 19 dealing with waiter and waitress service.

The Sub-Committee noted and requested also that the Applicant indicate on the menu choices and by appropriate signage the requirement that alcohol is sold subject to a substantial table meal and is therefore ancillary to food.

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: -

1. **To grant permission for the Sale of Alcohol (On and Off)** Monday to Saturday 09:00 to 23:00 hours and Sunday 09:00 to 22:30 hours
2. To grant permission for the **Opening Hours of the Premises**: Monday to Saturday 09:00 to 23:30 hours Sunday 09:00 to 22:30 hours
3. To grant permission for **Seasonal Variations**: From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day. On Sundays prior to bank holidays 09:00 to 00:00
4. That the Licence is subject to any relevant mandatory conditions.
5. That the Licence is subject to the following additional conditions and Informative imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

Conditions imposed by the Committee after a hearing

6. The consumption of alcohol on the premises shall only be by a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal.
7. 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.
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 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.
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 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.

10. 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.
11. 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.
12. 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.
13. 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.
14. A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
15. There shall be no sales of alcohol for consumption off the premises after 23.00 hours.
16. 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.
17. There shall be no sales of alcohol for consumption off the premises after 21:00 other than in sealed containers, which are not intended to be readily consumed in the immediate vicinity of the premises.
18. No drinks shall be served in glass containers for consumption off the premises unless in sealed containers, which are not intended to be readily consumed in the immediate vicinity of the premises.
19. The supply of alcohol on the premises shall be by waiter or waitress service only.
20. Off-sales in non-sealed containers shall be limited to 21:00 on any day.

21. The number of alcohol drinks for consumption off the premises purchased by any person at any one time shall be limited to four.
22. Free toilets are to be made available and the details of such advertised at the premises.
23. No seating shall be placed within the area hatched black on the plan whilst the Apple Market remains open to customers.
24. The sale and supply of alcohol for consumption off the premises shall be restricted to alcohol consumed at the outside tables and chairs shown on the licence plan, shall be by waiter or waitress service, served only to a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal.
25. There shall be a minimum of 2 members of staff present on the premises at all times.
26. 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.
27. The Premises Licence Holder shall ensure that there is prominent signage at each table advising customers that alcohol for consumption at those tables will only be sold accompanying food provided from the main menu of the premises.

INFORMATIVE

28. For the purposes of Condition 6 above 'Substantial Table Meal' means – a meal such as might be expected to be served as the main midday or main evening meal, or as a main course at either such meal and is eaten by a person seated at a table, or at a counter or other structure which serves the purposes of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure servicing the purposes of a table.

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
2 September 2021**

3. **1 PM: FLAT WHITE LTD, 17 BERWICK ST, LONDON W1F 0PT**

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 4
("The Committee")

Thursday 2 September 2021

Membership: Councillor Karen Scarborough (Chairman) Councillor Richard Elcho and Councillor Maggie Carman

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Kerry Simpkin
Committee Officer: Georgina Wills
Presenting Officer: Jessica Donavon

Application for a Variation of Premises Licence - Flat White 17 Berwick Street London W1F 0PT 21/02796/LIPV

Present: Alun Thomas (Legal Representative, Flat White Limited), Laura Smith, (Owner, Flat White Limited), Peter L (Resident), Georgia G (Resident), Richard Brown (Westminster Citizens Advice Bureau representing The Soho Society) David Gleeson (The Soho Society), Anna B (Resident), Michael H (Resident) and Karyn Abbott (Licensing Authority)

FULL DECISION

Premises

Flat White 17 Berwick Street London W1F 0PT

Applicant

Flat White Limited

Cumulative Impact Area

West End

Ward

West End

Summary of Application

The Sub-Committee has determined an application for a Variation of Premises Licence under the Licensing Act 2003 ("The Act"). The Premises are a Café situated in the West End Ward and are located within the West End Cumulative Impact Zone. The Special Consideration Zone does not apply. The Premises has had the benefit of a Premises Licence since 2013 under reference number 13/07127/LIPN. There is a resident count of 76.

The Applicant wishes to vary the licence as follows:-

- *To extend the hours for licensable activities to core hours*

- *To add Late Night Refreshment (Monday to Wednesday 23:00 to 23:30 Thursday to Friday to Saturday 23:00 to 00:00 Sunday N/A*
- *To permit the use of the bar until 21:00*
- *To add off sales of alcohol*
- *To remove conditions 25 and 26*
- *To amend condition 22, 27 and 28*

Representations Received:

- Environmental Health (Ian Watson) (**Withdrawn**)
- Licensing Authority (Kevin Jackaman)
- The Soho Society
- 11 Local Residents

Summary of issues raised by objectors:

Policy Position:

Policies CIP1, HRS1 and RTN1 (B) apply under the City Council's Statement of Licensing Policy (SLP) apply.

SUBMISSIONS AND REASONS

The Sub-Committee considered an application by Flat White Limited for a variation of a Premises Licence in respect of Flat White 17 Berwick Street London W1F 0PT. The Presenting Officer provided a summary of the Application and advised there were additional submission from the Applicant and Richard Brown (Westminster Citizens Advice Bureau representing The Soho Society) and these were circulated to all parties.

Mr Michael H, local resident advised that he had lived above the Premises since 2019 and informed that the Establishment was viewed as a community hub and a meeting point for friends and neighbours. He confirmed that the Applicant was a good operator and that there had been no issues of noise emanating from the Premises. Mr Michael H advised that he was in support of the Application. In response to the Sub-Committee Mr Michael advised that there was general noise in Soho both during the day and evening and these were due to activities in the area and did not have any concerns over the noise generation.

Mr Peter L, local resident, advised that he resided near to the Premises and was a long-term resident and had been based in Soho for several decades. He advised that he was a member of the Soho Business Alliance Advisory Board and The Soho Society. He advised that he was making representation in his capacity as a local resident and frequented the Premises regularly. The Sub-Committee was advised that the Premises was small and provided a 'different offer' in comparison to other establishment within the vicinity. He advised that the Premises offered a quiet space for individuals to meet during the day and played an integral part in bringing residents together during the Covid-19 Pandemic lockdown. He commented that the Application would enhance the current offer to the community and bring the Premises on par with other establishments in the locality. He advised that the

modest changes to the licence would not arise public nuisance or add to the cumulative impact. He commented that the Premises was an important community asset.

Mr David Gleeson, of The Soho Society and local resident commented that there were several licensed premises in the vicinity and was aware of the roles which they played in supporting the local community. Mr Gleeson advised that The Soho Society objected to part of the Application in particular the licensable activity which would enable for the sale of alcohol both 'on and off sales to not be ancillary to food before 21:00. He advised that the Application in its entirety would change the offer of the Premises from being a restaurant/Café into a drink led establishment. Mr Gleeson reminded the Sub-Committee that there was a correlation between drink led establishment and increase in crime and disorder in areas that they were situated. He advised that the Premises was situated in a heavily dense area which had large numbers of residential buildings which included flats and a hotel.

Mr Gleeson advised that there was a high footfall in the area and that residents experienced nuisances from patrons using cafes and restaurants from Berwick Street Soho. He commented that Soho experienced over 9 times above the Boroughs average for crimes and disorder and that this figure increased up to between 13% to 15% during 18:00 to 06:00. Mr Gleeson advised that the Premises turning into a drink led establishment would have a negative impact on residents on Beswick Street and Lexdon Street.

Ms Georgia G, local resident, advised that she had resided in her premises for 18 months and did not experience any nuisances that were described in Mr Gleeson's submission. Ms Georgia G advised that she supported the Application and advised the Premises provided a safe environment. She advised that the Application would enable patrons to have pre-drinks before going to other establishments such as the theatre and restaurants and that the Premises offered a 'small intimate' place for individuals to meet. Ms Georgia G advised that the Premises had an inclusive environment and was largely used by the LGBTQ community. She advised that the Premises was preferred over local pubs and this was due to safety reasons.

Ms Anna B, business owner, advised that she operated a premises in the vicinity for over 27 years. She advised that the Covid-19 pandemic had an adverse effect on businesses and that premises owners being given flexibility on how they operate their establishments ensured that they remained viable. Ms Anna B advised that the Application would ensure that customers demand could be met and advised that the Premises would not become drink led and would only extend their offer. She advised that the Premises was an asset to the community and that staff members and herself felt safe and assured during the latter hours whilst the establishment was open.

Mr Alun Thomas, Applicant's Legal Representative advised that the Premises was a small independent Café shop which seated a maximum of 30 persons. Mr Thomas advised that the Premises was established in 2005 and that the Applicant was one of the pioneers in introducing artisan coffee into the UK. He advised that the Premises would remain as a 'coffee shop' and would not change its business model. The Sub-Committee was advised that the alcohol beverages would be a small offer. Mr Thomas advised that the Premises offering of alcohol without food would allow patrons the option to have alcohol beverages rather than coffee and extend the

Applicants offer. He advised that the Premises sat under Class E of the Permitted Development Rights and would require planning permission if they wish to transfer into a drink led establishment. He reminded the Sub-Committee that alcohol would be ancillary to food after 21:00. Mr Thomas advised that 'off sales' would only be supplied to patrons that are seated in the external area. There will be no vertical drinking in the establishment.

Mr Thomas advised that no residents had objected and that 9 residents had made submissions in support of the Application. He informed that the Applicant had built a good rapport with local resident for over several years. Mr Thomas confirmed that the Soho Society was in support of the Application and only objected to the pre 21:00 alcohol offer. Mr Thomas advised that footfalls were still low and not all areas of Soho had returned to their pre- Covid-19 pandemic figures. There would be no issues which are associated with vertical drinking as patrons would be seated. He commented that under Paragraph D13 on page 27 of the SLP found that incidents rates associated with cumulative impact increase after 21:00. He advised that the exception to policy which was required for the alcohol offering prior to 21:00 would be different for those after the mentioned hour as there was less cumulative impact. He highlighted that the Premises was a 'safe haven' and comfortable space for female patrons and also a meeting point for residents. Mr Thomas advised that alcohol would be ancillary to the main operation which was a coffee shop.

In response to the Sub-Committee, Mr Thomas advised that a Condition which stipulates that alcohol was ancillary to the coffee shop would be accepted. The Policy Officer to the Sub-Committee advised that regard needed to be had to Paragraph F85 on page 91 of the SLP which related to the 21:00 exception rule was only appropriate for applications applying up to this hour and whose operations also ceased at the same time. He advised that a full exception to policy would be required for the Application as their terminal hours were beyond 21:00. The Sub-Committee noted that patrons could consume alcohol up to 21:00 and could cause nuisances after the hour and that the Premises could become a designated location for alcohol.

In response to questions from the Sub-Committee, Laura Smith, Owner Flat White Limited advised that the Premises was used primarily for social gatherings. She advised that the Premises bar was licensed in 2013 and usage had been introduced following reduced footfalls and poor sales of coffee. Ms Smith advised that complementary snacks were offered to patrons whilst alcohol beverages are served and did not wish for the Premises to become drink led. She advised that the application had been made to ensure that the business remains viable, and that the food offering would be available until 21:00 hours. The Sub-Committee was advised that the Premises offered a rotating seasonal menu and alcohol served were coffee inspired and included cocktails, beer and a small selection of wines.

Karyn Abbott, Licensing Authority confirmed that a Licence was granted in 2013 and fell under Policy RTN1. She advised that the Licence was granted which assured that the Premises would operate as a restaurant and commented that the variation before 21:00 was a change in the style of the Licence. Ms Abbott advised that the variation prior to 21:00 fell under Policy PB1 and as such the Applicant was required to demonstrate 'exceptional circumstance' to Policy and that the Premises would not add to cumulative impact.

Richard Brown, Westminster Citizens Advice Bureau representing The Soho Society commented that the plan presented by the Applicant did not include external table and chairs and advised that Model Condition 70B (MC70B) should be adopted for this area. The Sub-Committee were reminded that MC70B required that external area for 'off sales' would be subject to appropriate authorisation such as a Table and Chairs Licence or a Pavement License. He advised that the main concern was usage of the bar area before 21:00 and possible consumption after this hour. Mr Brown commented that the concerns of residents was the 'global' cumulative effect in Soho and advised that there was awareness that the Applicant was a good operator. He welcomed that the Applicant would agree to MC86 which required the licensable activities of the Premises to be ancillary to the main function of the establishment.

Mr Brown reminded the Sub-Committee that the Applicant was required to demonstrate that there was an 'exceptional circumstances' to the Policy. He commented that there was an increase in nuisances after 21:00 in the Cumulative Impact Zone. Mr Brown advised that a correlation could be made between anti-social behaviour and consumption of alcohol prior to 21:00. Mr Brown advised that the Application could become drink led and highlighted that the Applicant had not addressed arrangements for general off sales and deliveries. He advised that there was no clarification on whether 'off sales' would be ancillary to 'take away' meals and consumption at the bar.

Mr Thomas said that MC70B would be accepted 'in part' which allows 'off sales' prior to 21:00 to only seated persons in authorised areas and after 21:00 to patrons taking a substantial meal. In response to questions from the Sub-Committee, Mr Thomas advised that benches were placed on a private forecourt. There will be no deliveries from the Premises. The Sub-Committee advised that the Applicant would agree for the wording MC70B to be amended to require that the sale and consumption of alcohol would cease at 21:00 and that model restaurant condition operates after this hour. He advised that the Applicant would also accept if the mentioned hour was brought forward to 20:00.

Mr Thomas advised that the Premises would not add to cumulative impact and commented that the establishment was viewed as a safe place to consume alcohol and meet acquaintances by female customers and advised that it acted as a 'holding place' for patrons and retained individuals. He commented that the Premises was not drink led and would reduce the numbers of persons going to establishments which allowed vertical drinking. The Sub-Committee was advised that alcohol would be ancillary to the Premises which was a coffee shop. He reminded that the Premises would operate under the restaurant condition after 21:00 and that there was an exception to policy before 21:00 and after. In response to questions from the Legal Advisor to the Sub-Committee, Mr Thomas confirmed that, MC27, MC86 and a revised MC70B would be accepted by the Applicant should the Sub-Committee be minded granting the application.

Mr Brown advised that the 2020 Cumulative Impact Assessment identified that incident rates rapidly increased after 21:00 and commented that there was correlation between bar use prior to the mentioned hour and nuisance. He commented that the variation sought would apply to the whole Premises and this was unusual for establishments situated in the CIZ. He commented that Applicants

usually requested for a variation which would allow flexibility to their offer and changes sought applied to a particular area or overall percentage of the venue.

In response to the Sub-Committee, Mr Thomas advised that the overall capacity was 35 and that a Condition which requires for a proportion of patrons to be permitted to consume alcohol prior to 21:00 would be accepted. Mr Thomas advised that Paragraph D13 on page 47 of the SLP had two aspects, Pre and After 21:00 and reminded that the Sub-Committee were required to balance competing considerations which include the demand for premises, local interests, and law order. He advised that the Premises was a coffee shop which had a limited alcohol beverage offer and that only a small number of patrons would be served. Mr Thomas advised that the Application was reasonable and acceptable for the location. The Premises was viewed as a community asset and a safe haven for female patrons and inclusive place for individuals to attend.

The Sub-Committee decided that the Applicant had provided valid reasons as to why the granting of the application would promote the licensing objectives.

The Sub-Committee realises that it has a duty to consider each application on its individual merits and concluded based on the evidence before it that the application would not add to cumulative impact when considering the likely impact the application would have on the West End Cumulative Impact Zone, noting that premises that operate as a restaurant do not have to prove an exception as provided for under Paragraph D25 on page 29 of the SLP so there is no presumption to refuse such an application.

The Sub-Committee gave careful consideration whether the style, nature and style of the Premises was to change with the sale of alcohol and concluded that it would not morph into a permanent bar but operate simply as a coffee shop with an alcohol offer to accompany the food. The Sub-Committee noted that vertical drinking would not be permitted at the Premises and this is borne out by the fact that the sale of alcohol would be by waiter and waitress service and that after 21:00 hours the Premises the supply and consumption of alcohol at the Premises shall only be to a person seated taking a table meal there and for consumption by such a person as an ancillary to their meal.

The Sub-Committee realises that it has discretion when interpreting the policy considerations referred to above and the practical workings of the SLP and recognises that the same is not designed to be chopped and changed for different uses. However, when considering this application, the Sub-Committee did so based, on the merits of the application and then sought to strike the right balance having regard to the evidence.

The Sub-Committee noted that the Premises was very popular with local residents and this was confirmed by the level of support by those who had objected and spoke passionately about the Premises. However, popularity is not a reason alone why an application should be granted. The ultimate test is whether the Applicant is to comply with licence conditions and promote the licensing objectives.

In its determination of the matter the Sub-Committee considered the various policy arguments advanced by Mr Thomas in his submissions and accepted that the

Premises would operate first and foremost as a Coffee Shop and would therefore not be alcohol led. In this respect the Sub-Committee imposed condition numbered 37 to ensure that this remained so. The Sub-Committee concluded that the Premises was caught by Policy RNT1 and so the obstacle was whether the granting of the application would lead to negative impact in the West CIZ.

The Sub-Committee was further reassured that after 21:00 hours until the terminal hour the Premises would operate as a small restaurant with a very limited capacity where customers are seated, and the sale of alcohol is by waiter and waitress service and where alcohol is ancillary as confirmed by the Applicant. The Sub-Committee noted that draft beer would not be sold on the Premises and that staff would receive ongoing training in the licensing objectives to include the selling of alcohol.

The Sub-Committee noted that the Applicant was an experienced operator that managed her Premises well that would promote the licensing objectives. The conditions relating to CCTV now imposed on the premises licence would help achieve the promotion of the public nuisance and crime and disorder licensing objectives and mitigate the previous concerns raised by the Soho Society who had objected.

The Sub-Committee decided that it was appropriate to extend the hours for licensable activities to core hours, add Late Night Refreshment (Monday to Wednesday 23:00 to 23:30 Thursday to Friday to Saturday 23:00 to 00:00 Sunday N/A, to permit the use of the bar until 21:00, to add off sales of alcohol and the removal of conditions 25 and 26 and amendments to conditions 22, 27 and 28 accordingly.

The Sub-Committee decided that the Applicant had provided valid reasons as to why the granting of the variation application would not add to negative cumulative impact in the West End Cumulative Impact Zone and thus promote the licensing objectives.

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: -

1. To grant permission to extend the hours for licensable activities to core hours.
2. To grant permission for Late Night Refreshment (Indoors) (Monday to Wednesday 23:00 to 23:30 Thursday to Friday to Saturday 23:00 to 00:00 Sunday N/A.
3. To grant permission to permit the use of the bar until 21:00 hours.
4. To grant permission for the Off Sale of Alcohol.
5. That conditions 25 and 26 are removed in their entirety from the Premises Licence.

6. That conditions 22, 27 and 28 are amended accordingly and thereafter remain on the Premises Licence in full force and effect.
7. To add conditions in the terms specified below.
8. That the varied licence is subject to any relevant mandatory conditions.
9. That the existing conditions on the licence shall apply in all respects except in so far as they are varied by this Decision.
10. 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.

Conditions imposed by the Committee after a hearing

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. 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 to the public. This staff member shall be able to show Police recent data or footage with the absolute minimum of delay when requested.
13. A log shall be kept detailing all refused sales of alcohol. The log should include the date and time of the refused sale and the name of the member of staff who refused the sale. The log 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.
14. All staff shall be trained with regard to the requirements relating to the sale of alcohol.
15. No draft beer shall be sold at the premises.
16. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
17. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
18. 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.
19. Patrons permitted to temporarily leave and re-enter the premises, e.g. to smoke, shall not be permitted to take drinks or glass containers with them, save for persons seated at the outside tables.

20. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
21. No waste or recyclable materials including bottles, shall be moved, removed or placed in outside areas between 23:00 and 08:00 hours.
22. Loudspeakers shall not be located in the entrance lobby the premises building.
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 regarding of Crime and Disorder
 - (d) any incidents of disorder
 - (e) 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 no 'Off' sales of alcohol after 23.00 hours Monday to Saturday.
25. There shall be no sales of hot food or hot drink for consumption off the premises after 23:00 hours.
26. Outside tables and chairs shall be rendered unusable by 22.00 each day.
27. After 21:00 hours the supply and consumption of alcohol at the premises shall only be to a person seated taking a table meal there and for consumption by such a person as an ancillary to their meal and served by waiter/waitress service.
28. The supply of alcohol shall be by waiter or waitress service only.

. Before 21:00 hours the supply of alcohol shall only be by waiter/waitress service to persons seated.
29. The number of persons accommodated at the premises shall not exceed the following (including staff): 30
30. 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 preceding 31 day period.

31. 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.
32. 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.
33. The hours for sale of alcohol may be extended from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.
34. All 'Off' sales of alcohol shall be in sealed containers only save for 'Off' sales to persons seated in the external area adjacent to the premises.
35. Alcohol consumed outside the premises building shall only be consumed by persons seated at tables.
36. On the Day of London Pride:-
 - i. The premises will not externally advertise local promotions of alcohol.
 - ii. Save for customers seated in the external area, no sales of alcohol in bottles or glass containers are made during this period.
 - iii. Upon the direction of a Police Officer, using the grounds of the prevention of crime and disorder or public safety, the premises will immediately cease to sell alcohol until further directed by the Police.
37. The Licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a coffee shop.
38. 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 after 21:00 hours 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.

For the purpose of this condition 'Substantial Table Meal' means – a meal such as might be expected to be served as the main midday or main evening meal, or as a main course at either such meal and is eaten by a person seated at a table, or at a counter or other structure which serves the purposes of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure servicing the purposes of a table.

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
02 September 2021**