



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (2)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (2)** held on **Thursday 9th September, 2021**, This will be a virtual meeting.

Members Present: Councillors Tim Mitchell (Chairman), Barbara Arzymanow and Aziz Toki

1. MEMBERSHIP

THERE WERE NO CHANGES TO THE MEMBERSHIP.

2. DECLARATIONS OF INTEREST

THERE WERE NO DECLARATIONS OF INTEREST.

3. LICENSING APPLICATIONS

1. 10 AM: 55 WARWICK WAY, LONDON SW1V 1QR

THIS APPLICATION WAS WITHDRAWN BY THE APPLICANT.

2. 2 PM: 8 LAUDERDALE PARADE, LAUDERDALE ROAD, LONDON W9 1LU

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

Thursday 9 September 2021

Membership: Councillor Tim Mitchell (Chairman)
Councillor Barbara Arzymanow and Councillor Aziz Toki

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Kerry Simpkin
Committee Officer: Sarah Craddock
Presenting Officer: Emanuela Meloyan

Present: Robert Botkai and Andrew Sanders (Winckworth Sherwood LLP), Mr Ali (Applicant, (Keto Group Ltd), Dave Nevitt (Environmental Health Service), Richard Brown (Westminster Citizens Advice Licensing Solicitor representing Paddington Waterways and Maida Vale Society) and Mr and Mrs Andrew P (Local Residents).

Application for a New Premises Licence in respect of Chelo 8 Lauderdale Parade Lauderdale Road London W9 1LU 21/04285/LIPN

FULL DECISION

Premises

8 Lauderdale Parade
Lauderdale Road
London
W9 1LU

Applicant

Keto Group Ltd

Cumulative Impact Area?

N/A

Ward

Maida Vale

Licensable Activities and Hours applied for

Sale by Retail of Alcohol (Indoors and Outdoors)

Monday to Thursday: Midday to 22:00 hours
Friday and Saturday: Midday to 22:00 hours
Sunday: Midday to 22:00 hours

Seasonal Variations: Sundays immediately prior to a bank holiday Midday to 22:00

Late Night Refreshment

None

Regulated entertainment

Not required – background music only.

Opening Hours of the Premises:

Monday to Thursday: Midday to 22:00 hours
Friday and Saturday: Midday to 22:00 hours
Monday to Sunday: 10:00 to 23:00 hours

Representations Received

- Metropolitan Police Service (PC Dave Morgan) (**Withdrawn**)
- Environmental Health Service (Dave Nevitt)
- Elizabeth Virgo - Paddington Waterways and Maida Vale Society 4 Browning House 19-21 Formosa Street London W9 2JS
- 7 Local Residents

Summary of Objections

- It our belief that if granted the application would undermine the Licensing Objectives in relation to The Prevention of Crime and Disorder. I have read the operating schedule that you have supplied and although I am happy with the conditions offered, I would also like to see the following to be included "Except for any authorised external seating areas, all sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises"
- Representation is made in relation to the application, as the proposals are likely to increase the risk of Public Nuisance and may impact upon Public Safety.
- As a local resident, I am concerned about the mix of outdoor dining provided by the restaurant and serving alcohol at the times outlined in the application, with particular regard to noise. With residents living above and adjacent/above the restaurant, the combination is a potential for nuisance. I would welcome more information from the applicant on point P, d (the prevention of public nuisance), which currently only reads 'as per attached operating schedule.' No additional information, or the mentioned operating schedule is appended to the document. As it stands, I oppose the application, but could be swayed pending additional information
- I am very concerned that granting this application will lead to a serious increase in noise on Lauderdale Parade in the evenings. It means that people will be sitting out on the pavement eating and drinking until 23:30 weekdays and midnight Fridays and Saturdays. The hours are for the sale of alcohol, so presumably customers will be able to sit at table in the street after a meal drinking what they have legally purchased. It is then unlikely that they will always disperse quickly and quietly, so it could be 1 or 2 o'clock in the morning before the street is quiet again. That will have a very bad impact on the residences above the Lauderdale Parade shops. I am already kept up late by noise from the Sushi restaurant. I also understand that the restaurant at 8 Lauderdale Parade has illegally installed an external flu duct at the rear of the property. So, I have little confidence that they will comply with the requirements of the Operating Schedule.
- Our representation is made on the basis that the likely impact of the application, if granted as applied for, would be to harm the licensing objectives, particularly that of prevention of public nuisance. We do not

oppose a licence being granted at all, but we would like amendments to the Operating Schedule to ensure that the licensing objectives are promoted in this location. The premises is part of a parade of shops and commercial premises (including licensed premises) at ground floor level, with residents above. The wider locality is residential. As such, we would ask that the Licensing Authority to pay great attention to any comments submitted by local residents, and we would wish to support them in respect of valid concerns they may have.

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 providing Persian Cuisine. The Premises is located within Maida Vale and is not located within the West End Cumulative Area Zone. The application has since been amended following consultation with the parties in that the terminal hour for the sale of alcohol will now cease at 22:00 hours in line with core hours. The Special Consideration Zone does not apply. There is a resident count of 298.

Policy Position

Policies HRS1 and RTN1 apply under the City Council's Statement of Licensing Policy. Applications within the core hours set out below in the HRS1 policy will generally, be granted for the relevant premises uses, subject to not being contrary to other policies in the Statement of Licensing Policy. Applications for hours outside the core hours set out in Clause C will be considered on their merits, subject to other relevant policies, and with particular regard to the demonstration of compliance in the requirements of policies CD1, PS1, PN1 and CH1 associated with the likelihood of the effect of the grant of a licence for later or earlier hours on crime and disorder, public safety, public nuisance and the protection of children from harm.

RTN1 - Applications outside the West End Cumulative Impact Zone will generally be granted subject to the application meeting the requirements of policies CD1, PS1, PN1 and CH1. The hours for licensable activities being within the Council's Core Hours Policy HRS1. The applicant has taken account of the Special Consideration Zones Policy SCZ1 if the premises are located within a designated zone. The application and operation of the venue meeting the definition of a restaurant as per Clause C.

DECISION AND REASONS

Ms Emanuela Meloyan, Senior Licensing Officer summarised the application set out in the report before the Sub-Committee. She explained that the application was for a new Premises licence which sought to permit the sale of alcohol for consumption (on and off) the Premises between the hours of midday to 22:00 Monday to Sunday. She advised that the Police and one local resident had withdrawn their representations however the Environmental Health Service, the Paddington Waterways and Maida Vale Society and seven local residents had maintained their representations against the application. She further advised that additional submissions had been received from the applicant which had been circulated to all the relevant parties before the Sub-Committee hearing.

Mr Robert Botkai Solicitor appearing on behalf of the Applicant explained that this was a very small Persian cuisine restaurant and takeaway Premises which currently allowed their patrons to bring their own alcohol (BYO) to the restaurant to consume with their meal. He outlined that the Applicant now sought to regulate the consumption of alcohol on the Premises with a Premises Licence operating within the Council's Core Hours Policy. He advised that the tables and chairs situated outside the Premises were critical to the business, especially during the summer months, and would be rendered unusable by 22:30.

Mr Botkai advised that the planning enforcement issues had now been dealt with and that the external flu duct located at the back of the Premises had now been removed. He confirmed that no cooking was taking place on the Premises and all meals were prepared off site. He further confirmed that no cooking would take place until the new internal kitchen extraction equipment had been installed inside of the Premises. He stated that the fire mentioned in the planning enforcement report had been caused by a faulty fridge which was not relevant to the application before the Sub-Committee today.

Mr Botkai explained that the Police had withdrawn their representation following agreement of the proposed conditions to be attached to the Premises Licence. He added that discussions had also taken place with the Paddington Waterways and Maida Vale Society resulting in amendments being made to the Premises' operating schedule that had been circulated to the Sub-Committee prior to the hearing. He advised that Paddington Waterways had requested that the outside tables and chairs be removed by 22:00 hours however the Applicant did not consider this was appropriate or proportionate due to the small space inside of the Premises.

Mr Botkai explained that the only operational difference would be if this application was granted was that alcohol consumption and the type of alcohol consumed would be regulated as patrons would no longer be able to bring their own alcohol to the Premises. Mr Botkai suggested that less alcohol would probably be consumed as patrons would have to purchase more expensive alcohol on the Premises and therefore there would be no reason why the granting of this licence would lead to trouble in the neighbourhood. He emphasised that the Premises had received no noise complaints and that 90% of customers were local residents and people who lived on the Parade.

Mr Botkai advised that planning and licencing were two distinct and separate regulatory regimes and confirmed to the Sub-Committee that the Premises was dealing with their planning enforcement issues.

Mr Ali, the Applicant, explained to the Sub-Committee that the tables and chairs were rendered unusable by chaining them up outside the Premises. He added that they were too heavy to move into the restaurant. He advised that the outside area was monitored by the waiting staff and that there was unlikely to be any disruptive behaviour as he was operating a fine dining restaurant. He explained that there were four tables of three inside of the Premises and eight tables of two outside of the Premises and the granting of this licence would allow customers to have a few glasses of wine with their meal. He added there was no bar area in the Premises.

In response to questions from the Sub-Committee, the Applicant advised that all the doors were kept shut at the back of the property and that the kitchen smells mentioned in the representations could only have come from the external duct which had now been removed. He further advised that he had been operating the Premises since 2018 and had never received any noise complaints from the residents. He confirmed that the only complaint he had received was regarding the external duct which had now been removed. He advised that the back of the Premises was at least 25 metres away from any residential properties and that it was not used by the staff or for serving customers. All activity took place at the front of the Premises. He further advised that the Premises sometimes played Persian background music but that it could not be heard from the outside at either the front or back of the Premises. He confirmed that there was no exit at the rear of the Premises and that the window was open during the summer months as the kitchen area became very hot for the kitchen staff.

Dave Nevitt appearing on behalf of the Environmental Health Service advised that they were happy that the Premises would be operated as a restaurant and within the Council's Core Hours Policy. The Sub-Committee noted that the Council's model restaurant condition M66 would be attached to the Premises Licence. Mr Nevitt advised that he was content with the tables and chairs being rendered unusable by 22:30 hours as the terminal hour that was normally acceptable was 23:00 hours. He confirmed that the garden at the rear of the Premises was enclosed and that it was not part of the business. He also confirmed that he was not concerned about the window being open for ventilation purposes as the restaurant did not operate late into the night. He explained that he had visited the Premises and the extraction duct had been removed and that the Applicant had advised that he would be seeking planning approval for a new bespoke duct to go on top of the building which would recirculate within the Premises. He advised that the residents would not be prejudice by what went on in the building so there was no need to attach any conditions regarding the new internal duct to the Premises Licence. He confirmed that he was happy with the conditions that had been agreed with the Applicant and advised that Environmental Health had maintained their representation so that the technical issues surrounding the external duct could be dealt with and so that the concerns of the residents could be properly addressed by the Applicant.

Mr Richard Brown appearing on behalf of the Paddington Waterways and Maida Vale Society advised that the amended operating schedule that had been circulated in the additional papers had not resolved the concerns of Paddington Waterways as the Applicant still required off sales of alcohol to be included on the Premises Licence. He outlined that there was a residential area above the ground floor in the Lauderdale Parade itself and at the back of Castellain Mansions. He advised that Paddington Waterways did not have concerns regarding the tables and chairs being used until 22:30 although there was always concern regarding stockpiling of alcohol. Mr Brown requested that Model Condition 87 be attached to the licence regarding no fumes or odours emanating from the Premises and that any off sales of alcohol be sold in sealed bottles or containers.

Mr Andrew P local resident referred to Appendix 5 of the report which contained the residential map of the area and emphasised that the Premises was surrounded by lots of residential buildings. He requested that the Fire Brigade records regarding the fire at the Premises be checked as it was not his understanding that the fire was

caused by a faulty fridge. He advised that the external duct had only been taken down half an hour ago. He further advised that this Premises was more like a takeaway as the inside space was very tiny and that the table and chairs outside of the Premises caused noise nuisance. He considered that the application should not be granted today as the Premises currently did not even have its own kitchen. The Chairman advised that the Sub-Committee were here to determine the regulation of the sale and consumption of alcohol and explained that the tables and chairs located within the freehold area of a Premises did not need to be licenced. The Chairman emphasised that Licensing and Planning were separate regimes with different aims and objectives and were always determined separately.

In response to questions from the Sub-Committee, Mr Botkai advised that he was not aware of any issue regarding planters and that any concerns would have been brought to the Applicant's attention given the Premises' planning enforcement issues over the past three months.

The Sub-Committee then discussed the proposed conditions that would be attached to the Premises Licence. The Sub-Committee discussed that the CCTV model condition should be attached to the licence, that all off sales of alcohol should be restricted to bottles of wine and that a direct telephone number for the manager be provided to residents and be clearly on display on the Premises.

Mr Nevitt in summing up advised that the Premises would still be able to operate as a restaurant even if this application was not granted and the issues with the ductwork and ventilation would still need to be dealt with via planning.

Mr Botkai in summing up advised that by granting this licence there would be less alcohol consumed at the Premises as patrons would have to purchase alcohol with their meal which would be more expensive than purchasing it from a local shop. He emphasised that the Premises was very popular with local residents.

Conclusion

The Sub-Committee having read the report by the Director of Public Protection and Licensing that was before it; the written submissions of the Applicant and those parties objecting to the application; and, having heard presentations and representations by, and/or on behalf of, those parties present at the proceedings, as well as the responses by those parties to questions put to them by Members of the Sub-Committee, the Sub-Committee was satisfied that, in accordance with the Home Office Guidance and on the evidence before it, it was appropriate and proportionate, in all the circumstances, to **GRANT** the application.

The Sub-Committee noted that there will be no primary cooking on the Premises. However, should the Premises Licence Holder wish to do so at some later stage in the future then the relevant planning permission must be sought for the external ducting so as not to cause a nuisance to nearby residents with obnoxious food smells and to avoid any planning enforcement action being taken.

In this respect, the Sub-Committee has imposed conditions 11, 12 and 13 on the Premises Licence that will prevent nuisance. These conditions should have the desired effect of allaying the concerns expressed by the many residents who

objected to the application and in turn will promote the public nuisance licensing objective.

The Sub-Committee further noted the Premises Licence Holder's assurances and undertaking to work in partnership with local residents by forming a fruitful and meaningful dialogue when it came to the day to day running and management of the Premises particularly the outside area where tables and chairs are permitted daily until 22:30 hours and where nuisance is most likely to occur until the later hour.

In reaching its decision, the Sub-Committee took into consideration that the conditions had been agreed with all the responsible authorities and that the Premises had already been operating with bring your own alcohol with no history of noise complaints. The Sub-Committee were also of the opinion that the small nature and operation of the Premises operating within core hours was likely to cause noise nuisance in the local area and in addition the conditions imposed on the premises licence were appropriate and would ensure that the four licensing objectives were promoted.

The Sub-Committee decided that the Applicant had provided valid reasons as to why the granting of the application would 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 for the Sale of Alcohol (On and Off)** Monday to Sunday Midday to 22:00 hours
2. To grant permission for the **Opening Hours of the Premises:** Monday to Sunday 10:00 to 23:00 hours
3. To grant permission for **Seasonal Variations:** Sundays immediately prior to a bank holiday Midday to 22:00 hours.
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 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 and will include the external area immediately outside the premises entrance. 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. The premises shall only operate as a restaurant (i) in which customers are shown to their table or the customer will select a table themselves, (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, (iv) which do not provide any takeaway service of food or drink for immediate consumption off the premises, (v) 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.

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

9. A Challenge 21 or Challenge 25 scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as driving licence, passport or proof of age card with the PASS Hologram.
10. 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 crime disorder
 - (d) any incidents of disorder
 - (e) any faults in the CCTV system
 - (f) any refusal of the sale of alcohol
 - (g) any visit by a relevant authority or emergency service.
11. 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.
12. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of the local residents and businesses and leave the area quietly.

13. The pavement from the building line to the kerb edge immediately outside the premises, including gutter/channel; at its junction with the kerb edge, is swept and or washed and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.
14. No collection of waste or recycling materials (including bottle) from the premises shall take place between 23:00 and 07:00 on the following day.
15. No deliveries to the premises shall take place between 23:00 and 07:00 on the following day.
16. All waste is to be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
17. 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.
18. 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.
19. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke or make a phone call, shall not be permitted to take glass containers with them.
20. All outside tables and chairs shall be rendered unusable by 22:30 each day.
21. 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 business in the vicinity.
22. The Premises Licence Holder shall ensure that off sales of alcohol are restricted to re-sealed bottles of wine.

Informative

23. The granting of this licence or any variation to it is without prejudice to any requirements to obtain planning permission for a new extract duct system serving the premises. The Premises Licence Holder is advised to consult and seek approval also from the Council's Environmental Health Service when it comes to the appropriate control measures to be adopted to ensure the ducts proper efficient working.

If problems persist then 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
9 September 2021**

