



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (5)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (5)** held on **Thursday 16th September, 2021**. This was held as a virtual meeting.

Members Present: Councillors Murad Gassanly (Chairman), Heather Acton and Rita Begum

1. MEMBERSHIP

THERE WERE NO DECLARATIONS OF INTEREST.

2. DECLARATIONS OF INTEREST

THERE WERE NO DECLARATION OF INTEREST.

3. LICENSING APPLICATIONS

1. 9 SUFFOLK PLACE, LONDON, SW1Y 4HX

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 5 **("The Committee")**

Thursday 16 September 2021

Membership: Councillor Murad Gassanly (Chairman), Councillor Heather Acton and Councillor Rita Begum

Officer Support: Legal Advisor: Vivienne Walker
Policy Officer: Kerry Simpkin
Committee Officer: Sarah Craddock
Presenting Officer: Kevin Jackaman

Application for a New Premises Licence in respect of 9 Suffolk Place London SW1Y 4HX – 21/05450LIPN

FULL DECISION

Premises

9 Suffolk Place, London SW1 4HX

Applicant

Lhgrp Limited

Cumulative Impact Area?

N/A

Special Consideration Zone

West End Buffer

Ward

St James's Ward

Summary of Application

This is an application for a New Premises Licence under the Licensing Act 2003 ("The Act"). The Premises propose to trade as a fine dining restaurant with ancillary bar areas. The Premises are located within St. James's Ward and the West End Buffer Special Consideration Zone but not within the West End Cumulative Zone. The Premises have the benefit of an existing licence since September 2021 under reference 21/08355LIPVM. There is a resident count of 1.

Activities and Hours applied for

Live Music (Indoors)

Sunday to Tuesday: 10:00 hours to 01:00 hours

Wednesday to Saturday: 10:00 hours to 02:00 hours

Seasonal variations/Non-standard timings:

- On the morning that GMT changes to BST 1 hour will be added to the terminal hour of any activities where the existing terminal hour for the activity ends after 01:00 hours.
- The Premises may remain open for the sale of alcohol, regulated entertainment and the provision of late-night refreshment from the terminal hour for those activities on New Year's Eve through to the commencement time for those activities on New Year's Day.

Recorded Music (Indoors)

Sunday to Tuesday: 10:00 hours to 01:00 hours

Wednesday to Saturday: 10:00 hours to 02:00 hours

Seasonal variations/Non-standard timings:

- On the morning that GMT changes to BST 1 hour will be added to the terminal hour of any activities where the existing terminal hour for the activity ends after 01:00 hours.
- The Premises may remain open for the sale of alcohol, regulated entertainment and the provision of late-night refreshment from the terminal hour for those activities on New Year's Eve through to the commencement time for those activities on New Year's Day.
-

Performance of dance (Indoors)

Sunday to Tuesday: 10:00 hours to 01:00 hours

Wednesday to Saturday: 10:00 hours to 02:00 hours

Seasonal variations/Non-standard timings:

- On the morning that GMT changes to BST 1 hour will be added to the terminal hour of any activities where the existing terminal hour for the activity ends after 01:00 hours
- The Premises may remain open for the sale of alcohol, regulated entertainment and the provision of late-night refreshment from the terminal hour for those activities on New Year's Eve through to the commencement time for those activities on New Year's Day.

Late Night Refreshment (Indoors and Outdoors)

Sunday to Tuesday: 23:00 hours to 01:00 hours

Wednesday to Saturday: 23:00 hours to 02:00 hours

Seasonal variations/Non-standard timings:

- On the morning that GMT changes to BST 1 hour will be added to the terminal hour of any activities where the existing terminal hour for the activity ends after 01:00 hours.
- The Premises may remain open for the sale of alcohol, regulated entertainment and the provision of late-night refreshment from the terminal hour for those activities on New Year's Eve through to the commencement time for those activities on New Year's Day.

Sale by retail of alcohol (On and Off sales)

Sunday to Tuesday: 10:00 hours to 01:00 hours

Wednesday to Saturday: 10:00 hours to 02:00 hours

Seasonal variations/Non-standard timings:

- On the morning that GMT changes to BST 1 hour will be added to the terminal hour of any activities where the existing terminal hour for the activity ends after 01:00 hours.
- The Premises may remain open for the sale of alcohol, regulated entertainment and the provision of late-night refreshment from the terminal hour for those activities on New Year's Eve through to the commencement time for those activities on New Year's Day.

Hours premises are open to the public

Sunday to Tuesday: 10:00 hours to 01:30 hours

Wednesday to Saturday: 10:00 hours to 02:30 hours

Seasonal variations/Non-standard timings:

- On the morning that GMT changes to BST 1 hour will be added to the terminal hour of any activities where the existing terminal hour for the activity ends after 01:00 hours.
- The Premises may remain open for the sale of alcohol, regulated entertainment and the provision of late-night refreshment from the terminal hour for those activities on New Year's Eve through to the commencement time for those activities on New Year's Day.

Representations Received

- Metropolitan Police Service (PC Reaz Guerra)
- Environmental Health Service (David Nevitt)

Summary of issues raised by objectors

- MPS stated there was insufficient detail within the operating schedule to promote the licensing objectives.
- EHS stated the proposals are likely to increase the risk of public nuisance and may impact upon public safety.

Policy Position

Under Policy HRS1, 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 matters set out in Policy HRS1.

Under Policy RTN1(A) applications outside the West End Cumulative Impact will be considered on their merits and subject to the matters set out in Policy RTN1.

Under Policy SCZ1, in addition to meeting the other policies within the SLP applications with a designated SCZ should demonstrate that they have taken account of the issues particular to the Zone, in question as identified within the 2020 Cumulative Impact Assessment and should set out any proposed mitigation measures in relation to those issues within their operating schedule.

DECISION AND REASONS

Mr Kevin Jackaman, Senior Licensing Officer, presented the report of the Director of Public Protection and Licensing that was before the Sub-Committee.

Representations had been received by the Environmental Health Service and the Metropolitan Police Service. The Premises are situated within St. James's Ward and the West End Buffer Special Consideration Zone.

Ms Lana Tricker, solicitor acting on behalf of the applicant, explained the Premises will be a high end Italian restaurant. The Premises have recently been renovated to a high specification with construction completed. EHS signed off a works condition the day before the hearing. Substantial food will be provided throughout.

Ms Tricker explained the permitted use under the lease is for a high end restaurant and ancillary bar with the principal purpose being the sale of food. This has been reinforced by the applicant and offered condition 9. Ms Tricker stated the reason for this condition is because the applicant didn't want to give any impression that the Premises will morph into a bar – the sale of food must be the principal purpose. Further, Ms Tricker explained that the Crown, the landlord, has been very strict in terms of the terms of the lease and use of the Premises. The trading concept cannot change without the approval of the Crown.

Ms Tricker noted the Premises currently benefits from a premises licence which only has one operational condition on it. This licence is now in the applicant's name. The applicant can trade under this licence.

Ms Tricker explained this application sought extended hours until 02:00 hours from Wednesday to Saturday. To counter this request, Ms Tricker stated the applicant is not increasing the trading space but instead reducing the capacity substantially on all days of the week. In seeking an additional hour, this application proposes a decrease in capacity of 40% (200 people). Ms Tricker stated this had regard to paragraph D48 of the SLP.

Ms Tricker stated the Premises are a high end experience which is extremely unlikely to have walk-ins. The Premises entrance is at the ground floor and the trading space is in the basement. On ground floor there is reception and hosts at the door – there is a proposed condition that there will be no licensable activities on the ground floor. This will have no impact on the outside space to attract people. The basement has a number of areas on the plans – a formal dining basement, a lounge bar, a basement lounge and a vault. More than half the basement is back of house and kitchen space. There is a bar at one end of the Premises where patrons can have a drink and a wine tasting area. Last entry to the basement lounge is at 00:00 hours – this was again proposed to ensure that it wasn't considered a public area and didn't operate as vertical drinking as seating for all customers is offered.

Ms Tricker noted there is no residential overlooking as very little residential in the area. Notwithstanding this, there was a limitation on the numbers of customers who could go outside.

In relation to the SCZ, Ms Tricker noted that there was no objection by the Licensing Authority.

Ms Tricker submitted that the previous licence had no issues – in her view this demonstrated that the operation of a fine dining restaurant doesn't give rise to crime or nuisance in the area.

In relation to EHS and MPS objections, Ms Tricker noted that they had met with the applicant and visited the Premises and she understood them to be happy with the application but had maintained their representations due to the hours sought.

Ms Tricker stated the applicant did need the hours sought – in her submission there would be no additional impact because of the significantly reduced capacity, especially having regard to the wide raft of conditions proposed when compared to the existing licence.

Off-sales are allowed under the existing licence. This is sought in the event that there are off-sales.

In response to questions by Members of the Sub-Committee, Ms Tricker and Mr Luca Maggiora explained:

- (a) Conditions 13 and 14 – In all areas of the Premises food needs to be and will be the dominant offering. There will be menus in each area. Taking a meal will not be required but will be encouraged in each area. The restaurant will open at 17:00 hours and the private member lounge will not open until 22:00 hours – it will be a private members lounge and only members can access it.
- (b) Booking – The Premises will use a pre-booking system for the restaurant but will not use one for the private member's lounge.
- (c) Bar – the Premises will be a destination point and will not allow dozens of people to come in and drink. This is why the applicant hasn't collaborated with the theatre opposite as he doesn't consider theatre patrons to be appropriate for the Premises,
- (d) Member's condition – There is already a condition offered limiting access to the members lounge. Given the nature of the potential customers, the standard condition isn't appropriate however the offered condition requires them to be guests of the DPS. This does not mean that anyone can come in at any point as it is very high end.
- (e) Music – This will be the only restaurant in the area not playing recorded music and DJs. This is why the applicant bought a grand piano and there will be a live band every evening. The recorded music will only be for the private member's lounge. The applicant has agreed with the Royal Philharmonic Orchestra to perform twice a month to create an experience of a classical music concert whilst people are having a meal. In order to promote this experience, the Premises will enforce a smart casual dress code.
- (f) Smokers – the Premises have a courtyard in the basement, so people do not have to smoke in the street. There are no neighbours inside where they smoke.
- (g) Dispersal – the application seeks similar hours to under the current licence so there will not be much change required to the dispersal policy. The Premises will have security on the front door. The applicant does not expect to have large amounts of people leaving at 02:00 hours because it is a restaurant and people will leave earlier. The Premises do seek to offer an alternative to going

to a nightclub after having a meal. The applicant thinks at most there will be 60-70 people leaving at 02:00 hours which is significantly less than his current premises in Mayfair where up to 500 people are leaving up to 03:00 hours. There is also a condition relating to dispersal.

- (h) Delivery – This is not currently planned but it may be necessary in the event of another lockdown.

Mr David Nevitt, Environmental Health Officer, explained he knows the Premises because he dealt with the previous operator. The previous licence is very old fashioned. He explained that the application is a significant improvement in terms of conditions offered. Further, Mr Nevitt stated he was encouraged by the fact that the works done have resulted in a complete transformation and betterment of the Premises – noting the public safety facilities have been fully upgraded and improved. He stated it is a very well finished premises and is set out as a restaurant.

Mr Nevitt stated the issue for EHS is that there are already late hours on the existing licence. This has to be balanced against the improvements to the Premises as well as the significant reduction in capacity. This is a matter for the Committee to determine.

Mr Nevitt stated he did not see anything in the application which was obviously against policy. The only reason he had maintained his representation was for the Committee to determine the application on its merits.

In terms of the bar, Mr Nevitt stated he was not aware of anything that required a membership condition or prevention. The only potential issue was in relation to hours.

In relation to smokers, Mr Nevitt explained by reference to the design of the Premises and the host building that he did not consider smokers would cause an issue.

In response to questions by Members of the Sub-Committee,

- (a) Complaints – EHS are not aware of any complaints concerning the Premises, although it has been closed for a while.

PC Bryan Lewis, Metropolitan Police Service, explained MPS' objection is based on the extension of hours. He stated the Premises are not a concern for MPS, the concern was people going on the street late at night close to the West End.

PC Lewis noted he would have expected a condition in relation to door security. He stated this should be considered or at least a risk assessment noting that the licence could be transferred.

In response to questions by Members of the Sub-Committee,

- (a) Anti-social behaviour – MPS are not aware of any issues relating to the Premises.

Conclusion

The Sub-Committee has a duty to consider the application on its individual merits and took into account all of the committee papers, submissions made by the Applicant and all other parties, and the oral evidence given by those parties in attendance during the hearing in its determination of the matter.

The Sub-Committee noted that representations were received from EHS and MPS. These representations were concerned with the hours sought. The Sub Committee agreed with EHS and MPS that the applicant was offering a high quality restaurant and private members experience.

The Sub Committee had to balance the increase in hours sought from the existing licence against the benefits of the application. The Sub Committee placed significant weight on the detailed conditions offered by the applicant as well as the representations made by the applicant concerning the nature of the proposed restaurant operation, along with the significant reduction in capacity offered. For these reasons, the Sub Committee decided that it would be appropriate and proportionate to grant the licence as applied for.

The 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 the parties, both orally and in writing, the Committee had decided, after taking into account all of the individual circumstances of this application and the promotion of the four licensing objectives:

1. **To grant permission for Live Music (Indoors)** Monday to Tuesday 10:00 to 01:00 hours Wednesday to Saturday 10:00 to 02:00 hours Sunday 10:00 to 01:00 hours.

Seasonal Variations: The hours for licensable activities and opening times 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 with an additional hour when British Summer Time commences where the existing terminal hour for the activities ends after 01:00 hours.

2. **To grant permission for Recorded Music (Indoors)** Monday to Tuesday 10:00 to 01:00 hours Wednesday to Saturday 10:00 to 02:00 hours Sunday 10:00 to 01:00 hours.

Seasonal Variations: The hours for licensable activities and opening times 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 with an additional hour when British Summer Time commences where the existing terminal hour for the activities ends after 01:00 hours.

3. **To grant permission for Performance of Dance (Indoors)** Monday to Tuesday 10:00 to 01:00 hours Wednesday to Saturday 10:00 to 02:00 hours Sunday 10:00 to 01:00 hours.

Seasonal Variations: The hours for licensable activities and opening times 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 with an additional hour when British Summer Time commences where the existing terminal hour for the activities ends after 01:00 hours.

4. **To grant permission for Late Night Refreshment (Indoors and Outdoors)** Monday to Tuesday 23:00 to 01:00 hours Wednesday to Saturday 23:00 to 02:00 hours Sunday 23:00 to 01:00 hours.

Seasonal Variations: The hours for licensable activities and opening times 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 with an additional hour when British Summer Time commences where the existing terminal hour for the activities ends after 01:00 hours.

5. **To grant permission for Sale by Retail of Alcohol (Indoors and Outdoors)** Monday to Tuesday 10:00 to 01:00 hours Wednesday to Saturday 10:00 02:00 hours Sunday 10:00 01:00 hours.

Seasonal Variations: The hours for licensable activities and opening times 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 with an additional hour when British Summer Time commences where the existing terminal hour for the activities ends after 01:00 hours.

6. **To grant permission for Opening Hours of the Premises** Monday to Tuesday 10:00 to 01:30 hours Wednesday to Saturday 10:00 to 02:30 hours Sunday 10:00 to 01:30 hours.

Seasonal Variations: The hours for licensable activities and opening times 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 with an additional hour when British Summer Time commences where the existing terminal hour for the activities ends after 01:00 hours.

7. That the Licence is subject to any relevant mandatory conditions.
8. 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

9. The licensable activities authorised by this Licence and provided at the premises shall be ancillary to the main function of a fine dining restaurant.
10. The number of persons permitted in the premises at any one-time (excluding staff) shall not exceed 300 persons in the basement.
11. Seating shall be provided for 300 persons except if there is pre-booked

function at the premises.

12. 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.
13. With the exception of condition 14, 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.

14. The sale and supply of alcohol at the premises shall only be to persons taking a substantial table meal there except: -
 - (1) to a maximum of 50 persons in the basement lounge area cross hatched on the plan and 80 persons in the basement restaurant lounge cross hatched on the plan and 20 persons in the basement vault. Menus shall be displayed in the basement lounge, the basement restaurant lounge and the vault and food shall be readily available to be served in these areas at all times; or
 - (2) to persons attending a pre-booked private function where substantial food must be available as part of the booking.
15. In relation to the basement restaurant lounge there shall be no admission after midnight other than to:
 - (1) guests of the owner or DPS of their venue and their bona fide guests, a list of which will be kept at the premises and available for immediate inspection by the authorities for 31 days, or
 - (2) persons attending a pre-booked function.
16. The Premises Licence Holder shall ensure that there are no licensable activities on the ground floor.

17. Waiter/waitress service shall be provided throughout the premises.
18. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises are open for licensable activities and during all times when customers remain on the premises 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.
19. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
20. There shall be a personal licence holder on duty on the premises at all times when the premises are authorised to sell alcohol.
21. A noise limiter must be fitted to the musical amplification system and maintained in accordance with the following criteria:
 - (a) the limiter must be set at a level determined by and to the satisfaction of an authorised Environmental Health Officer, so as to ensure that no noise nuisance is caused to local residents or businesses,
 - (b) The operational panel of the noise limiter shall then be secured by key or password to the satisfaction of the authorised Environmental Health Officer and access shall only be by persons authorised by the Premises Licence holder,
 - (c) The limiter shall not be altered without prior written agreement from the Environmental Health Consultation Team,
 - (d) No alteration or modification to any existing sound system(s) should be affected without prior knowledge of the Environmental Health Consultation Team, and
 - (e) No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.
22. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
23. 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.
24. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises, save for alcohol consumed at the outside tables and chairs shown on the licence plan, which 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. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
26. 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.
27. A direct telephone number for the manager at the premises shall be publicly available at all times the premises are open. This telephone number and/or is to be made available to residents and businesses in the vicinity.
28. Patrons permitted to temporarily leave and then re-enter the premises on the street, e.g., to smoke or make a phone call, shall be limited to 6 persons at any one time.
29. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
30. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 08.00 hours on the following day.
31. 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.
32. There shall be no striptease or nudity, and all persons shall be decently attired at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue licence.
33. 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.
34. 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, searching equipment or scanning

equipment

(g) any refusal of the sale of alcohol

(h) any visit by a relevant authority or emergency service.

35. There shall be no sales of hot food or hot drink or alcohol for consumption off the premises after 23.00 hours.
36. No deliveries to the premises shall take place between 23.00 hours and 08.00 hours on the following day.
37. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.
38. All emergency doors shall be maintained effectively self closing and not held open other than by an approved device.
39. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
40. Curtains and hangings shall be arranged so as not to obstruct emergency safety signs or emergency equipment.
41. All fabrics, curtains, drapes and similar features including materials used in finishing and furnishing shall be either non-combustible or be durably or inherently flame-retarded fabric. Any fabrics used in escape routes (other than foyers), entertainment areas or function rooms, shall be non-combustible.
42. The certificates listed below shall be submitted to the licensing authority upon written request.
 - (a) Any permanent or temporary emergency lighting battery or system
 - (b) Any permanent or temporary electrical installation
 - (c) Any permanent or temporary emergency warning system.
43. Flashing or particularly bright lights on or outside the premises shall not cause a nuisance to nearby properties, save insofar as they are necessary for the prevention of crime.
44. There shall be a minimum of one SIA licensed door supervisor on duty at the premises from 20:00 hours on Monday to Saturday. The SIA door supervisors must correctly display their SIA licence(s) when on duty. On Sunday the premises will be risk assessed and should the risk assessment deemed it necessary the requisite number of SIA licensed door supervisors shall be on duty whilst the premises are trading. The risk assessment shall be retained and available for inspection by the Licensing Authority and the Police for 31 days after the event/operation.
45. The premises may remain open for the sale of alcohol and the provision of late-night refreshment from the terminal hour for those activities on New Year's Eve through to the commencement time for those activities on New Year's Day.

46. On the morning that Greenwich Mean Time changes to British Summer Time one hour will be added to the terminal hour of any activities and to the closing time for the premises where the existing terminal hour for the activities and/or closing hour for the premises ends after 01.00 hours.
47. A copy of the premises' dispersal policy shall be made readily available at the premises for inspection by a Police officer and/or an authorised officer of Westminster City Council.

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
16 September 2021**

2. SOPHISTICATS, BASEMENT AND PART GROUND FLOOR, 3-7 BREWER STREET, LONDON W1F 0RD

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 5
("The Committee")

Thursday 16 September 2021

Membership: Councillor Murad Gassanly (Chairman), Councillor Heather Acton and Councillor Rita Begum

Officer Support: Legal Advisor: Vivienne Walker
 Policy Officer: Kerry Simpkin
 Committee Officer: Sarah Craddock
 Presenting Officer: Kevin Jackaman

Application for a New Premises Licence in respect of Sophisticats Basement and Part Ground Floor 3-7 Brewer Street London W1F 0RD – 21/06392/LIPN

FULL DECISION

Premises

Sophisticats Basement and Part Ground Floor, 3-7 Brewer Street, London W1F 0RD

Applicant

John McKeown Clubs Limited

Cumulative Impact Area?

West End

Special Consideration Zone

N/A

Ward

West End Ward

Summary of Application

This is an application for a New Premises Licence under the Licensing Act 2003 ("The Act"). The premises currently operate as a strip/lap dancing club. On 8th October 2020 the Premises were permitted to operate on a temporary basis until 30 September 2021 as a bar due to the restrictions imposed on Sexual Entertainment Venue and Night Club operations under the COVID-19 Regulations.

The Premises are located within the West End and the West End Cumulative Zone, but not within the Special Consideration Zone. The Premises have the benefit of two Premises Licences. The current licence number is 20/06824/LIPN. The Premises also hold a Sexual Entertainment Venue Licence which is valid until 30 September 2021. There is a resident count of 266.

Activities and Hours applied for

Live Music (Indoors)

Monday to Saturday 09:00 to 03:00 hours
Sunday 09:00 to 23:00 hours

Seasonal Variations: All licensable activities 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 with an additional hour when British Summer Time commences.

Recorded Music (Indoors)

Monday to Saturday 09:00 to 03:00 hours
Sunday 09:00 to 23:00 hours

Seasonal Variations: All licensable activities 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 with an additional hour when British Summer Time commences.

Performance of Dance (Indoors)

Monday to Saturday 09:00 to 03:00 hours
Sunday 09:00 to 23:00 hours

Seasonal Variations: All licensable activities 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 with an additional hour when British Summer Time commences.

Anything of a similar description to Live Music, Recorded Music or Performance of Dance (Indoors)

Monday to Saturday 09:00 to 03:00 hours
Sunday 09:00 to 23:00 hours

Seasonal Variations: All licensable activities 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 with an additional hour when British Summer Time commences.

Late Night Refreshment (Indoors)

Monday to Saturday 23:00 to 03:00 hours

Seasonal Variations: All licensable activities 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 with an additional hour when British Summer Time commences.

Sale by Retail of Alcohol (Indoors)

Monday to Saturday 09:00 to 03:00 hours
Sunday 09:00 to 23:00 hours

Seasonal Variations: All licensable activities 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 with an additional hour when British Summer Time commences.

Opening Hours of the Premises

Monday to Saturday 09:00 to 03:00 hours
Sunday 09:00 to 23:00 hours

Seasonal Variations: All licensable activities 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 with an additional hour when British Summer Time commences.

Representations Received

- Licensing Authority (Jessica Donovan)
- Environmental Health Service (Anil Drayan) (withdrawn)

Summary of issues raised by objectors

- Licensing Authority objected to this application and how the Premises would promote the four Licensing Objectives. The Licensing Authority require the applicant to provide submissions as to how the operation of the premises will

not add to cumulative impact in the West End cumulative impact Zone, in accordance with policy CIP1.

Policy Position

Under Policy HRS1, 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 matters set out in Policy HRS1.

Under Policy CIP1 it is the Licensing Authority's policy to refuse applications within the West End Cumulative Impact Zone for: pubs and bars, fast food premises, and music and dancing and similar entertainment, other than applications to: 1. Vary the hours within Core Hours under Policy HRS1, and/or 2. Vary the licence to reduce the overall capacity of the premises. Applications for other premises types within the West End Cumulative Impact Zones will be subject to other policies within this statement and must demonstrate that they will not add to cumulative impact.

DECISION AND REASONS

Mr Kevin Jackaman, Senior Licensing Officer, presented the report before the Sub-Committee. He advised that this was an application for a New Premises Licence in respect of Basement and Part Ground Floor, 3-7 Brewer Street W1F 0RD and the Applicant was seeking the provision of Sale of retail of Alcohol (on the Premises) and Regulated Entertainment and Late Night Refreshment until 3:00am Monday to Saturday and the Sale of retail of Alcohol (on the Premises) and Regulated Entertainment until 23:00 on Sundays. He advised that representations had been received from the Licensing Authority and the Environmental Health Service. The Licensing Authority had maintained their representation however after further consultation with the Applicant the Environmental Health Service withdraw their representation on the 4 August. The Applicant had applied for a Premises capacity of 40, excluding staff, and licensable activities authorising the sale of alcohol (on the Premises) between 11:00 to 22:30 Monday to Sunday. He further advised that additional submissions had been received from the Licensing Authority which had been circulated to all the relevant parties before the Sub-Committee hearing.

Mr Michael Bromley-Martin, counsel on behalf of the applicant, addressed the Sub-Committee and introduced the application and provided an overview of the style of the operation proposed. The Sub-Committee were advised that this application was to replace two existing Premises Licences: the permanent Sexual Entertainment Premises Licence and the time limited Premises Licence that ends on the 30 September 2021.

Mr Bromley-Martin explained that the Premises were able to reopen after the first lockdown in October 2020 and then again after the second lockdown in March 2021 with the granting of the time limited Premises Licence. He explained that the Applicant had found that operating the Premises under the time limited Premises Licence, due to the restrictions on operating as a sexual entertainment venue, had been highly successful and had appealed to a wider clientele as the Premises now offered a full range of entertainment such as comedy shows. The Applicant wished

to continue to operate the Premises in this way however the difficulty was that the permanent licence had a condition attached to it (condition 9) which limited its operation in that 'the sale of intoxicating liquor shall be ancillary to the provision of striptease entertainment and whilst the premises are operating under a Sexual Entertainment Venue Licence'.

Mr Bromley-Martin stated that the Applicant would like this condition removed from the new Premises Licence and be replaced with similar wording such as condition 42 of the time limited Premises Licence which states that 'the sale of alcohol shall be ancillary to and whilst the premises are operating as either: a) a lounge bar providing live music and/or dance performances, with alcohol consumed only by persons seated; b) a restaurant where alcohol is sold ancillary to a table meal. He advised that he wished the words 'sexual entertainment, burlesque and comedy to be added to this condition after the wording 'or dance performances' and explained that he considered there had been a small misunderstanding in that this application should be considered under all three of the Council's policies and not just MD1(B) and RTN1 as the Premises will not just be operating as a lounge bar but as lounge bar which will be providing sexual entertainment, Burlesque and comedy.

Mr Bromley-Martin noted that in order for the licence to be granted today the Applicant must show the Sub-Committee that there are exceptional circumstances to do so as he did last October when they granted him the time limited Premises Licence application.

In response to questions from the Sub-Committee, Mr Bromley-Martin advised that the exceptional circumstances were the same as the ones put forward in October 2020 in that the application was a direct result of Covid-19 which was still having an impact on the ability to run a sexual entertainment venue only. In addition, the Premises already had an existing Premises Licence and the exceptional circumstances in this instance was the replacement of the existing licence with a similar licence with added conditions but excluding condition 9 of the present licence. The Chairman then clarified that the time limited Premises Licence had been granted in October 2020 due to the Pandemic providing the exceptional circumstances to policy. Mr Bromley-Martin confirmed that sexual entertainment would continue to remain on the licence however the Premises would not just be a sexual entertainment venue but would be allowed to offer a combination of regulated entertainment such as live music, comedy and burlesque which will appeal to a wider range of clientele.

Mr Bromley-Martin explained that the new Premises Licence would not add to the cumulative impact zone as the Premises already had an existing licence and would provide an additional cultural venue to a much wider audience but also with additional conditions which are beneficial to the licencing objectives and in respect of the existing licence which it merely replaces. He advised that the time limited Premises Licence had been in operation for nearly a year without complaint or difficulties occurring in the area and it was important for the Sub-Committee to note that the Applicant had agreed to the sale of alcohol remaining ancillary to entertainment to show the difference between a lounge bar with no entertainment. The new Premises licence attracts a different type of clientele which will not have an impact the cumulative impact of the West End area.

Mr Bromley-Martin advised that all clientele needed to remain seated whilst consuming alcohol and the new licence would be much more similar to the operation of a sexual entertainment venue than a simple bar or lounge bar as envisaged by policy PB1. He emphasised this was not a vertical drinking establishment and would not impact the cumulative impact zone going forward as it hadn't done in the past year whilst operating under the time limited licence.

Mr Bromley-Martin advised that the application should be granted if the Applicant could show exceptional circumstances as stated in the Council's Policy PB1 and again emphasised condition 51 that would be attached to the licence if the application was granted which stated that alcohol would only be ancillary to regulated entertainment. Ticket sales for shows and if necessary, this could be added as a condition to the licence.

In response to the question from the Sub-Committee, Mr Bromley-Martin outlined the exceptional circumstance of this application as follows:

- a) It is an application for a replacement for an existing permanent licence with the removal of the sexual entertainment venue (condition 9)
- b) The proposed additional conditions 50 and 51 will be added to the Premises Licence which are beneficial and promote the four licensing objectives.
- c) This application is an extension of an existing time limited licence allowing the same licensable activities but with no requirement to provide sexual entertainment.
- d) There would be no additional impact within the cumulative impact zone and that is evidenced by the operation of the Premises since last October.
- e) There are no objections to the grant of this licence from the Soho Society or local residents which is significant.
- f) This application is in accordance with policy C1 and P1 and the encouragement of cultural events/venues within the West End and all patrons are seated.

Ms Karyn Abbott, representing the Licensing Authority, advised that the Licensing Service had maintained their representation due to the location of the Premises in the West End Community Impact area, the uncertainty of the operation of the Premises and that the Premises were changing from a sexual entertainment venue to one unlike a bar. The Sub-Committee noted that the changing the operation of the Premises would bring a whole different group of clientele to the Premises and the operation would be advertised differently which could attract more people to the venue which raises concerns for the licensing authority due to the potential impact on the West End Community Impact area. Ms Abbott advised that it would have been helpful to have been given the proposed changes to condition 51 before the hearing to the Licensing Authority could have considered this appropriately however the Policy clearly states that the Applicant needs to demonstrate exceptional circumstances to the Sub-Committee and the Licensing Authority still has concerns

as to how the Applicant intends to operate under this condition 51 due to the different styles of operation outlined in this proposed condition.

Ms Abbott referred to the Licensing Authority's additional submissions and advised that particular concern was regarding whether the lounge bar element would be the predominant operating style. Ms Abbott then advised that the Premises current licence was granted due to the exceptional circumstances of the Pandemic and because sexual entertainment venues were unable to operate during this time. It was on this basis that the licence was granted and as Covid restrictions have now been lifted these circumstances do not longer exist. Sexual entertainment venues are now permitted to operate and it is the Licensing Authority's submission that the Applicant has not provided sufficient evidence to depart from the Council's policy due to the uncertainty of the operation of the Premises. Therefore, the Sub-Committee should refuse the application as proposed unless they are generally satisfied that the Applicant has proposed exceptional circumstances within their submissions.

Conclusion

The Committee has a duty to consider the application on its individual merits and took into account all the committee papers, submissions made by the Applicant and the oral evidence given by all parties during the hearing in its determination of the application.

The Committee noted the representations received from the Licensing Authority. The thrust of the Licensing Authority's objections cited are the uncertainty as to how the Applicant will operate the premises. It was noted that during the hearing, the Applicant made an amendment to condition 51, this provided the sale of alcohol to be ancillary to sexual entertainment, burlesque and comedy.

The Premises intend to provide regulated entertainment and the supply of alcohol. The Premises are within both the West End Ward and West End Cumulative Impact Zone. The Special Consideration Zone does not apply.

It was accepted by the applicant and the Licensing Authority that Policy PB1 would apply and therefore it is the Licensing Authority's policy to refuse applications within the West End Cumulative Impact Zone other than: (1) applications to vary the existing licence hours within the Council's Core Hours Policy HRS1; (2) Applications that seek to vary the existing licence so as to reduce the overall capacity of the premises. Given that this application was for neither of these, the Applicant had to demonstrate exceptional circumstances in order for the licence to be granted.

The Committee, however, was not persuaded by the Applicant that an exception to Policy had been proven and that the application would not add to negative cumulative impact in the West End Cumulative Impact Zone leading to the undermining of the four licensing objectives.

In reaching this decision, the Committee concluded that the exceptional circumstances relied upon by the applicant, namely the same exceptional circumstances that justified the grant of the current Premises licence due to the Pandemic (and because sexual entertainment venues were unable to operate during this time), no longer existed. In light of this finding, the Committee concluded that the

applicant had not demonstrated exceptional circumstances. The Committee also noted the Licensing Authority's uncertainty as to how the Premises would operate this. As such, the Committee concluded that the Applicant had not provided sufficient evidence to depart from the Council's policy.

Accordingly, the Sub Committee decided that the Applicant had *not* provided sufficient reasons as to why the granting of the application would promote the licensing objectives and therefore ***refused*** the application in all the circumstances of the case.

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

**The Licensing Sub-Committee
16 September 2021**