



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (4)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (4)** held on **Wednesday 11th August, 2021**, This will be a Virtual Meeting.

Members Present: Councillors Karen Scarborough (Chairman), Jacqui Wilkinson and Maggie Carman

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: 61-63 SHAFTESBURY AVE, LONDON W1D 6LG – APPLICATION FOR A NEW PREMISES LICENCE

THIS APPLICATION WAS NOT HEARD AT THIS SUB-COMMITTEE.

2. 3 PM: 36-40 RUPERT ST, LONDON W1D 6DN – APPLICATION FOR A NEW PREMISES LICENCE

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

Thursday 11 August 2021

Membership: Councillor Karen Scarborough (Chairman), Councillor Jacqui Wilkinson and Councillor Maggie Carman

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Kerry Simpkin
Committee Officers: Cameron MacLean
Presenting Officer: Emanuela Meloyan

Application for a Premises Licence – 36 – 40 Rupert Street, London W1D 6DN – 21/03388/LIPN

FULL DECISION

Premises

36 – 40 Rupert Street, London W1D 6DN

Applicant

Hovarda UK Limited represented by Counsel, Marcus Lavell of Keystone Law

Cumulative Impact Area?

West End

Ward

St James's

Licensable Activities and Hours applied for

Late Night Refreshment (Indoors and Outdoors)

Monday to Saturday 23:00 to 02:30

Sunday 12:00 to 02:30

Live Music, Recorded Music and Anything of a similar description to that falling within (e), (f) or (g) (Indoors and Outdoors)

Monday to Saturday 10:00 to 02:30

Sunday 12:00 to 02:30

Sale by Retail of Alcohol (Indoors and Outdoors)

Monday to Saturday 10:00 to 02:30

Sunday 12:00 to 02:30

Opening Hours of the Premises:

Monday to Saturday 08:00 to 03:00

Sunday 10:00 to 03:00

Seasonal Variations:

Non-standard Timings: All licensable activities shall be extended from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day. An additional hour to the standard and non-standard times on the day when British Summertime commences.

Representations Received

- Environmental Health Service (Maxwell Koduah)
- Metropolitan Police Service (PC Dave Morgan)
- Licensing Authority (Jessica Donovan)

Summary of Objections

- Environmental Health Service considered that the application would likely impact the promotion of the licensing objectives within the West End CIA. EHS noted the licence currently in issue for the Premises and that this application sought longer hours for the same licensable activities
- Metropolitan Police Service objected to the application on the basis that it would cause further policing problems in the West End CIA, noting in particular the hours sought being longer than currently permitted and that there was insufficient detail in the operating schedule and proposed conditions.
- The Licensing Authority requested further submissions in relation to the operation of the non-hatched area – in particular, whether it would operate vertical drinking. The LA noted submissions were required as to how this application would not add to the cumulative impact of the West End CIA.

Summary of Application

The Sub-Committee has determined an application for a New Premises Licence under the Licensing Act 2003 (“The Act”). The Premise intends to operate as a restaurant and are located within the St James’s Ward. The Premises are located within the West End Cumulative Zone but not in a Special Consideration Zone. The Premises has the benefit of an existing licence since 2005 under reference number (19/15030/LIPDPS). There is a resident count of 56.

Policy Position

Under Policy HRS1, applications outside the core hours will be considered on their merits.

Under Policy RTN1, applications inside the West End Cumulative Impact Zone will generally be granted subject to matters set out in Policy RTN1(b)

Under Policy PB1, it is the Council’s policy to refuse applications within the West End Cumulative Impact Zone other than applications to vary existing hours to within core hours or to reduce overall capacity.

Under Policy CIP1, it is the Council’s policy to refuse applications within the West End Cumulative Impact Zone other than applications to vary existing hours to within core hours or to reduce overall capacity.

SUBMISSIONS AND REASONS

Ms Meloyan, Senior Licensing Officer, summarised the application that was before the Sub-Committee, stating that representations had been received by the Licensing Authority (Roxana Haq), the Metropolitan Police Service (MPS) (PC Bryan Lewis) and the Environmental Health Service (EHS) (Anil Drayan). There were no representations from any other interested parties. Ms Meloyan explained that the Premises are situated within the St James' Ward and falls within the West End cumulative impact zone.

Mr Lavell, Counsel acting on behalf of the Applicant, explained that it was an application to take a Premises that already has a premises licence within the cumulative impact zone (the West End stress area), from a terminal hour of 01:30 hours to 03:00 hours.

Mr Lavell explained that Hovarda is a food led hospitality venue which has been trading successfully for the last 4 years. It has taken over the Premises, which was a sports bar with a noisy and rowdy environment, and turned it into a food led more restaurant environment.

Mr Lavell suggested that the fact there were no objections to the application from any amenity society or any local resident is testament to the fact that the Premises has successfully operated and promoted the licensing objectives over the last 4 years. He stated he was aware that Westminster's Policy notes that simply being a good operator is not enough to show an exception to policy, however he stated it is a very good foundation to build from especially in an area as sensitive as the West End stress area. In his submission, it was in itself exceptional that there were no objections given this.

Drive behind application – Mr Lavell explained that Hovarda have identified that they get a decent number of customers within their last hour of trade (effectively between midnight-1am). These are primarily people who have enjoyed theatrical entertainment elsewhere in the West End although there are other customers who are looking for a food led night out. Mr Lavell stated that whilst they can accommodate those people and they can provide them with food and drink and an element of entertainment, the identified opportunity is to extend that night out for those customers and provide them with a much longer service giving an improvement to turnover and employment. Mr Lavell stated that he had been informed that if that application was successful it would see the creation of 10 leisure and hospitality industry jobs – in his submission, that was not something to be shied away from.

Mr Lavelle emphasised that this application was not about drawing more people in to the stress area. He explained that the premises already has these customers, noting the 01:00 hours last entry condition offered, and the applicant would like to keep these customers on site for longer to see their new entertainment offering of local musicians and singers. Mr Lavell submitted that the application is keeping the Premises food led, providing an element of entertainment that is lacking elsewhere in Westminster in terms of grassroots live music. Mr Lavell noted that is enshrined by not only the last entry condition but also a condition restricting the sale of alcohol to be solely ancillary to food after 01:00 hours

Mr Lavell summarised this point by stating the applicant is an experienced operator who has operated for 4 years whilst promoting the licensing objectives. The application was for entertainment led as well as food led activities from 01:00-01:30 hours with a terminal hour of 02:30 hours and all customers have to be off site by 03:00 hours. Mr Lavell submitted that these conditions actually improve the position that the Premises currently enjoys with its licence.

Cumulative impact – Mr Lavell advised that the policy states ‘to refuse applications within the west end cumulative impact zone for pubs and bars, fast food premises and music and dancing and similar entertainment. Mr Lavell suggested that reference to music and dancing is effectively looking at nightclubs. He stated that this Policy states the Council do not want pubs, bars and nightclubs popping up in addition to those already in place.

Mr Lavell stated that this Premises already benefits for a licence until 01:30 hours. What is to be gained through this application is the ability to sell food on the Premises later, which does not make the Premises a pub or nightclub, and to sell alcohol only ancillary to the sales of such food, which he said is not what you would expect in a pub bar or nightclub. Mr Lavell submitted the applicant does not engage the policy in this respect.

Mr Lavell stated that the existing licence has two 24-hour permissions. It allows the provision of private regulated entertainment 24 hours a day and recorded music 24-hours a day. He stated that this is long established DJ entertainment. Mr Lavell emphasised that the consumption of alcohol is not a licensable activity and only the sale is. This means customers can consume alcohol on the premises 24-hours a day and they can receive several forms of entertainment 24-hours a day. If granted, this licence would result in those permissions being lost. The Premises would have a cease of 02:30 hours and everyone must be off the Premises by 03:00 hours. On this basis, Mr Lavell submitted the new licence modernises what is taking place on the Premises and updates conditions. The CCTV condition has been brought up to date which gives a permanent benefit at all times. On this basis, he stated the licence itself is improved by way of this application.

Mr Lavell finished by saying that this is an example of an operator who wants to do things the right way. The Applicant wishes to have a modern and clean licence that permits him to do something that should be encouraged.

Mr Lavell stated that since he had become involved, he had suggested, agreed by the Applicant, the imposition of two further conditions: A noise limiter condition despite the fact the current licence allows regulated entertainment 24-hours a day; and a condition governing dispersal.

In response to questions:

- (a) In relation to cumulative impact, Mr Lavell stated that due to the number of licenced venues within the area, the burden on services and the ability of the Police responding to issues has diminished drastically as there is too much activity going on. That is what cumulative impact is and that is what the applicant has to avoid. He stated that the applicant is not looking at drawing additional people into the stress area thereby adding to cumulative impact. Instead, the Premises is looking at the same number of people and merely holding them on the site for longer. It is not looking at drawing people into the cumulative impact area. In his view this was the main thrust. Furthermore, Mr Lavell stated that there is a last entry condition being offered up until 01.00.

He stated that the Applicant would not increase footfall in the area and that is a fundamental area of cumulative impact. The Applicant is not looking at operating one of the venues identified in CIP1. In line with the words of the policy, Mr Lavell stated the Premises does not engage CIP1 as it is not a bar, pub or nightclub.

- (b) Mr Lavell confirmed that the hours of the licence have been the same since the Applicant took the Premises over in 2017.
- (c) Mr Lavell explained that there are meals all day whilst the Premises is open. Food is the major driver of revenue. It is not cheap to book a table and dine at Hovarda. He explained it is primarily a food led business, there's a holding bar on the first floor with a lounge dining area along with some formal dining tables. The ground floor is more formal dining. The entertainment being sought is not designed to be a live gigging venue but instead customers will enter and whilst you eat a local acoustic guitar will be sat in the corner providing some more engaging and live entertainment.
- (d) Live entertainment is to be decided on demand – at the moment, from midnight onwards part of the idea of bringing in the post theatre diners.
- (e) In relation to dispersal, Mr Lavell stated the Premises currently closes at 01:30 hours which is managed successfully by having staff on the street who say goodnight and are reminded that it is a residential area and anyone who is appearing to cause a noise nuisance will be approached and reminded. This has been successful for people departing at 01:30 hours through customer engagement. Mr Lavell stated the commitment to a condition that will identify that sort of thing, and stated the applicant would look at a condition of having SIA door staff and how to deal with patrons making too much noise.
- (f) With regards to smoking, Mr Lavell stated that patrons smoke out the front of the Premises and we have not had any issues with this. If members were minded, the Applicant would look at a condition to limit the number of smokers.
- (g) In terms of the 03:00 hours terminal hour requested, Mr Lavell explained this was the result of engagement with customers. He noted that even if a show finished at 23:00 hours, left the theatre and made their way through the West End to us, it could easily be midnight by the time customers arrive at the Premises. The Applicant has experienced this from engaging with our customers and that it where the drive of this application comes from.
- (h) It is highly unlikely that people would have heard of the musicians playing.
- (i) Mr Lavell agreed there would be more people leaving later. He stated the Applicant thinks the people that leave the Premises at 01:00 hours will go on to other places in the area that are open until 03:00 hours. The Applicant wants to keep the customers until 03:00 hours at the Premises.

Mr Anil Drayan, Environmental Health Officer, stated that EHS have maintained their representation in order for the Sub-Committee to have a chance to assess the application because it is in the cumulative impact zone and the Applicant is asking for increased hours beyond the core hours. Mr Drayan stated that the existing licence permits beyond core hours, and this application would be a further extension.

Mr Drayan started by advising the Sub-Committee on the current operation of the Premises. The Premises was taken over by the existing operators in 2017, the last recorded relevant complaint against the Premises was made in 2018 and that was due to loud music and that was from what looked like residents that were living in the building block. Mr Drayan stated there have been no resident representations made to this application. He said he was too sure if the resident blocks still exist. The Applicant has demonstrated they are able to operate without causing further nuisance since 2018. The offer of adding a noise limiter condition will further aid in preventing that issue.

In that sense, Mr Drayan stated EHS are satisfied that the licensing objectives of prevention of public nuisance and public safety will not be an issue from within the Premises. It is more the issue of cumulative impact. The Applicant has offered the SIA door staff advising people where to go and how they should leave, dispersal condition, the capacity remaining the same at the moment with a late entry condition. Mr Drayan stated the real question is assessing whether the application, if granted, is going to be adding to cumulative impact.

In relation to the mitigation offered, Mr Drayan stated that the application will remove the 24-hour permission that is on the current licence. Mr Drayan stated that it may be that the Applicant hasn't used this and it maybe that if they do not get this licence, the Premises may decide to begin using this aspect. Mr Drayan stated he thinks the Sub-Committee will have to take that into consideration and what weight they put on that 24-hour permission. He stated that the Applicant could provide that 24-hour regulated entrainment and recorded music that is permitted. Again, he stated this was something the Sub-Committee needed to take into consideration to see if that helps mitigate against cumulative impact.

In response to questions from the Sub-Committee:

- (a) In relation to pre-selling alcohol, Mr Drayan explained by way of example that someone could pay for 10 drinks at this time and collect it at 02:00 hours or they could collect it one by one. It could be provided in a large jug and sold before 01:30 hours and then you would have a jug of alcohol to then drink until 04:00 hours with the entertainment provided to keep you on the Premises.

Ms Roxana Huq, Senior Licensing Authority, stated the licensing authority had maintained their representation due to the concerns set out in their submission in respect of the increase in hours which are outside the core hours policy. She stated the Applicant has agreed to the conditions we have proposed. However, members must be satisfied that any exception demonstrated is acceptable to counteract any cumulative impact in the West End cumulative impact zone.

PC Bryan Lewis, Metropolitan Police Service, explained that the Police's objection is based on the cumulative impact policy in the West End.

He stated it is mostly a food led premises and the Police have not had any problems with it. PC Lewis said he has no criticism of the Premises and said that it is a well-run venue. Rather, the Police's objection is the question of longer trading hours leading to more people on the street who have consumed alcohol and then potentially being the victims of crime and disorder. He stated he appreciates there is talk of existing customers, but they still have to leave at some point up until 03:00

hours. The later the hour, the greater the risk. The night tube is not resuming until 2022. He stated he thought some good conditions have been proposed.

Conclusion

The Sub-Committee has a duty to consider the application on its individual merits. In reaching their decision, the Sub-Committee took into account all the committee papers, supplementary submissions made by the Applicant, Responsible Authorities and the oral evidence given by all parties during the hearing in its determination of the matter.

The Applicant already runs a restaurant at the Premises with a terminal hour of 01:00 hours. The Sub-Committee noted that there had been no objections raised by local residents and that EHS advised that there would not be an issue caused from within the Premises.

However, as noted by the Applicant during the course of submissions, the Council expects operators to be good. This is not an exception to policy. Given the nature of the application, the Applicant had to show that the application would not add to the cumulative impact of the area.

The Sub-Committee concluded that, if granted, the application would add to the cumulative impact. The Sub-Committee did not agree that the result of this application would simply be to retain the same patrons in the Premises for longer given, if permitted, this application would allow for more people to be in the West End CIA between 01:00 hours – 03:00 hours. Accordingly, the Sub-Committee did not consider the Applicant had shown there would be no cumulative impact if granted. The crux of the matter was whether there would be increased numbers in the cumulative impact area due to the nature, style and operation of the Applicants business model and how that is likely to affect dispersal and the sorts of issues the MPS talked about regarding crime and disorder. The Sub-Committee concluded that this would cause difficulties in the cumulative impact area.

The Sub Committee was not persuaded by the Applicant that the promotion of the licensing objectives would be upheld particularly the public nuisance and crime and disorder licensing objectives. The Sub Committee when looking at the evidence had regard to the policy considerations arising under Policies PN1, CD1 and CH1 under the City Councils Statement of Licensing 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 reached by the Licensing Sub-Committee.

This Decision takes immediate effect.

The Licensing Sub-Committee

11 August 2021

