



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (1)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (1)** held on **Thursday 3rd March, 2022**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Matthew Green (Chairman), Melvyn Caplan and Maggie Carman

1. MEMBERSHIP

1.1 There were no changes to the membership.

2. DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1. WINGSTOP RESTAURANTS, BASEMENT TO SECOND FLOOR, 138 SHAFTESBURY AVENUE, WC2H 8HB

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE No.1 ("The Committee")

Thursday 3 March 2022

Membership: Councillor Matthew Green (Chairman)
Councillor Melvyn Caplan
Councillor Maggie Carman

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Kerry Simpkin
Committee Officer: Kisi Smith-Charlemagne
Presenting Officer: Kevin Jackaman

Application for a Variation of Premises Licence in respect of Wingstop Restaurants Basement To Second Floor 138 Shaftesbury Avenue London WC2H 8HB – 21/07770/LIPV

Others present also: Ms Lana Tricker - LT Law (Solicitor) Mr Herman Sahota Director (PLH) (Via phone) PC Reaz Guerra (Metropolitan Police Service) Mr Anil Drayan (Environmental Health Service) Ms Jessica Donovan (The Licensing Authority) Mr Richard Brown (Citizens Advice Project) Mr David Kaner (CGCA) Ms Jane Doyle (The Soho Society)

Premises

Basement To Second Floor 138 Shaftesbury Avenue London WC2H 8HB

Premise Licence Holder

Lemon Pepper Holdings Ltd

Cumulative Impact Area

West End Cumulative Impact Zone (CIZ)

Special Consideration Zone

None

Ward

St James's

Summary of Application

This is an application for a Variation of a Premises Licence under the Licensing Act 2003 ("The Act"). The Premises operates as a restaurant with ancillary takeaway. The Application sought to:

- extend the sale of alcohol, late night refreshment and opening hours from midnight to 01:00 Thursday Friday and Saturday. No changes on other days.
- vary existing condition 42. from "On Fridays and Saturdays, from 22:00 until close, there shall be a minimum of 1 SIA door supervisor on duty at the premises. They shall wear either a high visibility yellow jacket or vest." to "On Thursdays, Fridays and Saturdays, from 22:00 until close, there shall be a minimum of 1 SIA door supervisor on duty at the premises. They shall wear either a high visibility yellow jacket or vest."
- remove existing condition 43.
- vary existing condition 44. from "There shall be no supply of alcohol for consumption off the premises after 23:00 hours Monday to Saturday and 22:30 on Sunday " to "There shall be no supply of alcohol for consumption off the premises after 23:30 hours Monday to Wed, 00.30 Thurs to Sat and 23:30 on Sunday."

Activities and Hours applied for

Late Night Refreshments: (Indoors and Outdoors)

Monday to Wednesday 23:00 to 00:00 hours Thursday to Saturday 23:00 to 01:00 and Sunday 23:00 to 00:00 hours

Seasonal Variations: 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

Sale by Retail of Alcohol: On and Off Sales

Monday to Wednesday 11:00 to 00:00 hours Thursday to Saturday 11:00 to 01:00 and Sunday 11:00 to 00:00 hours

Seasonal Variations: 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

Opening Hours of the Premises

Monday to Wednesday 10:00 to 00:00 hours Thursday to Saturday 10:00 to 01:00 and Sunday 10:00 to 00:00 hours

Seasonal Variations: 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

Proposed conditions being varied

Current Condition 42:

On Fridays and Saturdays, from 22:00 until close, there shall be a minimum of 1 SIA door supervisor on duty at the premises. They shall wear either a high visibility yellow jacket or vest.

Proposed Condition 42:

On Thursdays, Fridays and Saturdays, from 22:00 until close, there shall be a minimum of 1 SIA door supervisor on duty at the premises. They shall wear either a high visibility yellow jacket or vest.

Conditions being added

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.

Representations Received:

- PC Nicole Sondh (Metropolitan Police Service)
- Mr Anil Drayan (Environmental Health Service)
- Ms Jessica Donovan (The Licensing Authority)
- The Soho Society

Summary of issues raised by objectors:

Concerns were raised on the grounds of prevention of crime and disorder, prevention of public nuisance, and cumulative impact in the West End Cumulative Impact Area. It was felt that application proposal to extend its on and off sales licence in an area already saturated with late night licences. Objectors felt that if granted the premises would fail to promote the licensing objectives and increase cumulative impact in the West End Cumulative Impact Zone.

Policy Position:

Policies HRS1, RTN1(B), FFP1 and CIP1 apply under the City Council's Statement of Licensing Policy (SLP).

SUBMISSIONS AND REASONS

The Presenting Officer Mr Kevin Jackaman introduced the application to the Sub-Committee, he advised that this was an application for a variation application for a restaurant. The PLH had applied for extended hours for off sales of alcohol and late night refreshment at the premises, and the removal of condition 43 of the licence. The amendments to the licence were no longer sought, having read the representations. He advised that the variation application was therefore limited to extending the hours for alcohol, late night refreshment and opening hours from midnight to 01:00 Thursday, Friday and Saturday. No changes were sought for the other days of the week.

Mr Jackaman advised that following on from this, condition 42 would be amended so security was also provided on Thursday and the following proposed condition would be added. *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.* The Premises are located within the St James's ward and in the West End Cumulative Impact Zone.

Ms Lana Tricker Solicitor appearing on behalf of the PLH addressed the Sub-Committee, she advised that the PLH operated a chain of restaurants and that the premises on Shaftsbury Avenue was the flagship restaurant. She stated that the Premises had varied the licence in 2019 and that after reviewing the representations the PLH amended the application by removing the extended hours of off sales of alcohol, late night refreshments at the Premises and the removal of condition 43.

Ms Tricker confirmed that the variation was now to extend the hours for alcohol, late night refreshment and opening hours from 00:00 to 01:00 on Thursday, Friday and

Saturday and no changes were sought for the other days of the week. She also advised that a model condition for dispersal would be added and condition 42 would be amended so that two SIA security staff was also provided on Thursday, Friday, and Saturday.

Ms Tricker confirmed that there would be no change to the capacity of the Premises, regulated entertainment, or takeaway element. The sale of alcohol would be ancillary to food as the Premises was a restaurant as stated in condition 10 and there was no change to the restaurant style. Licensable activities would take place on the ground floor and first floor; the basement, second and third floors were all back of house.

Ms Tricker explained how the Premises operated, stating that orders were placed at the counter and a waiter or waitress would take the freshly prepared meal (8-10 minutes preparation) to the customer's table. She confirmed that there was no bar or holding bar and that the Premises was not a fast-food restaurant and should not be added to the cause of the Cumulative Impact Area (CIA). Alcohol sales make up 1% of the total turnover and that the Premises did not serve super strength beer and only offered a choice of two beers.

Ms Tricker advised that there was no policy presumption to refuse the application as the Premises operated as a restaurant with waiter and waitress service and that it should be judged on its merits. The Premises has not been the subject of complaint by EH or the Police regarding the premises operation, a good dispersal policy supported by good transport links and was subject to Westminster restaurant conditions. Ms Tricker advised that no alcohol was on display, and this was a family restaurant which implemented challenge 25.

Ms Tricker confirmed the Premises had a designated smoking area, which was regularly cleaned, and that staff had implemented certain measures to monitor noise disturbance and were trained in effective crowd dispersal.

The Sub-Committee advised all parties that the main issue for consideration was establishing if the Premises was a restaurant or a fast-food premises and if the latter applied Policy FFP1 was to refuse fast food applications in the West End CIZ. At this point the Sub-Committee sought further information regarding the outcome of the 2019 variation to the premises licence. The Sub-Committee sought further clarification under the SLP regarding the distinction between a restaurant premises and a fast-food premises and how the PLH would mitigate against adding to cumulative impact.

In answer to questions from the Sub-Committee Ms Tricker advised that the Premises operated a modified version of Model Condition 66 and referred to condition 10 which read: *The sale of alcohol for consumption on the premises shall only be to persons purchasing a substantial table meal there and as an ancillary to that meal, which is to be eaten seated at a table or counter in the premises.* Ms Tricker confirmed that the Premises offered takeaway until 23:00, alcohol was not provided to customers who were not seated and having a substantial table meal. Alcohol is provided at the counter but there are very low levels of alcohol sales.

The Sub-Committee noted that one exception had been granted to the Premises and sought clarification from the PLH as to why a second exception should be granted.

The Sub-Committee also noted that the Police withdrew its representation in 2019, but had maintained its representation this time around with the current application. The Sub-Committee also sought further clarification as to what the PLH intended to do during the one-hour extension on Thursday, Friday and Saturday.

Ms Tricker advised that there would be no change to the Premises operation save, that customers would simply be coming into the restaurant for a meal until a later hour. To accommodate the extra hours there would be extra SIA security.

The Sub-Committee noted that the operation remained the same, however it expected the PLH to be going above and beyond to mitigate any impact on the West End CIZ as this was an application for an additional exception. The Sub-Committee queried if the PLH would consider any further measures to mitigate the impact.

Ms Tricker offered a last entry time condition and a consumption condition, she stated that the PLH had policies in place until 00:00 and had been successful in mitigating the impact in the West End CIZ. She advised that there was no evidence that the Premises had caused any impact. The Sub-Committee queried if condition10 could be amended to the MC66 in its entirety. Ms Tricker confirmed that could be implemented, however alcohol would still need to be purchased and collected at the counter as this was the PLH's business model. The Sub-Committee sought further clarification regarding why meals could be brought to the table and alcohol could not.

The Sub-Committee was surprised that what had been offered to mitigate the impact in the West End CIZ and questioned why the PLH was reluctant to operate the full model restaurant Model Condition MC66. It was noted by the Sub-Committee that the Premises did not provide food at a fast pace and there was a presumption to refuse fast food establishments. Ms Tricker stated that the Premises was food led and would allow intoxicated customers to eat, and possibly sober up before heading home.

The Sub-Committee also queried why the PLH had sought extended hours on Thursday. In response Ms Tricker confirmed that Thursday, Friday and Saturday are the busiest nights of the week.

Mr Anil Drayan appearing on behalf of EHS addressed the Sub-Committee, he advised that he was initially concerned with the application due to the extension of hours and the takeaway element of the application which was now withdrawn. Mr Drayan confirmed that there had been no complaints made regarding the Premises, he also stated that the Premises did operate an amended MC66 but believed that the Sub-Committee needed to decide if the application was an exception. He confirmed that the last entry condition was welcomed.

Mr Kerry Simpkin Policy Officer to the Sub-Committee, advised that the Premises would not fall into the restaurant category as it provided a takeaway service, he confirmed that 'takeaway for delivery service only' was the definition and that the Premises would fall into the fast-food policy. He confirmed that it was not possible to use one policy for a period and then switch to a different policy, it would be linked to the primary use of the Premises and in this case it would be fast-food.

PC Reaz Guerra appearing on behalf of the Metropolitan Police addressed the Sub-Committee, he advised that the key issue was whether the Premises was a restaurant or a fast-food establishment. He reiterated the PLH's earlier statement that food was prepared in 8-10 minutes which fitted with a fast-food establishment attracting people leaving a pub or a bar. He advised that there is sometimes a queue that develops outside the and with the later hours when people have been drinking more, there is the premises protentional for confrontation. PC Guerra confirmed that the Premises was in a busy part of the West End and the later hours could have the effect of drawing and retaining people in this area.

Regarding MC66 and alcohol being supplied by waiter and waitress service PC Guerra stated that it was a key element of control for the Premises which ensures that customers receive the alcohol when they are sat at a table. Ms Tricker confirmed the alcohol was provided in plastic bottles.

Ms Jessica Donovan appearing on behalf of the Licensing Authority addressed the Sub-Committee, she confirmed that the Licensing Authority had maintained its objection as the Premises was in the West End CIA and as such various policy points must be considered, namely policies CIP1 and HSR1. Ms Donovan noted that the PLH was no longer seeking to remove condition 43. She paraphrased Paragraph D16 of the CIP1 policy which states that the Licensing Authorities policy in relation to the West End CIA is directed to the effects on licences in the area, therefore a case was most unlikely to be considered exceptional unless it was directed at the underlying reason of the policy.

Ms Donovan referred to policy HRS1 advising that the PLH was seeking to vary the hours outside of core hours in the West end cumulative impact zone, adding to cumulative impact in the West End Cumulative Impact and on that basis the Sub-Committee must be satisfied that the application's hours would not add to the CIA.

Mr Richard Brown, appearing on behalf of Ms Jane Doyle from the Soho Society and calling Mr David Kaner as a witness addressed the Sub-Committee. Mr Brown advised that based on how the Premises operated it seemed to fall within policies CIP1 and FFP1 under the SLP. He confirmed that he agreed with Mr Simpkins interpretation of the policy. He stated that the policies set out a strict presumption to refuse certain types of application (including for extended hours) unless an applicant can demonstrate genuinely exceptional circumstances to the policies.

Mr Brown said that the current hours had been gained incrementally. He advised that a new licence was granted in 2018 with a terminal hour of 23:00 Monday to Saturday 22:30 Sunday for the sale of alcohol. He commented that the PLH returned soon after with a variation application in 2019 and was granted extensions to midnight Monday to Saturday. Mr Brown stated that the current application sought an additional 60 minutes for the sale of alcohol Thursday to Saturday.

Mr Brown was of the view that the Premises did not operate as Model Condition 66 restaurant, it had partial waiter and waitress service and not the crucial aspect relating to alcohol being served at the counter and not directly to seated customers. Mr Brown felt that this was a high turnover Premises i.e. that food can be ordered within 8-10 minutes, which went against the workings of the SLP and likely to cause more impact by attracting people drinking in the West End. Mr Brown stated that

there were queues that formed outside the Premises and no table can be booked in advance.

Mr Brown said that these were characteristics of a fast-food premises, stating that there were several fast-food premises in the area such as Mc Donald's, Donna Kebab which operated to core hours although Shake Shack which was an old licence and had slightly longer hours. Mr Brown believed that granting longer hours to the PLH would change the feel on Cambridge Circus.

Mr Brown acknowledged that there were no resident objections and touched upon the fact that the PLH's submission stated that the impact of the longer hours would be minimised as there were no nearby residents. However, Mr Brown emphasised that there was already several residential premises in the vicinity and that cumulative impact could not be judged solely on the impact of one premises, but how it impacted on the wider area. He was of the view that a premise open until 01:00, retaining people in the West End CIZ would be problematic.

Ms Jane Doyle of the Soho Society addressed the Sub-Committee, she advised that every time she walked past the Premises there was a queue of people often going down Charing Cross Road. Ms Doyle stated that she was interested to find out where the smoking facilities were located and whether the Premises had toilet facilities available to customers. She also expressed concern with additional people entering the West End hotspot areas.

Mr David Kaner addressed the Sub-Committee, he advised that residential properties were located above Shake Shack/Slims Chicken, he stated that those residents had commented on the queues, but had never actually complained to EH. Mr Kaner confirmed that there were also residents at Mansions and Seven Dials area. Mr Kaner commented on how busy the area was and that there was a high level of impact from all the licensable premises.

Mr Herman Sahota (PLH) joined the hearing via telephone and addressed the Sub-Committee, he responded to earlier queries raised and confirmed that the Premises provide fresh food to order, very similar to Nando's or Five Guys which was ready in 10-15 mins and delivered to the table. He also explained that the sale of alcohol was minimal, and the Premises was frequented by families. Mr Sahota said that the Premises rarely had queues and that queue managers were in place alongside queue barriers. Mr Sahota confirmed that the smoking area was next to the chapel entrance (on Shaftesbury Avenue) and was limited to 10 people at any given time.

The Sub-Committee discussed with Mr Sahota the option of accepting the extension to late night refreshment without the sale of alcohol. Mr Sahota advised he would accept a condition for alcohol to be served to tables from 23:00, but not late night refreshment without alcohol. The Sub-Committee also discussed applying the full restaurant condition of Model Condition 66 for the Premises including alcohol served to seated customers at tables and not at the counter to the licence. Mr Sahota said at this time it would be challenging to accept such a condition.

In closing Mr Kerry Simkins confirmed that the Premises was subject to the fast-food policy due to its takeaway element and this should be noted by the Sub-Committee.

Conclusion and reasons of the Sub-Committee

The Sub-Committee has determined an application for a Variation of Premises Licence under the Act. It is not bound by previous Decisions of licensing premises that may or may not have been granted within the area. It realises that it has duty to consider each application on its individual merits and did so when determining the application.

The Sub-Committee noted that the Premises has been licensed since 2018 with a chain of restaurants nationally and that the Premises located at 138 Shaftesbury Avenue (on the corner of Shaftesbury Avenue and Charing Cross Road at Cambridge Circus) is the flag ship for the UK and has been operating for almost 6 months.

The Sub-Committee noted that the PLH had applied for extended hours for the off sale of alcohol and late night refreshment and the removal of Condition 43 but this was later withdrawn after much resistant by those who objected and welcomed by the Sub-Committee. Instead, the variation is now limited to extending the hours for the sale of alcohol, late night refreshment and open hours from Midnight to 01:00 Thursday, Friday and Saturday with no changes sought for the other days of the week. Effectively this would mean an extra hour for licensable activities taking place on the Premises three days of the week at busy times within the West End CIZ.

The operation would be restricted to Condition 10 on the Premises Licence which states:-

“The sale of alcohol for the consumption on the premises shall only to be persons purchasing a substantial meal there and as an ancillary to that meal, which is to be eaten seated a table or counter in the premises”.

The Sub-Committee considered the evidence before it and whether the four licensing objectives will be promoted. The Sub-Committee heard evidence from all the respective parties and in the light of considering that evidence **refused** the application for the reasons outlined below: -

Under the fast-food premises policy FFP1 (B) there is a policy presumption to refuse an application within the West End CIZ unless the PLH can show an exception to policy (the matters contained in Paragraphs B 1-2 and C1-3 refer).

Contrasted with the restaurant policy RNT1 (B) this states that applications within the West End CIZ will be granted but subject to licensable activities being within the core hours policy HRS1 and meeting the requirements of policies CD1, PS1, PN1 and CH1.

The Sub-Committee carefully considered the PLH's written submission in support of the application appearing at Appendix 2 of the Agenda Report and the arguments advanced by Ms Tricker during the hearing as to why an exception had been proven and the justified reasons as to why the variation application should be granted.

However, the key question for the Sub-Committee was to decide whether the operation of the Premises fell within policy RNT1 (B) or policy FFP1 as this was a

crucial aspect of the Sub-Committee's decision making in deciding which policy rightfully applied. The only way to establish this was to consider from the facts how the Premises operated daily and what its key characteristics were by applying those key characteristics and components to the workings of both policies and the evidence.

Turning to policy FFP1 the Sub-Committee was advised by the PLH that the Premises operated a takeaway service up until 23:00 hours. Whilst this was not subject to the variation application it is nevertheless a key indicator as to how the Premises operates daily giving rise generally to the overall nature, style and character of the Premises.

In its assessment of the matter the Sub-Committee considered paragraph F110 on page 100 of the SLP when considering whether the Premises fell within the meaning of a restaurant. The matters contained under Paragraphs C 1-5 of the SLP are quite specific and define a restaurant and this is usually demonstrated by the Council's model restaurant conditions being imposed on a premises licence namely Model Condition 38 (MC38) Model Condition 40 (MC40) and Model Condition 66 (MC66) to ensure that a premises operation is food and not alcohol led and is compliant with those conditions. Paragraph F110 also on page of the SLP states the reasons for policy RNT1 is as follows:

"This policy applies to those premises that are proposed to be used as a restaurant as defined within this policy, and not to fast food premises. The policy distinguishes between restaurants, where dining (a substantial meal) is the main activity for its customers, and fast food premises which at certain hours are likely to attract and provide food for people at the end of an evenings' drinking"

Applying the definition above the Sub-Committee concluded that the Premises did not operate as a restaurant within the meaning of the RNT1 policy but instead fell neatly within FFP1. The crucial aspects of FFP1 are set out at Paragraph F111 on page 101 of the SLP and swayed the opinion of the Sub-Committee in this direction which states:

"Fast food premises provide late night refreshment either by way of take-away food for immediate consumption, or fast food on a counter or self-seating basis. These types of premises are in general more likely than restaurants (as defined in this section) to lead to people remaining on the streets of the West End Cumulative Impact Zone or returning rapidly to those streets. If no fast food premises were available people would be more inclined to disperse, and in retaining people until a later hour these fast food premises undermine the objective of timely dispersal. Late at night, it is likely that they would be attractive to persons who have been drinking elsewhere. The Licensing Authority considers that seeking to minimize the number of people on the street late at night, through rapid dispersal, especially those who have been drinking, is fundamental to promoting the licensing objectives of the prevention of crime and disorder, public nuisance, and public safety. The Licensing Authority comes to this view notwithstanding the benefits which may be offered by well run fast food premises in terms of security, staff, CCTV, toilets, and the provision of a safe environment in which to wait until transport is available. These aspects have been considered by the council but are outweighed by the need for more rapid dispersal from the area in order to promote the licensing objectives".

In deciding this aspect of the SLP the Sub-Committee had regard to the definition of a fast food premise contained under Paragraph D (1-4) on page 85 of the SLP and the reasons set out at Paragraph F56 for Policy FFP1 also on page 85 which states:-

“Fast food premises which are open after 11pm can attract large groups of customers, many of whom have been consuming alcohol in pubs, bars, or night clubs sometimes some distance away. The congregation of people around these premises leads to additional noise and disturbance and further congestion in the area. Although premises which serve cold food and drink are not subject to licensing and may stay open all night, they are not so attractive to people who have been drinking as those providing hot food and drink. The council considers that the addition of hot fast food and hot drink adds to the attractiveness of premises to people who have been drinking and who are more likely to be involved in anti-social behaviour”.

The Sub-Committee did not dispute that the PLH was not a good operator that managed the Premises well and was free from complaint. However, the issue the Sub-Committee had to contend with was whether the additional hour would have a negative impact on the West End CIZ and this really was the true crux of the matter.

The Sub-Committee did express concern regarding customers exiting the Premises at the later hour and questioned whether the dispersal arrangements the PLH had in place/were proposing to implement with staff and or additional SIA controlling the front were adequate to promote the licensing objectives in particular the public nuisance licence objective. The PLH stated that dispersal had not been a problem because its established management practices had been proven over time with experienced staff and it was envisaged that a gradual dispersal of customers would take place during the later hours in the hope that this would minimise any nuisance caused to nearby residents. The Sub-Committee noted the PLH's offer to have a bespoke dispersal plan which would be made available to the Responsible Authorities as well as offering a condition on the Licence in that respect.

The Sub-Committee noted the capacity for the Premises and what affect this would have on the number of persons dispersing at the proposed terminal hour of 01:00 and the impact to local residents in terms of public nuisance.

The Sub-Committee noted that Environmental Health did not have specific issues now that the application had been amended and if the Sub-Committee were minded to approving the variation, they would require the proposed conditions are imposed on the premises licence including the dispersal condition.

The Sub-Committee noted that the Licensing Authority had maintained its objection because the Premises was in the West End CIZ and that the application would have an impact on the core hours policy due to the hour extension. Likewise, the Police shared the same views and reported that the Premises was not a problem Premises where crime and disorder was concerned but appreciated that the Premises was nevertheless in the West End CIZ where exceptional reasons had to be proven.

The Sub-Committee noted the views of the Soho Society, David Kaner and the arguments well made by Mr Brown in relation to the negative impact the application would cause to the West End CIZ.

It was the Sub-Committee's considered view, however, that the increase in licensable activities for the additional hour would lead to public nuisance, particularly when customers are leaving the Premises.

In terms of the policy considerations for hours the Sub-Committee had regard to Policy HRS1 on pages 62-68 of the SLP and Paragraph E9 on page 65 which states that "Hours later than core hours will be considered on their own merits in relation to other policies in the SLP....."

The Sub-Committee appreciated it has discretion when considering the merits of the application but took the view that granting the application would be *contrary* to other policies. The Sub-Committee had regard to all relevant policies under the SLP in particular Policy PN1; the prevention of Public Nuisance and the Prevention of Crime and Disorder.

Policy PN1 states: "***The Licensing Authority will not grant applications that will not promote the public nuisance licensing objective. The criteria and considerations to be taken account are contained on pages 32-35 of the SLP.***"

Similarly, regarding Policy CD1 this also states the Licensing Authority will not grant applications that do not promote the prevention of crime and disorder licensing objective. *The criteria and considerations to be taken account are contained on pages 27-29 of the SLP.*

The Sub-Committee was of the view that the Premises could potentially become a destination venue due to the later hours as this would attract customers in the West End CIZ drinking alcohol and adding to negative cumulative impact. It also considered carefully the SLP in terms of the crime and disorder licensing objective and the potential for crime and disorder particularly regarding violent offences and street robberies that take place in the area which could have the potential for exacerbating existing problems and a drain on Police and City Inspector resources.

The Sub-Committee wanted to emphasise and place on record that the Premises was not associated with crime and disorder but had to consider in its determination of the matter the global affect and impact on the West End CIZ for granting additional hours would have on the area.

The Sub-Committee was of the view that exceptional reasons had not been provided. It sympathised wholly with the PLH that businesses are struggling in the current climate for obvious reasons post the Covid-19 pandemic and the financial implications for the business might not necessarily be good, but exceptionality must first and foremost be proven in accordance with the policy aims and objectives as referred to above. Regrettably on this occasion this had not been demonstrated by the PLH as to why the policy requirements should be departed from by the Sub-Committee.

Based on the evidence the Sub-Committee concluded that the Premises operated within the definition of a fast-food premises and that the Premises primary use was

that of a fast-food premises. This was in keeping too with the takeaway element offered up to 23:00 hours to its customers and therefore a key characteristic for the Premises even though the Premises required customers purchasing alcohol to be seated in accordance with condition 10. The increase in the additional number of SIA staff was welcomed but again the Sub-Committee did not consider the management of the Premises to be the central issue here but more the fact that customers are likely to be drawn to the Premises due to the food offer available and its popularity at a later hour causing negative impact in the West End CIZ.

It was on this basis the Sub-Committee concluded that the proposed terminal hour of 01:00 would have a negative impact on the West End CIZ. The Sub-Committee did consider the conditions offered by the PLH including the issue of a dispersal plan but did not consider that this went far enough and to the heart of the problems experienced in the area. Having a dispersal plan is something the Sub-Committee would expect the PLH to have in place and implemented in any event even at the current terminal hour of Midnight as this would aid dispersal in an already busy area and help promote the licensing objectives. Ms Tricker's offer of a last entry time condition, and a consumption condition, was considered and noted by the Sub-Committee but these measures in the opinion of the Sub-Committee did not outweigh the negative impact likely to be caused in the West End CIZ over the three days which were the busiest periods.

The Sub-Committee felt that it needed to strike the right balance when considering the commercial needs of the PLH, the merits of the application and the evidence before it given by the Responsible Authorities and Soho Society and did not arrive at the decision to refuse the application lightly having regard to the full set of circumstances of the case. It did properly consider whether the proposed conditions offered would mitigate the concerns of residents but was not persuaded by the PLH that these would go to the heart of the problems associated with public nuisance and exceptionality.

The Sub-Committee having carefully considered all the oral and written evidence by the parties in addition to all relevant parts of the Home Office Guidance issued under section 182 of the Act 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 for the extension of hours for licensable activities.

The Sub-Committee came to the overall conclusion that due to the style, nature and character of the Premises it operated as a fast-food premises under Policy FFP1 and not as a restaurant therefore the additional hours applied for would have a negative impact on the West End CIZ leading to the licensing objectives being undermined which is not what the Act is designed to do or achieve.

In all the circumstances of the case the application is ***Refused***.

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

**The Licensing Sub-Committee
3 March 2022**

2. CROCKERS FOLLY, 23-24 ABERDEEN PLACE, NW8 8JR

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE No.1
("The Committee")

Thursday 3 March 2022

Membership: Councillor Matthew Green (Chairman)
Councillor Melvyn Caplan
Councillor Maggie Carman

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Kerry Simpkin
Committee Officer: Kisi Smith-Charlemagne
Presenting Officer: Ms Jessica Donovan

Application for a Premises Variation Licence in respect of Crockers Folly 23-24
Aberdeen Place London NW8 8JR – 21/09487/LIPV

Others Present also; Mr John Lisle of Hogan Lisle (Solicitor) Ms Elizabeth Freeman (Applicant) Mr Anil Drayan (Environmental Health) Mr Richard Brown (Citizens Advice Project) Mrs Nicola Bailey (Local Resident)

Premises

23-24 Aberdeen Place London NW8 8JR

Applicant

Crockers Folly Limited

Cumulative Impact Area

None

Special Consideration Zone

None

Ward

Regents Park

Summary of Application

The Sub-Committee has determined an application for a Variation of a Premises Licence under the Licensing Act 2003 ("The Act"). The Premises operates as a public house and has been licensed since 2010. The application seeks to amend Condition 27 to read: "*All outside table and chairs shall be rendered unusable by 22:30 hours*". This will permit customers to sit on the entire Terrace until 22:30 hours. The Premises are located within the Regents Park Ward but do not fall within

the West End Cumulative Impact Zone or Special Consideration Zone. Representations were received from the Metropolitan Police Service, Environmental Health Service and 14 local residents.

There is a resident count of 144.

Activities and Hours

Regulated Entertainment: Recorded Music (Basement and Ground Floor)

Monday to Thursday 10:00 to 23:30 Friday to Saturday 22:00 to 00:00 and Sunday 12:00 to 22:30 hours

Sundays before Bank Holidays 12:00 to 00:00. The hours for Regulated Entertainment 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.

Late Night Refreshment: Indoors and Outdoors (Basement and Ground Floor)

Monday to Thursday 23:00 to 23:30 Friday to Saturday 23:00 to 00:00 and Sunday N/A

Seasonal variations/ Non-standard timings: Sundays before Bank Holidays 12:00 to 00:00. The hours for Late Night Refreshments 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.

Sale by Retail of Alcohol: On and Off sales (Basement and Ground Floor)

Monday to Thursday 10:00 to 23:30 hours Friday to Saturday 10:00 to 00:00 and Sunday 12:00 to 22:30 hours

Seasonal variations/ Non-standard timings: Sundays before Bank Holidays 12:00 to 00:00. The hours for the Sale by Retail of Alcohol may be extended from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

Opening Hours of the Premises (Basement and Ground Floor)

Monday to Thursday 10:00 to 23:30 hours Friday to Saturday 10:00 to 00:00 and Sunday 12:00 to 22:50 hours

Seasonal variations/ Non-standard timings: None

Proposed conditions being varied

Current Condition:

Condition 27: 'All outside tables and chairs shall be rendered unusable by 21:00 hours and the external area to the left of the entrance door as you face the premise shall be rendered unusable by 19:00 hours each day.'

Proposed Condition:

Condition 27: 'All outside table and chairs shall be rendered unusable by 22:30 hours.' This will permit customers to sit on the entire Terrace until 22:30.

Representations Received:

- PC Reaz Guerra - Metropolitan Police Service (**withdrawn**)
- Mr Anil Drayan - Environmental Health Service (EHS)
- 14 Local Residents

Summary of issues raised by objectors:

Concerns were raised on the grounds of increased Public Nuisance in the area. Residents also raised concerns regarding significant noise nuisance from the restaurant and bar due to tables outside in the street. It was noted that regular deliveries to the pub caused disturbances in the morning; followed by a rubbish pickup every day; and in the last 2 years motorbike there are takeaway pickups. It was felt that this was a residential area where lots of families with young children lived and the impact of an extended time for outside dining and drinking would mean even fewer undisturbed hours in the night for sleeping in what should be a quiet residential area.

Policy Position:

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

SUBMISSIONS AND REASONS

The Presenting Officer Ms Jessica Donovan introduced the application to the Sub-Committee, she advised this was an application by the Applicant Crockers Folly Limited to vary a Premises Licence in respect of 23-24 Aberdeen Place London NW8 8JR which operates as a public house and has been licensed since 2010. The variation seeks the removal and modification of Condition 27 from the licence. The Premises are within the Regents Park Ward but not located within a Cumulative Impact Area or a Special Consideration Zone.

Mr John Lisle Solicitor appearing on behalf of the Applicant addressed the Sub-Committee, he advised that the Premise Licence was granted in 2014 and there were a number of objections which related to the front terrace. He explained that the terrace was split into two areas in from the Premises, the right-hand side operated until 21:00 and the left-hand side operated until 19:00. Mr Lisle said that the Applicant had made a number of applications over the years to increase the operating hours on the left-hand side, but these had been refused.

Mr Lisle stated that this application was somehow different as the Applicant now had the support of Mr Peter's who lived next door to the Premises (left-hand side), who was in support of the application. Mr Lisle confirmed that due to the Covid-19 Pandemic the Premises had benefited from a public highway pavement licence on Cunningham Place for 14 seats operating until 22:30. He said that there had been no complaints regarding the pavement licence. Mr Lisle advised that the pavement licence was due to come to an end and the application before them was to have outside dining for the entire terrace until 22:30.

Mr Lisle confirmed that there were 40 covers across the terrace with an additional 14 on Cunningham place. He stated that it was his belief that the use of the terrace until 22:30 would not increase noise or disturbance. Mr Lisle felt that the condition imposed on the licence in 2014 was restrictive and that the Applicant had demonstrated that they were a responsible operator who ran a well-managed Premises.

Mr Peters witness for the Applicant joined the hearing via the telephone, he advised the Sub-Committee that he had lived next door to the Premises (right-hand side) since 2005. He said regarding noise, he could recall only a few isolated incidences of noise and disturbance and only once for the use of the terrace. Mr Peters said the security staff outside the Premises acts as an added layer of protection and oversight.

The Sub-Committee sought further clarification as to why the terrace area had two different operating hours namely 19:00 for the left-hand side and 21:00 for the right-hand side. Mr Lisle stated that this had been imposed by the EHS. At this point Mr Anil Drayan from the EHS informed the Sub-Committee that Mr Peters had objected originally to the then application in 2014 therefore the licence was granted until 19:00 on the left-hand side. As there were no residents on the right-hand side 21:00 hours was granted by the Sub-Committee at that time.

The Sub-Committee sought clarification as to why it should consider granting the extension when previous applications had been refused and why the Applicant was sought to operate both sides of the terrace until 22:30 instead of 21:00, to bring both areas of the terrace to the same operating schedule. Mr Lisle responded to the queries advising that Mr Peters was now in support of the application. He said that the original applications were for a later hour and 19:00 was imposed. He said that the table and chairs licence had been operating until 22:30 with no complaints and therefore felt the terrace area could be brought inline.

The Sub-Committee sought clarification regarding the actions of patrons once the terrace area closed and the entire capacity of the Premises (inside and out). Mr Lisle responded to the queries advising that patrons were asked to leave and either went into the pub or finished drinks and left. He also confirmed a capacity of 110 (inside) and 40 (outside).

Mr Drayan, confirmed that EHS had maintained its objection to assist the Sub-Committee, provide any background information needed and answer any questions on conditions on the licence or any proposed measures to be put in place. He said that EH had no other comments to make on the application and that it was a matter for the Sub-Committee to determine. The Sub-Committee sought clarification on the

assessments of the City Inspectors. Mr Drayan confirmed that the Premises had been on the radar due to initial complaints when the Premises opened in 2014, but there had been little complaints since other than a wedding function in 2019.

Mrs Nicola Bailey addressed the Sub-Committee, she advised that she was also representing the Wharncliffe Residents Association as their chairman Dr Steven Lipworth was unable to attend today's hearing. Mrs Bailey stated that she has lived on Cunningham Place since 1979, she commented on the table and chairs licence on Cunningham Place saying that it was only problematic when there was event, cricket matches or when the weather is good, and people are sitting outside in the evening. Mrs Bailey also commented on the waste collection and delivery as it was a disturbance in the morning when the rubbish was put out for collection and when deliveries arrived at 05:00.

Mrs Bailey advised that she objected to extending the outside hours because this is too late for a residential area where there are young families and older residents who need their sleep. She advised that she looked after her grandchildren on some school nights and as both her bedrooms directly overlook the Crocker's Folly and was affected by all noise generated from the Premises. Mrs Bailey also commented on the vulnerable residents in supported housing who were unlikely to complain. Mrs Bailey confirmed that she would be concerned if the right-hand side of the Premises would create more noise and smoking.

The Sub-Committee sought further clarification regarding a designated smoking area. Mr Lisle confirmed that the designated smoking area would be in the terrace area on the right-hand side.

Mr Richard Brown addressed the Sub-Committee, he advised that he was representing a number of the objectors on the application, namely: Jen Zibin (Whitten), Alan Roth, Stefanie Roth, Dafna Bonas, Anna Sinclair, Ms Zibin, Mr and Mrs Roth plan to participate remotely. Mr Brown said that it had been noisier outside the Premises due to the table and chairs licence, however his key point is that the current situation represented an acceptable balance. He confirmed that the Premises was located on a residential street with no other licensed premises. Mr Brown felt that granting a later terminal hour for the outside area's risks upsetting this balance.

Providing some background Mr Brown advised that the condition in question was imposed on the premises licence when it was granted in 2014 and following concerns raised by residents (including Mr Peters) as to noise and nuisance which would arise from the use of the outside area should permission be granted for use later into the evening. An earlier time for the left-hand side of the terrace was imposed in recognition of its proximity to the next-door residential properties. He stated that the Applicant did not appeal the imposition of the condition but did subsequently apply to vary the licence to extend the times for use of the entire terrace to 22:00 and 23:00. Both applications were refused.

Mr Brown said that the reasons for refusal was relevant to the current application in that there is no explanation whether any noise attenuation work has taken place. Mr Brown stated that the representations submitted in respect of the application refer to

the residential nature of the surrounding area and hence the disproportionate impact that outside noise later in the evening would have. He also advised that the map to be found on the same page does not fully reflect the density of residential accommodation (or indeed families with children) in the vicinity.

Ms Jen Zibin (Whitten), addressed the Sub-Committee (via Teams), she stated that she objected to any extension of licensing hours. She advised that she was sympathetic to the challenges facing business owners over the last 18 months, however, she needed to object on grounds of public nuisance. Ms Zibin said that the current restrictions struck a fair balance between the commercial needs of Crockers and the needs of residents, many of whom were working families with school age children - 8 school age children alone on the west side of Cunningham Place, and a great many in the Wharncliffe estate).

Ms Zibin felt that the current licence had been occasionally breached, particularly when there are cricket matches on at Lords with many customers drinking on the street and pavements. She felt that residents were able to put up with this as it was occasional, and they wanted to support the Premises, however noise had disturbed her children's sleep on several occasions. She felt that any amendment to extend the hours would increase the prospect of nuisance.

The Sub-Committee sought confirmation from the Applicant if it would consider an amendment to condition 16, increasing the number of SIA staff to two on days where cricket matches are played at Lords. Mr Lisle confirmed that the Applicant would be willing to amend condition 16 to two SIA staff on Lord cricket match days and condition 15 on Friday and Saturday.

Dr Roth and Mrs Roth addressed the Sub-Committee (via telephone) and advised that all the local residents had exercised good will in not reporting every breach of the licensing conditions, especially the right-hand side of the terrace after 21:00, but could not be policing the Premises every day. Dr Roth complimented the Premise on its quality of service. He said that the current hours for both the internal and specially to the external terrace area had proven to be an acceptable balance between noise/nuisance and commercial operation of the Premises. Dr Roth said that any increase in hours would disrupt the well-balanced operation and increase any potential incidences of disorder and drunkenly boisterous behaviour and raise public safety issues.

Ms Freeman addressed the Sub-Committee, she advised that she is not often at the Premises, but when she is she has observed patrons seating and being served by members of staff. Ms Freeman advised that smoking was currently taking place on the right-hand side of the Premises.

Mr Drayan outlined the process for reporting breaches and encouraging the Applicant and residents to meet regularly to address any issues that may arise. He also suggested that the designated smoking area should remain on the right-hand side of the entrance within the terraced area. The Sub-Committee sought a new plan with a hatched area for smoking and confirmed that it would be a maximum of 10 people until 21:00. Mrs Bailey requested that the condition should also include members of staff.

Conclusion

The Sub-Committee realises that it is not bound by any previous Sub-Committee Decisions made and has a duty to consider each application on its individual merits and did so for the purposes of determining this application. The Premises are not located within the West End Cumulative Impact Zone or Special Consideration Zone so there is no presumption to refuse the application.

In reaching their decision, the Sub-Committee considered all the committee papers, supplementary submissions made by the Applicant, and the oral evidence given by all parties during the hearing in its determination of the matter.

The Sub-Committee noted that the style, nature and character of the Premises as described by the Applicant would be that of a Public House and if the application were granted with the additional hours for the outside terrace area the Premises would operate the same.

The Sub-Committee acknowledged the many heartfelt representations by local residents and how passionate those views came across when considering what impact an additional 90 minutes would have by patrons using the outside terrace and the prospect of nuisance occurring as clearly identified in the representations made by local residents.

The Sub-Committee concluded that the right balance has been struck here when considering the needs of local residents and the commercial needs of the Applicant and his ability to run his Premises in an efficient and effective manner that will lead to the promotion of the licensing objectives.

The Sub-Committee considered that the safeguards put in place by the extensive use of conditions it has imposed on the Premises Licence would mitigate the concerns raised by local residents when it came to noise emanating from the Premises, smoking, dispersal of customers which in turn would have the desired effect of promoting the public nuisance licensing objective.

The Sub-Committee considered that the area was residential in nature where lots of families with young children lived and the impact of an extended time for outside dining and drinking would mean even fewer undisturbed hours in the night for sleeping in what should be a quiet residential area.

The Sub-Committee decided to grant the variation by amending Condition 27 so that the terminal hour for both sides of the terrace terminated at 21:00 hours so that both sides were streamlined.

The Sub-Committee considered that 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 the parties, both orally and in writing, **the Sub-Committee has decided to Grant the Application**, after taking into account all the individual circumstances of this case and the promotion of the four licensing objectives:

1. **To grant permission** to modify Condition 27 on the Premises Licence so that it now reads “All outside table and chairs shall be rendered unusable by 21:00 hours” and specified below **and renumbered as Condition 23**.
2. That Conditions 15 and 16 are hereby modified in that there shall be a minimum of 2 SIA licensed door supervisors as opposed to just one as specified below and **renumbered as Conditions 11 and 12**.
3. That the varied licence is subject to any relevant mandatory conditions.
4. That the existing conditions on the licence shall apply in all respects except in so far as they are varied by this Decision.
5. That the varied licence is subject to the following additional conditions and imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

Conditions imposed by the Committee after a licensing hearing

6. No deliveries to the premises shall take place between 17:00 and 09:00 on the following day.
7. Rubbish to be collected during the usual City of Westminster rubbish collection hours.
8.
 - (a) The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team.
 - (b) All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.
 - (c) 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.
 - (d) All recordings shall be stored for a minimum period of 31 days with date and time stamping.
 - (e) Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.
9. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public. This staff member shall be able to arrange for Police to view recent data or footage with the absolute minimum of delay when requested.
10. An incident log shall be kept for 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) any complaints received regarding crime and disorder;
 - (c) any incidents of disorder;

- (d) any faults in the CCTV system;
 - (e) any visit by a relevant authority or emergency service.
11. A minimum of 2 SIA licensed door supervisors shall be on duty at the entrance of the premises from 20:00 hours whilst it is open for business on Friday and Saturday. SIA licences worn by door staff shall be on display at all times, carried within yellow high visibility arm bands.
 12. A minimum of 2 SIA licensed door supervisors shall be on duty at the entrance of the premises during the hours of licensable activity on Lord's Cricket Ground match days.
 13. A Challenge 21 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
 14. 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.
 15. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
 16. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
 17. All windows and external doors shall be kept closed after 21:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.
 18. A sound limiting device located in a separate and remote lockable cabinet from the volume control shall be fitted to any musical amplification system and set at a level determined by and to the satisfaction of an authorised officer of the Environmental Health Service to ensure that no noise nuisance is caused to local residents. The operational panel of the noise limiter shall then be secured to the satisfaction of officer from the Environmental Health Service. The keys securing the noise limiter cabinet shall be held by the licence holder or authorised manager only, and shall not be accessed by any other person. The limiter shall not be altered without prior agreement with the Environmental Health Service.
 19. Alcohol consumed outside the premises building shall only be consumed by patrons seated at tables.
 20. After 21:00 hours patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall not be permitted to take drinks or glass containers with them.

21. Notices shall be prominently displayed at all exits and all areas used for smoking requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
22. After 21:00 hours staff and patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall be limited to 10 persons at any one time.
23. All outside table and chairs shall be rendered unusable by 21:00 hours.
24. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
25. No waste or recyclable materials, including bottles, shall be moved, removed or placed in outside areas between 21.00 hours and 08.00 hours.
26. The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.
27. 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.
28. The number of persons accommodated at any one time (excluding staff) shall not exceed 150 with a maximum of 40 in the external areas.
29. 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.
30. 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.
31. 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.
32. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.
33. 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.

34. The hours for Regulated Entertainment and Sale of Alcohol may be extended from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.
35. Late Night refreshment shall be permitted from 23:00 on New Year's Eve until 05:00 on New Year's Day.

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

**The Licensing Sub-Committee
3 March 2022**

3. SHADOW LICENCE, GROUND FLOOR, 6 BEDFORD STREET, WC2E 9HZ

**WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE No.1
("The Committee")**

Thursday 3 March 2022

Membership: Councillor Matthew Green (Chairman)
Councillor Melvyn Caplan
Councillor Maggie Carman

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Kerry Simpkin
Committee Officer: Kisi Smith-Charlemagne
Presenting Officer: Jessica Donovan

Application for a New Premises Licence in respect of Ground Floor, 6 Bedford Street, London, WC2E 9HZ – 21/09030/LIPN

Other Parties Present also: Mr Alun Thomas – Thomas & Thomas (Solicitor)
Mr Kevin Jackman – Licensing Authority

Premises

Ground Floor, 6 Bedford Street, London, WC2E 9HZ

Applicant

Legal And General Assurance (Pensions Management) Limited

Cumulative Impact Area

West End

Special Consideration Zone

None

Ward

St James's

Summary of Application

The Sub-Committee has determined an application for a New Premises Licence under the Licensing Act 2003 ("The Act"). The Premises currently operate as a restaurant and has been licensed since 2005. The purpose of this application is to seek a shadow licence on the same terms, plans and conditions as per licence reference 21/00270/LIPCH. The Premises are located within the St James's Ward and within the West End Cumulative Impact Zone.

There is a resident count of 60.

Activities and Hours applied for

Regulated Entertainment: Recorded Music (Indoors)

Monday to Sunday 00:00 to 00:00

Seasonal variations/ Non-standard timings: N/A

Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit (Indoors)

Monday to Sunday 00:00 to 00:00

Seasonal variations/ Non-standard timings: N/A

Late Night Refreshments (Indoors)

Monday to Thursday 23:00 to 00:30 hours Friday to Saturday 23:00 to 01:30 and Sunday 23:00 to 00:00

Seasonal Variations: For times authorised for Christmas, New Year and Good Friday see the conditions at Annex 1 of the licence which can be found at Appendix 3.

Sale by Retail of Alcohol (On and Off Sales)

Monday to Thursday 10:00 to 00:00 hours Friday to Saturday 10:00 to 01:00 and Sunday 12:00 to 23:30 hours

Seasonal Variations: For times authorised for Christmas, New Year and Good Friday see the conditions at Annex 1 of the licence which can be found at Appendix 3.

Opening Hours of the Premises

Monday to Thursday 10:00 to 00:30 hours Friday to Saturday 10:00 to 01:30 and Sunday 12:00 to 00:00 hours

Seasonal Variations: N/A

Representations Received:

- Mr Kevin Jackaman - The Licensing Authority
- 1 Local resident

Summary of issues raised by objectors:

Concerns were raised on the grounds of public nuisance. A local resident raised concerns regarding ongoing crime, disturbance, traffic, public safety and hygiene issues on the intersection of Bedford and Chandos Street. It was also noted by a resident that in his opinion the application was incomplete and may not necessarily be compliant with the requirements of the Act.

Policy Position:

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

DECISION AND REASONS

The Presenting Officer Ms Jessica Donovan introduced the application to the Sub-Committee, she advised that this was an application for a New Premises Licence in respect of Ground Floor, 6 Bedford Street, London, WC2E 9HZ by the Applicant, Legal and General Assurance (Pensions Management Limited) who were seeking a shadow licence on the exact same terms as the existing Premises Licence 21/00270/LIPCH. The Premises currently operate as a restaurant and are located within the St James's ward and in the West End Cumulative Impact Zone.

Ms Alun Thomas, Solicitor appearing on behalf of the Applicant addressed the Sub-Committee, he advised that the Applicant was the Landlord of the Premises and was simply seeking a "shadow" licence on the exact same terms as the existing premises licence. Mr Thomas explained that Landlords often did this to have a safeguard particularly in these uncertain and difficult times. Mr Thomas said that the application sought no changes to the existing licence.

Mr Thomas referred to the leading "Extreme Oyster" case on shadow licences and the guiding principles contained therein. He said that the Applicant had accepted a condition from the Licensing Authority which stated: 'The shadow licence will not take effect when the current licence is in operation'. Mr Thomas stated that the Applicant had corresponded with the local resident objector via the Council's website and clarification had been given as to who the landlord was and the rationale for submitting the application. Responding to a question from the Sub-Committee, Mr Thomas confirmed that the Premises was currently operating as a TGI Friday's.

Mr Kevin Jackaman, appearing on behalf of the Licensing Authority addressed the Sub-Committee, he confirmed that the Licensing Authority initially objected to the application as it was located within the CIA. He said that the initial concerns regarding the Applicant had been answered by Mr Thomas, namely that it was the Landlord of the Premises that was the Applicant. Mr Jackaman confirmed that the Applicant had agreed to the proposed condition and that the Licensing Authority had no further objection to the application. He confirmed that the Licensing Authority had maintained its objection due to a local resident objection and it was for the Sub-Committee to determine the matter accordingly based on the evidence.

Conclusion

The Sub-Committee realises that it has a duty to consider each application on its individual merits and did so when determining this application.

The Sub-Committee noted that this was a valid application for a shadow licence which is to be on the same terms as the existing Premises Licence with the Premises operating as a restaurant.

The Sub-Committee noted that the Applicant has applied for a shadow licence merely to protect their interest as amplified by Mr Thomas in his submissions. The Sub-Committee is well versed in dealing with applications of this type and the reasons why a landlord would seek a licence in such circumstances and this too is recognised and provided for in the SLP at Paragraph D20 on page 49 which reads:-.

“The Licensing Authority may consider granting applications for licences that duplicate the terms and conditions of the current operational licence for that same premises but are issued to the landowner, or other person with an interest in the property and that the licence has no affect by condition. These ‘Shadow Licences’ are normally sought by the landowner to protect the interest of their property due to the Policy to refuse certain new applications. A Shadow Licence will, in the event that a licence lapses, is surrendered or is revoked the property own can look to market the property with the licence. The holder of the Shadow Licence would in those circumstances need to apply to the Licensing Authority to vary the licence to remove any conditions preventing the use of that licence. At that point the Licensing Authority will consider whether the operation of the premises is likely to be an exception to policy. It will be for the Shadow Licence licensee to demonstrate that they are an exception within the applications operating schedule”

The Sub-Committee using its discretionary powers concluded that Paragraph D20 of the Policy had been met by the Applicant on the basis that this was an application for a shadow licence identical to the existing Premises Licence in terms of hours and conditions. Therefore, the Sub-Committee could see no real justification for rejecting the application.

Having taken into account all the evidence and the individual circumstances of this case the Sub-Committee decided to grant the application. The Sub-Committee was satisfied that the application was suitable for the local area and had addressed any concerns raised. The Applicant had demonstrated that there were exceptional circumstances which would allow the Sub-Committee to depart from policy in granting the application, which was considered appropriate, with the conditions considered proportionate and restrictive enough to ensure that it promoted the

licensing objectives in addition to reducing the overall impact the application would have on the West End Cumulative Impact Zone.

The Sub-Committee concluded that the conditions it had imposed on the Premises Licence would mitigate the concerns raised by residents and have the overall effect of promoting the licensing objectives.

The Sub-Committee would however request that the Licensing Authority be informed who eventually takes over the shadow licence by way of the usual transfer provisions contained within the Act.

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

1. **To grant permission for Regulated Entertainment: Recorded Music (Indoors)** Monday to Sunday 00:00 to 00:00 **Seasonal variations** N/A
2. **To grant permission for Private Entertainment consisting of dance, music or other entertainment of a like kind for consideration and with a view to profit (Indoors)** Monday to Sunday 00:00 to 00:00 **Seasonal variations** N/A
3. **To grant permission for Late Night Refreshments (Indoors)** Monday to Thursday 23:00 to 00:30 Friday to Saturday 23:00 to 01:30 and Sunday 23:00 to 00:00 **Seasonal Variations:** For times authorised for Christmas, New Year and Good Friday see the conditions at Annex 1 of the licence which can be found at Appendix 3.
4. **To grant permission for the Sale by Retail of Alcohol (On and Off Sales)** Monday to Thursday 10:00 to 00:00 Friday to Saturday 10:00 to 01:00 and Sunday 12:00 to 23:30 **Seasonal Variations:** For times authorised for Christmas, New Year and Good Friday see the conditions at Annex 1 of the licence which can be found at Appendix 3.
5. **To grant permission for the Opening Hours of the Premises:** Monday to Thursday 10:00 to 00:30 Friday to Saturday 10:00 to 01:30 and Sunday 12:00 to 00:00 **Seasonal Variations:** N/A
6. That the Licence is subject to any relevant mandatory conditions.
7. 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 licensing hearing

8. Substantial food and suitable beverages other than intoxicating liquor (including drinking water) shall be available during the whole of the permitted hours in all parts of the premises where intoxicating liquor is sold or supplied.
9. (i) Alcohol shall not be sold, supplied, consumed in or taken from the premises except during permitted hours.

In this condition, permitted hours means:

- (a) On weekdays, other than Christmas Day, Good Friday or New Year's Eve, 10:00 to 23:00;
 - (b) On Sundays, other than Christmas Day or New Year's Eve, 12:00 to 22:30;
 - (c) On Good Friday, 12:00 to 22:30;
 - (d) On Christmas Day, 12:00 to 15:00 and 19:00 to 22:30;
 - (e) On New Year's Eve, except on a Sunday, 10:00 to 23:00;
 - (f) On New Year's Eve on a Sunday, 12:00 to 22:30;
 - (g) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).
- (ii) Alcohol may be sold or supplied for one hour following the hours set out above (other than Christmas Day and New Year's Eve), and on Christmas Day, between 15:00 and 19:00, to persons taking table meals in the premises in a part of the premises usually set apart for the service of such persons and for consumption by such a person in that part of the premises as an ancillary to his meal. For other purposes or in other parts of the premises the hours set out above shall continue to apply.
- (iii) (a) On Fridays and Saturdays only alcohol may be sold or supplied until 01:00 in the morning to persons taking table meals in the premises in a part of the premises usually set apart for the service of such persons and for consumption by that person in that part of the premises as an ancillary to his meal.
- (b) The alcohol must be sold or supplied at a time before (i) the provision of entertainment by persons present and performing or (ii) the provision of substantial refreshment has ended. For other purposes or in other parts of the premises the hours set out above shall continue to apply.
- (c) This condition does not authorise any sale or supply to any person admitted to the premises either after midnight or less than half an hour before the entertainment is due to end, except in accordance with condition number 10 (ii) above.

NOTE - The above restrictions do not prohibit:

- (a) during the first thirty minutes after the above hours the consumption of the alcohol on the premises;

- (b) during the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
- (c) during the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking table meals there if the alcohol was supplied for consumption as ancillary to the meals;
- (d) the sale or supply of alcohol to or the consumption of alcohol by any person residing in the licensed premises;
- (e) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
- (f) the sale of alcohol to a trader or registered club for the purposes of the trade or club;
- (g) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;
- (h) the taking of alcohol from the premises by a person residing there;
- (i) the supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied;
- (j) the supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

In this condition, any reference to a person residing in the premises shall be construed as including a person not residing there but carrying on or in charge of the business on the premises.

- 10. The terminal hour for Late Night Refreshment on New Year's Eve is extended to 05:00 on New Year's Day.
- 11. The shadow licence will not take effect when the current licence is in operation.

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

**The Licensing Sub-Committee
3 March 2022**

The Meeting ended at 2.15 pm

