



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (3)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (3)** held on **Thursday 21st July, 2022**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Robert Eagleton (Chair), Judith Southern and Tim Mitchell

1. MEMBERSHIP

1.1 There was no change of membership.

2. DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1. SHADOW LICENCE, 60 ST JOHN'S WOOD HIGH STREET, NW8 7SH

The Applicant withdrew their application.

2. SHADOW LICENCE, 9 KINGLY STREET, W1B 5PH

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 3
("The Committee")

Thursday 21 July 2022

Membership: Councillor Robert Eagleton (Chair), Councillor Judith Southern and Councillor Tim Mitchell

Officer Support Legal Advisor: Horatio Chance
Policy Officer: Aaron Hardy
Committee Officer: Sarah Craddock
Presenting Officer: Roxana Haq

Others present: Alun Thomas, Solicitor of Thomas & Thomas representing Shaftesbury AV Limited

Application for a New Premises Licence - Shadow Licence, The Court 9 Kingly Street London W1B 5PH 22/05147/LPIN

FULL DECISION

Premises

The Court
9 Kingly Street
LONDON
W1B 5PH

Applicant

Shaftesbury AV Limited

Ward

West End

Cumulative Impact

West End Cumulative Impact Zone (WCIZ)

Special Consideration Zone

N/A

Activities and Hours applied for

Performance of Dance

Monday to Friday: 09:00 to 03:00

Saturday: 09:00 to 00:00

Seasonal Details: From the start on New Year's Eve to the end time on New Year's Day

Performance of Live Music

Monday to Friday: 09:00 to 03:00

Saturday: 09:00 to 00:00

Seasonal Details: From the start time on New Year's Eve to the end time on New Year's Day

Playing of Recorded Music Unrestricted

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

Monday to Friday: 09:00 to 03:00

Saturday: 09:00 to 00:00

Seasonal Details: From the start time on New Year's Eve to the end time on New Year's Day

Late Night Refreshment (Indoors)

Monday to Friday: 23:00 to 03:30

Saturday: 23:00 to 00:00

Seasonal Details: From the start time on New Year's Eve to the end time on New Year's Day.

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

Sale by Retail of Alcohol (On and Off the Premises)

Monday to Friday: 10:00 to 03:00

Saturday: 10:00 to 00:00

Sunday: 12:00 to 22:30

Seasonal Details: From the start time on New Year's Eve to the end time on New Year's Day.

The Opening Hours of the Premises:

Monday to Friday: 09:00 to 03:30

Saturday: 09:00 to 00:30

Sunday: 12:00 to 23:00

Seasonal Details: From the start time on New Year's Eve to the end time on New Year's Day

Where the licence authorises supplies of alcohol, whether these are on and/or off supplies:

Alcohol is supplied for consumption both on and off the Premises.

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 operates as a private members club. The Applicant seeks a Shadow Licence to be held by the freeholder of the Premises Shaftesbury AV Limited on the same terms as the existing licence 20/02060/LIPDPS. The Premises has had the benefit of a premises licence since 2005. The Premises are located within the West End Cumulative Impact Zone. There is a resident count of 7.

Representations Received

- Metropolitan Police Service (MPS) (withdrawn 23 November 2021)
- Soho Society (Marina Tempia) (opposing)

Summary of Representations

- The MPS objected on the basis that the application may undermine the Licensing Objectives. The venue is in the West End Cumulative Impact Area which was created in 2020 based on data between 2017- 2019 with the current Licence having a start date of 20/03/2020 potentially predating the introduction of that policy, a locality where there is traditionally high levels of crime and disorder.
- The Soho Society objected to the application as it is currently presented, on the grounds of prevention of crime and disorder, prevention of public nuisance, and cumulative impact in the West End Cumulative Impact Zone.
- Soho is at the forefront of the late-night economy in Westminster with its numerous restaurants, bars and entertainment establishments. The area is densely populated at night with people out on the streets, resulting in high levels of noise / disturbance, crime and disorder and antisocial behaviour. There are 466 licensed premises in Soho with a large proportion (25%) being late night licences, 118 are licensed between 01:00 - 06.00 with a capacity of over 22,480. This shadow licence application is to mirror the current late night licence and proposes the following condition, 'The shadow licence will not take effect when the current licence is in operation.' We object to the proposed condition, however we will withdraw our objection if the proposed condition is replaced with relevant model condition MC97 below.
- MC97. The shadow licence will not take effect when the current licence is in operation, or it lapses, is surrendered or revoked.

Policy Position

HRS1

Applications for hours outside the core hours set out in Clause C will be considered on their merits, subject to other relevant policies, and with particular regard to the following:

1. The demonstration of compliance in the requirements of policies CD1, PS1, PN1 and CH1 associated with the likelihood of the effect of the grant of a licence for later or earlier hours on crime and disorder, public safety, public nuisance and the protection of children from harm.

PB1 (B)

- B. It is the Licensing Authority's policy to refuse applications within the West End Cumulative Impact Zone other than:
1. Applications to vary the existing licence hours within the council's Core Hours Policy HRS1.
 2. Applications that seek to vary the existing licence so as to reduce the overall capacity of the premises.
- C. The applications referred to in Clause B1 and B2 will generally be granted subject to:
1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1, and/or,
 2. The operation of any delivery services for alcohol and/or late night refreshment meeting the council's Ancillary Delivery of Alcohol and/or Late-Night Refreshment Policy DEL1.
 3. The application and operation of the venue continuing to meet the definition of a Public House or Bar in Clause D.
- D. For the purposes of this policy a Public House or Bar is defined as a premises, or part of a premises that's primary use is the sale or supply of alcohol for consumption on those premises and/or for consumption off the premises for consumption outside the venue.

SUBMISSIONS AND REASONS

The Presenting Officer Ms Roxana Haq introduced the application to the sub-Committee. She advised that this was a new premises licence under the Act in respect of The Court 9 Kingly Street, London W1B 5PH. The application has been made by Shaftesbury AV Limited (represented Mr Alun Thomas Solicitor). The Applicant has applied for a shadow licence on the same terms, plans and conditions as the current existing licence. Full details can be found on pages 36-37 of the agenda report. Representations have been made by the Metropolitan Police Service however following agreement of conditions this was later withdrawn. A representation was also made by the Soho Society but they are not in attendance today. The Premises is situated within the West End Ward and falls within the West End Cumulative Impact Zone.

Mr Thomas addressed the Sub-Committee on behalf of the Applicant and confirmed that he acts for Shaftesbury AV who are part of Shaftesbury PLC. They have some 350 licenced premises within the West End. When the application for the shadow licence was made, the tenant was still in operation however, Shaftesbury now has possession of the premises.

Mr Thomas explained that the shadow application has been made for the following two reasons:

- In case the current licence goes into administration, surrenders licence and somehow lapses.
- We simply cannot transfer the existing licence.

In terms of the application this is on exactly the same terms as the existing licence save for 1 additional condition. There is to be no additional use or impact of granting the application. Mr Thomas explained the key principles as set out in the leading case of “Extreme Oyster” and the circumstances which give rise to applying for this type of licence.

Mr Thomas said that the issue before the Sub-Committee was that the Soho Society are asking for Model Condition (MC97) to be imposed on the licence should the application be granted. This says the shadow licence will not take effect when the current licence is in operation, lapses or is surrendered. Mr Thomas explained that if the licence is not in effect when it is in operation then it cannot be used. This means that the shadow licence will not take effect if it lapses such as the primary licence holder becoming insolvent, or if the current lapses. MC97 will not help the Applicant in these circumstances.

By way of a solution Mr Thomas proposed to the Sub-Committee an alternative condition. He mentioned that during a hearing last week on a different application a condition was suggested where it did not conflict with policy. Mr Thomas said that he would be content with a condition along the lines that “*The Shadow Licence will not take effect when the current licence is in operation*” as this is clear and leaves no room for doubt as to what the condition means.

Mr Thomas said that in terms of paragraph D20 of the policy it is Mr Brown’s contention that the Sub-Committee should impose model condition MC97. In this instance if the shadow licence was required a variation application must be submitted. Mr Thomas said that Paragraph I24 of the SLP conflicts with D20 and is further supported by other parts of policy for example Paragraphs F66, I19 and I22. This leaves the Applicant in a difficult position and so D20 cannot be relied upon.

Mr Thomas said that the Sub-Committee had 3 options namely:-

- Have no condition at all.
- Condition that the licence will not take effect while the current licence is in operation. Taken to mean when the licence is being used
- Cannot impose a condition that has no meaningful effect at all (MC97).

Mr Thomas said that as far as the notification of interest process is concerned where a landlord owns a property, you can put an entry on the licensing register if a

notifiable event happens like transferring a licence the landlord is informed. He advised that we do not get informed where a licence lapses due to insolvency because you do not know until a letter arrives from the Administrator.

The Sub-Committee discussed an issue regarding the licensable activity hours on certain days of the week as it was not entirely clear from the licence and Minutes of the previous Decision and sought an adjournment to clarify the position. After adjourning and returning the Sub-Committee confirmed that it had looked through the Minutes and confirmed the application as applied for was correct. The terminal hour of 03:00 was not changed and the additional hour on Saturday was granted accordingly. It was confirmed to Mr Thomas that the application is proceeding with it being a terminal hour of 03:00 and midnight on Saturday.

Mr Chance, the Legal Advisor to the Sub-Committee, stated that in terms of the policy issues, arguably it could be said that Paragraph D20 conflicts with Paragraph I24 however the duty of the Sub-Committee is to determine each application on its own individual merits. If there are valid reasons to depart from Policy, then the Sub-Committee has the power and discretion to take that particular approach.

The Sub-Committee noted the concerns of Mr Thomas in relation to the case that went before a Sub-Committee last week as that specific case concerned insolvency and the facts relating to this application are slightly different. Mr Thomas submitted again that the Sub-Committee could choose to impose no condition at all or go with his suggested proposed condition 34.

Conclusion

The Sub-Committee realises that it has a duty to consider each application on its individual merits and did so for the purposes of this application. It was noted by the Sub-Committee that the Metropolitan Police Service had withdrawn their objection and that the Environmental Health Service and the Licensing Authority had not made representations against the application. The only remaining representation was from the Soho Society.

The Sub-Committee considering the evidence before it and the arguments advanced by Mr Thomas in his submissions to the Sub-Committee considered Paragraph D20 on page 28 of the SLP and all other relevant parts of the SLP.

Having carefully considered the matter and the need to promote the licensing objectives, the Sub-Committee decided to grant the application for a shadow licence. The Sub-Committee was persuaded that the application met the policy requirements under the SLP and that an exception had been proven. The Sub-Committee has imposed all the conditions and in so far as condition 34 is concerned it decided that it would not be appropriate or proportionate to impose Model Condition MC97 due to the circumstances the Applicant outlined during the hearing. The Sub-Committee when arriving at this decision had regard to the policy considerations and has the power to depart from the terms of the policy when it is appropriate to do so. Mr Thomas's proposed Condition 34 is now imposed on the licence accordingly.

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. The Sub-Committee would request that the Licensing Authority should be informed of who eventually takes over the shadow licence.

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 Sub-Committee further considered the conditions were proportionate to ensure that the licence promoted the licensing objectives.

The Sub-Committee arrived at this decision based upon the merits of the application and the various safeguards and measures the Applicant is to implement in the running of the Premises that will uphold the promotion of the licensing objectives.

In reaching its decision, the Sub-Committee concluded that the conditions attached to the licence would alleviate the residents' concerns and were appropriate and 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 **Sale by Retail of alcohol (On and Off Sales)** Monday to Friday 10:00 to 03:00 Saturday 10:00 to 12:00 and Sunday 12:00 to 22:30.
2. To grant permission for **Late Night Refreshment (Indoors)** Monday to Friday 23:00 to 03:30 Saturday 23:00 to 00:00 Sunday N/A.
3. To grant permission for **Live Music (Indoors)** Monday to Friday 09:00 to 03:00 Saturday 09:00 to 00:00 Sunday N/A
4. To grant permission for **Recorded Music (Indoors)** Monday to Sunday 00:00 to 00:00 hours.
5. To grant permission for **Performance of Dance (Indoors)** Monday to Friday 09:00 to 03:00 Saturday 09:00 to 00:00 Sunday N/A.
6. To grant permission for the **Anything of a similar description to Live Music, Recorded Music or Performance of Dance (Indoors)** Monday to Friday 09:00 to 03:00 Saturday 09:00 to 00:00 and Sunday N/A.
7. To grant permission for the **Opening Hours for the Premises** Monday to Friday 09:00 to 03:30 Saturday 09:00 to 00:30 Sunday 12:00 to 23:00.

8. That the Premises Licence is subject to any relevant mandatory conditions.
9. That the Premises Licence is subject to the following conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

Conditions attached by the Committee after a licensing hearing

10. This licence is subject to all the former Rules of Management for Places of Public Entertainment licensed by Westminster City Council, in force from 4 September 1998 and incorporating amendments agreed by the Council on 25 October 1999, 30 June 2000, 16 January 2001 and 1 October 2001.
11. On New Year's Eve the premises can remain open for the purpose of providing regulated entertainment from the time when the provision of regulated entertainment must otherwise cease on New Year's Eve to the time when regulated entertainment can commence on New Year's Day (or until midnight on New Year's Eve where no regulated entertainment takes place on New Year's Day).
12. Notwithstanding the provisions of Rule of Management No.6 the premises may remain open for the purposes of this licence from 23:00 on each of the days Monday to Friday to 03:00 on the day following.
13. An attendant shall be on duty in the cloakroom during the whole time it is in use.
14. The exit way to Beak Street via the open court and Kingly Court shall be maintained readily available and the collapsible gate at the inner end of the arch shall be locked back fully in the open position when the premises are in use.
15. The spring keys to the entrance doors of No. 10 Kingly Street be removed and retained in the possession of a responsible person during the whole time the public are on the premises.
16. The number of persons accommodated at any one time (excluding staff) shall not exceed the following: Ground floor of Nos. 9 and 10 Kingly Street - 30. Basement of No.9 Kingly Street and Nos. 12/15 Kingly Court - 120.
17. The sale of alcohol must be ancillary to the use of the premises for music and dancing and substantial refreshment.
18. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of

recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.

19. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
20. The supply of alcohol at the premises shall only be sold for consumption by members and their bona fide guests (not exceeding 4 guests per member). No person shall be admitted to membership of the private club or be entitled to take advantage of any of the privileges of membership without an interval of at least 48 hours between their nomination or application for membership and their admission.
21. A list of the names and addresses of members shall be kept on the premises at all times together with a book showing the names and dates of attendance of any guests introduced by members. Both the list and the book shall be produced on demand for inspection by the police or an authorised officer of the Council.
22. After 23:00 hours, the supply of alcohol at the premises shall only be to a person seated at a table.
23. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
24. All external doors shall be kept closed after 23:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.
25. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
26. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
27. 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.
28. 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

29. The approved arrangements at the premises, including means of escape provisions emergency warning equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.
30. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.
31. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.
32. All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.
33. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
34. 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
21 July 2022**

3. DRINKS WITH SASHA, BASEMENT AND GROUND FLOOR, 25 DUKE STREET, W1U 1DJ

This application was Granted under Delegated Authority.

The Meeting ended at 11.30 am