



CITY OF WESTMINSTER

# MINUTES

## Licensing Sub-Committee (6)

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (6)** held on **Thursday 25th August, 2022**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

**Members Present:** Councillors Aziz Toki (Chair), Judith Southern and Jim Glen

#### 1. MEMBERSHIP

1.1 There were no changes to the membership.

#### 2. DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

#### 1. PITCH 3001 VICTORIA STREET

### WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 6

Thursday 25 August 2022

Membership: Councillor Aziz Toki (Chairman), Councillor Judith Southern and Councillor Jim Glen

Legal Adviser: Michael Carson

Policy Officer: Daisy Gadd

Committee Officer: Georgina Wills

Presenting Officers: Shannon Pring

Also Present; Nichola Kerr (West End Street Trading Association, WESTA)  
Chris Cahill (Licence Holder)  
Joe Tang (Principal Engineer -Momentum)

**Application to vary the designation resolution passed by the Council on 25 July 1990 to rescind the designation of Isolated Pitch 3001 Victoria Street/ RESCIN**

**FULL DECISION**

## **Pitch Designation**

Victoria Street footway, backing onto the rear side kerb line on the corner of Carlisle Place facing towards Victoria Street. (L: 3.7m W2.5m)

## **Applicant**

Westminster City Council's Licensing Street Trading Team

## **Licence Holder**

Represented by Nicola Kerr (West End Street Trading Association), Chris Cahill (Licence Holder) Joe Tang (Principal Engineer - Momentum)

## **Ward**

Vincent Square

## **Summary of Application**

The Licensing Sub-Committee is asked to:

- a) Vary the designating resolution passed by the Council on 25 July 1990 to rescind the designation and designate a new location for Pitch 3001 Victoria Street as recommended by officers.
- b) Vary the licence (reference MAR39661) to reflect the new pitch designation and the amended pitch size. If granted, this variation should take effect from 1 January 2023.

## **Representations Received**

Three representations received in support of the application (City Planning, Highways and Street Management , West End Street Trading Association and a local resident)

## **Policy Considerations**

### **1. Street Trading Policy**

- a) Policy ST5 within the City of Westminster Statement of Street Licensing Policy relates to the designation and de-designation of street trading pitches. However, the Licensing Service requests that the committee consider this application as an exception to this policy.

### **Designation and De-designation- Policy ST5**

- (i) *The Licensing authority will designate specific resolution for licensed street trading.*

*(ii) The Licensing authority may de-designate pitches that are no longer suitable for licensed street trading.*

*(iii) The Licensing authority will not designate any new isolated street trading pitches, apart from in exceptional circumstances.*

*Policy ST5(2) states that the Licensing authority may, subject to the appropriate consultation and notification procedures, de-designate street trading pitches where in the opinion of the licensing authority, they are no longer suitable for street trading. The circumstances under which a location may be considered not suitable include:*

- (a) It has not been used for trading for a period of greater than six months;*
- (b) There has been altered circumstances due to the increased pedestrian footfall resulting from altered highways layouts, public realms improvements or construction projects;*
- (c) Where there is new development and the siting and operation of the trading pitch would adversely affect local pedestrian flow or cause congestion, including close to the transport stops or stations.*

## **SUBMISSIONS AND REASONS**

1. Ms Shannon Pring, the Presenting Officer, introduced the application and advised that the Licence Holder was being represented by the West End Street Trading Association. There was consultation with Highway Authority, Police, the Licensee and the West End Street Traders Association and no objections were made regarding the proposal.
2. Ms Pring advised that Contraflow works in the Victoria Station area require the layout of the kerb at the junction of Victoria Street and Carlisle Place be reduced which directly impacts the current pitch location. Following discussions with the relevant parties to identify suitable options for relocation it was agreed that the proposed location at the corner of Carlisle Place would be most suitable for street trading. The construction works are due to be completed at the end of January 2023; however, this may be subject to change. Mr Cahill is temporarily relocated at the Northern edge of Cathedral Piazza (adjacent to, but not on, the southern footway of Victoria Street). If granted, Mr Cahill will return to the new pitch designation, on the completion
3. In response to questions from the Sub-Committee, Mr Cahill advised that he was satisfied with the designation. The Sub-Committee was informed that there were concerns raised by a resident and that these had now been addressed. Ms Nichola Kerr, WESTA, representing the Licence Holder, advised the Sub-Committee that she was satisfied with the Application.

Having carefully considered the committee papers and the submissions made by all the parties, both orally and in writing, **the Sub-Committee has decided**, after taking into account all the circumstances of this application that **approval** be given that the designation resolution passed by the Council on **25 July 1990** be varied to rescind the designation of street trading Pitch 3001 Victoria Street and vary the licence

(reference MAR39661) to reflect the new pitch designation and the amended pitch size to take effect from 1 January 2023.

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

**The Licensing Sub-Committee  
25 August 2022**

**2. 3 - 4 VERE STREET, LONDON, W1G 0DH**

**WCC LICENSING SUB-COMMITTEE NO. 6**  
**("The Committee")**

Thursday 25 August 2022

Membership: Councillor Aziz Toki (Chairman), Councillor Judith Southern and Councillor Jim Glen

Officer Support: Legal Advisor: Horatio Chance  
Policy Officer: Aaron Hardy  
Committee Officer: Georgina Wills  
Presenting Officer: Emanuela Meloyan

**Application for a New Sexual Entertainment Venue Licence Ground Floor and Basement, 3 - 4 Vere Street, London, W1G 0DH (Formerly Maroush) under the Local Government (Miscellaneous Provisions) Act 1982 (as amended by the Policing and Crime Act 2009)**

Others Present: Michael Bromley Martin QC, Barrister, Applicant Legal Representative, Clarmans Clubs Ltd Thomas O'Maoileoin, Thomas and Thomas Partners, Applicant Legal Representative, Clarmans Clubs Ltd Jack Spiegler of Thomas and Thomas Partners. Applicant Legal Representative, Clarmans Clubs Ltd John Wythe Director, Clarmans Clubs Ltd John McKeown Director, Clarmans Clubs Ltd, Philip Kolvin QC representing Nigel Fox 334 Ramsbury Oxford Limited, Victoria Shapiro and Simon Chadowitz, James Rankin QC representing Nikitas Korres for Pontegadea Andrew Wall of Greenvale Capital, Mr Arthur Cobra Sobral da Fonseca Solicitor representing The Consulate General of Brazil in London. Craig Baylis Richard Lancaster, New Westend Robert Sutherland, Consultant Solicitor for Shiva Hotels Dominic Fitzgerald, Director – Shiva Hotels PC Dave Morgan, Metropolitan Police Service, PC Steve Muldoon Metropolitan Police Service, Anil Drayan Environmental Health Service, Karyn Abbott Licensing Authority, Jessica Donovan, Licensing Authority.

**FULL DECISION**

**Premises**

Ground Floor and Basement  
3 - 4 Vere Street  
London

W1G 0DH

### **Applicant**

Clarmans Clubs Ltd

### **Ward**

West End

### **Cumulative Impact**

North

### **Special Consideration Zone**

N/A

### **Activities and Hours applied for**

#### **Opening Hours for the Premises**

Monday to Tuesday 23:00 – 02:00,

Wednesday – Saturday: 23:00 – 05:00 (the morning following)

Sundays have been withdrawn from the application.

#### **Regulation of Entertainment**

Monday to Tuesday 23:00 – 02:00

Wednesday – Saturday: 23:00 – 05:00 (the morning following)

Sundays have been withdrawn from the application.

### **Summary of Application**

The Sub-Committee has determined an application for a New Sexual Entertainment Venue Premises Licence made by Clarmans Clubs Limited to operate the Premises as a sexual entertainment venue between the hours of Monday to Tuesday 23:00 – 02:00 and Wednesday – Saturday: 23:00 – 05:00 (the morning following).

### **Representations Received**

- Metropolitan Police Service (PC Dave Morgan and PC Steve Muldoon)
- Environmental Health Service (Anil Drayan)
- The Licensing Authority (Karyn Abbot and Jessica Donovan)
- Councillor Karen Scarborough (Withdrawn)
- 15 objectors

### **Summary of Representations**

- On 15 January 2022, the Metropolitan Police Service made an objection to the application on the basis that, if granted the application would undermine the licensing objectives. The hours sought exceed Westminster's Core Hour

Policy and there is insufficient detail contained within the operating schedule to promote the licensing objectives.

- On 18 January 2022, the Council's Environmental Health Service made an objection on the basis that the grant of the licence would be inappropriate having regard to the layout, character, or condition of the premises. As part of this objection, conditions have been proposed to be added to the operating schedule of the licence if granted.
- On 18 January 2022, the Licensing Authority made an objection based on the nature of the premises and the character of the relevant locality and the use of premises in the vicinity.

### **Objections from Interested Parties**

There were 15 objections from interested parties submitted on the grounds of:

- Public nuisance
- Crime and disorder
- Residential amenity
- Inappropriate location
- Protection of children from harm

There were also representations from former Local Ward Councillors namely, Councillor Johnathan Glanz and Councillor Timothy Barnes.

### **Policy Position**

#### **Suitability of applicant – SU1**

The applicant has stated that no relevant offences have been committed. In addition, the Police and the Council's Licensing Inspectorate have carried out fit and proper persons checks and have not made any objections to the application.

#### **SEV carried on for the benefit of another person – SU2**

The Police and the Council's Licensing Inspectorate have undertaken appropriate checks and have made no comments.

#### **Appropriate number of SEV in a locality – NO1**

The appropriate number of sexual entertainment venues in the relevant localities is 25 in the Westminster core CAZ north. As the premises are currently licensed this application, if granted, will not exceed 25.

#### **Character of the relevant locality – LO1**

The premises is situated on Vere Street, which is a through road from Oxford Street to Henrietta Place. Vere Street is made up mainly of retail shops and restaurants. There is a resident count of 370.

## Use of premises in the vicinity – LO2

The main use of the premises in the immediate vicinity are commercial. There is one faith group within a 250-metre radius of the premises. There are no other SEV premises, schools, or places of worship in a 250-metre radius of the premises.

## Layout, character or condition of the venue – LO3

Vere Street dates from the early 1800's and 3-4 Vere Street is currently a restaurant on the ground and lower ground floor with an office building on the first to fifth floors. The main entrance to the premises is on the ground floor and another entrance to the premises is at street level which has stairs that lead down to the basement.

## **PRELIMINARY MATTERS**

1. Councillor Jim Glen declared that he previously sat on a Licensing Sub-Committee which considered a renewal of a SEV License and that this Meeting had been referred to on Pg. 66 of the Licensing Sub-Committee Agenda. Councillor Glen also declared that he had sat on a Planning Applications Sub-Committee which had considered applications for the demolition of the Vere Street Car Park and the Debenhams Site. Councillor Glen advised that these applications did not affect his ability to determine this application and participate in the hearing.
2. The Presenting Officer, Ms Emanuela Meloyan introduced the application to the Sub-Committee and advised that the application was for a New Sexual Entertainment Venue Licence (SEV). Ms Meloyan advised that the Application had been amended and that the regulation of entertainment would now take place on Monday to Tuesday 23:00 to 02:00, Wednesday to Saturday: 23:00 to 05:00 (the morning following) and be held in the basement only. Sundays have been withdrawn from the application. She advised that additional representations had been received from the Applicant and interested parties and these had been circulated to all parties.
3. The Sub-Committee held a short discussion regarding timings allocated to parties to make their submissions. The Chair confirmed that the set timings for submissions would remain and informed that all parties would be given equal time to ensure fairness so neither party was disadvantaged. Each party would be entitled to cross examine where relevant all evidence presented to the Sub-Committee and ask appropriate questions.

## **SUBMISSIONS AND REASONS**

4. Mr Michael Bromley-Martin QC, Applicant's Legal Representative Clarmans Clubs Ltd, advised that the application had been 'scaled down' following representations being lodged by interested parties. These included removing regulated entertainment on Sundays and limiting this activity to the basement

and reducing the operational hours and capacity from 225 to 110. There will also be a separate entrance to the Venue from the Brazilian Consulate and no throughway between both establishments. Mr Bromley-Martin advised that the Premises would operate outside the trading hours of all objectors' establishments. There will also be no signage advertising the venue. The Application will replace the SEV Licence.

5. The Sub-Committee was advised that the Applicant previously operated an SEV called Sophisticates in Marylebone Lane for some 20 years and during these periods no concerns were raised regarding its operational style. Mr Bromley-Martin advised that the Applicant was an 'excellent' operator and managed SEVs in several locations around the country and that their style of operation had been 'tried and tested'. He advised that the Premises was not located in a residential area and the nearest private dwelling was 75 meters away. He advised that the Applicant would be investing £4million in the locality and would create 80 new jobs. The Application would also support the Council's Policy of offering a diverse night-time economy. The Sub-Committee was advised that the Policy which restricted 25 SEVs within the CAS would still be met if the Application was granted.
6. Mr Bromley-Martin advised that the Licensing Authority's representation was based on Policy only. He commented that the nearest religious building, St Peters Church in Vere Street had been deconsecrated in 1935 and not been used as a place for worship for over 80 years. Mr Bromley-Martin QC advised that the All-Souls Church in Langham Place was located at a much further distance. He commented that representations from the business and hospitality sector were largely based on wishes for their establishments not to be located near or associated with an SEV. He reiterated that the Premises would not be in operation during the trading hours of Objectors establishments and that concerns raised by such parties were misplaced. The Sub-Committee were advised that two of the three Ward Councillors who had objected were not re-elected.
7. Mr Bromley-Martin advised that the Application alongside an SEV would also include a two Star Michelin Restaurant serving Brazilian cuisine. The Brazilian Ambassador has accepted an invitation to the restaurants opening. Mr Bromley-Martin stated that the Marylebone Residents Association had withdrawn their representation following consultation about proposed Conditions and commented that the Amenity Society was a widely recognised established forum. He advised that the Metropolitan Police Service and Environmental Health Service had been provided Conditions and amendments had been made following consultation with Responsible Authorities. This included the numbers of performers. The Sub-Committee was advised that the above-mentioned parties were satisfied with the Application.
8. In response to questions from the Sub-Committee, Mr Bromley-Martin advised that the restaurant would be the 'public face' of the Premises. He advised that the Applicant would not be required to advertise the venue as



Clarmans Clubs Ltd had an established client base. Mr John Wythe Director, Clarmans Clubs Ltd advised that Clarmans Clubs Ltd had a membership list and that patrons were engaged with before becoming members. Mr Wythe advised that Clarmans Clubs Ltd was an established brand which had been in existence for over two decades. He advised that the venue would have no connections with the other two operations within the building. The Sub-Committee was advised that the Venue had a separate entrance and only shared a Fire Emergency Exit.

9. Following questions from the Sub-Committee, Mr Bromley-Martin advised that the Premises would have an address and would attract patrons from other SEVs which were no longer in operation. He said that the Applicant's Licence for a SEV Premises in Euston had been revoked following a Review in 2019. However, the allegations regarding this Premises were not substantiated and that the London Borough of Camden's Licensing Sub-Committee had permitted for the Premises to revert back to a nightclub.
10. In response to further questions from the Sub-Committee Mr John McKeown, Director Clarmans Clubs Ltd, advised that Sophisticates in Marylebone Lane was more visible to the public and could be seen. Mr Mckeown advised that he wished to return to Westminster as he had a client base and historical connections. He advised that SEVs were very discreet and did not cause any crime and disorder and that residents would unlikely object to any licence renewals.
11. PC Dave Morgan, Metropolitan Police, advised that representations had been maintained as the operational hours were outside core hours despite being reduced. PC Morgan advised that there had been further consultations with the Applicant and several Conditions had been agreed. He advised the Sub-Committee that the Metropolitan Police Service would assist with questions. PC Morgan confirmed that the Clarmans Clubs Ltd SEV located in Brewer Street, Soho, London did not contribute to anti-social behaviour. However, Brewer Street had a high number of criminal activities.
12. In response to questions from the Sub-Committee, PC Morgan advised that Vere Street was a quieter locality in comparison to Soho, London. He advised that there was a high number of robberies and street crime in the Oxford Street District. PC Morgan advised that there were concerns that patrons could become victims of street crime.
13. Mr Anil Drayan, representing the Environmental Health Service advised that he had visited the Premises and was satisfied that it would not cause any concerns regarding public nuisance and public safety. Mr Drayan advised that Conditions had been agreed with the Applicant. He advised that the fire escape route was via the Brazilian Consulate and that permission would be required to access this part of the building during emergencies with the Freeholder and current occupants of the upper floors. Mr Drayan advised that there was no direct access from the Ground Floor to the Basement and street level. The Sub-Committee was advised that the existing Restaurant Licence

would need to be varied to gain access to the basement if the Application was granted.

14. Mr Drayan advised that the Premises in Brewer Street previously operated as a nightclub and caused public nuisance. He advised that these disturbances ceased when Clarmans Clubs Ltd obtained the Lease and transferred the Premises into an SEV. Mr Drayan advised that there were no history of complaints or concerns regarding public nuisance and public safety in the Premises which the Applicant operated in Marylebone Lane, London. He advised that the previous restaurant at Vere Street used to operate until 05:00 and that there was no history of complaints. Mr Drayan advised that the Application had been amended and commented that there were no concerns regarding public nuisance and public safety. The Sub-Committee was informed that representations had been maintained to assist the Sub-Committee. In response to questions from the Sub-Committee, Mr Drayan confirmed that the Premises location was predominantly commercial, and the revised application was satisfactory.
15. In response to questions from the Sub-Committee, Mr McKeown Director, Clarmans Clubs Ltd advised that the fire exit door had an automatic lock which was activated during emergencies. He advised that there were no circulations of person from the basement to the upper floors. The Sub-Committee noted that the objections received were in relation to the initial Application which had been submitted.
16. Ms Karyn Abbott representing the Licensing Authority, advised that the Application had been amended and that regulated entertainment would be restricted to the basement. Ms Abbott advised that all SEVs mandatory Conditions had been agreed by the Applicant. The Sub-Committee was advised that there was no other SEVs within 5 miles of the Premises or schools. She confirmed that the venue would not exceed the maximum number of SEVs that were permitted. Ms Abbott advised that Policy LO1 needed to be considered and that they were required to take into regard the character of locality and whether it was appropriate for an SEV. She advised that the premises had a Premises Licence under the Licensing Act 2003 and that the Application had been amended to reflect existing hours for licensable activities. The Sub-Committee were advised that Sec 2.5.1 of the SEV Policy required for the same hours of an existing Premises Licence should be granted to SEVs. Ms Abbott confirmed that hours applied for were outside the core hours. She advised that Conditions had been agreed with the Metropolitan Police and should be imposed if the Application was granted.
17. In response to questions from the Sub-Committee, Ms Abbott stated that St Peters Church was used by the London Institute of Contemporary Christians and that buildings did not have to be consecrated for acts of worship to take part within their boundaries. Following further questions from the Sub-Committee, Ms Abbott advised that the Premises location was quiet, and informed that there were 14 SEVs in the wider locality and there was uncertainty whether all were currently trading.

18. Mr Philip Kolvin QC representing Nigel Fox 334 Ramsbury Oxford Limited, Victoria Shapiro and Simon Chadowitz advised that evidence had been submitted from experts who dealt with Commercial Developments and a former senior Police officer. Mr Kolvin commented on the difficulties faced in the Oxford Street District and the Council's vision to address challenges. The Sub-Committee was advised that Ramsbury Oxford Limited had invested £500million in the locality following the purchase of the former Debenhams store. He advised that Ramsbury Oxford Limited aim was to regenerate the site and provide facilities for a new community of users. These included retail units, eateries, leisure. Medical surgeries and offices. Mr Kolvin advised that external terraces would be used for leisure purposes and the vacant units would be marketed to both a domestic and international business community. The Sub-Committee was advised that the project was one of several projects by key investors and the overall aim of these consortiums was to ensure that the Oxford Street Iconic International status is maintained.
19. Mr Kolvin advised that some units within the former Debenhams store would be in operation 24hours and that eateries will trade until the later hours. He stated that there would be a 'cross over' between the Premises operating hours and those of local businesses. Mr Kolvin advised that the main entrance to the upper floors of the former Debenhams store would be based in front of the Premises. He commented that an SEV in Vere Street would conflict with the Council's vision for the area. He reminded all parties that the locality included an iconic retail street and a developing religious institution. Mr Kolvin went on further to say that a 'strip club' being based in a consular building would be inappropriate and have a mal effect on the Capital and Westminster City Council's reputation.
20. Mr Kolvin reminded the Sub-Committee that they were permitted to consider the locality of SEVs and were able to refuse a licence where it was deemed that the proposed locations were unsuitable. He stated that Paragraph 2.4.6 of the Policy defined a location as being an area which had a 'sensitive use'. This included high profile retail, iconic site, and family entertainment and leisure. Mr Kolvin stated that the locality comprised of all three. He advised that the Applicant's evidence was heavily reliant on previous trades in different localities and said that SEVs licences needed to be renewed each year. Mr Kolvin commented that the future development of the locality was a material factor and should be taken into consideration.
21. Mr Kolvin advised that Paragraph 2.3.15 of the Policy required the Sub-Committee to take into consideration the appropriate number of SEVs within a locality of the proposed venue. The Sub-Committee was advised that an SEV had been refused in Duke Street, London. The Sub-Committee commented that the Application in Duke Street would have had an impact on the location. Mr Kolvin advised that Mr Ian Smith, a former senior Police officer, had observed Sophisticats in Brewer Street. He advised that Mr Smith report had noted that Sophisticats was frequented by pedicabs and was associated with touting. Mr Kolvin said that there were concerns that the unique undesirable characteristics found in Soho London would transfer to the locality and reiterated the fact that the vicinity was to be redeveloped.

22. The Sub-Committee was advised that entrance to the Premises was at street level and that individuals would be questioned on whether they intend to enter an SEV. Mr Kolvin advised that his clients were strongly adverse to these type of interactions taking place. There was also no information on where smokers would congregate. The Sub-Committee were advised that the Applicant would use private hire vehicles service and these motors would collect patrons at a designated point. He stated that his clients and their customers would be using a hire car service which was marshalled by a SEV Premises, and this was undesirable.
23. Mr Kolvin commented that the Applicants written submissions contained several irrelevant points. He advised that an application should not be granted to prevent an inappropriate Premises from operating in the locality. He reminded the Sub-Committee that the Premises had been acquired by the Applicant and that issues such as employment of workers or investments in properties should not be taken into consideration. Mr Kolvin stated that the appropriateness of the venue's locality should be taken into consideration.
24. The Sub-Committee were reminded that the Application had received objections from various parties which included major economic development stakeholders and the Brazilian Consulate General, and these views should be given weight.
25. Mr Kolvin commented that the application for a SEV Licence should be done separately and not done in conjunction with a restaurant. The Sub-Committee was advised that there was no picture presented of the SEV. Mr Kolvin commented that a Planning Application should had been submitted first by the Applicant. The Sub Committee noted that SEVs were part of the night-time economic offering.
26. The Sub-Committee adjourned at 11:34 and resumed at 11:40
27. Mr Robert Sutherland, Consultant Solicitor for Shiva Hotels advised that he supported Mr Kolvin submission. Mr Sutherland advised that the Applicants proposed operational model was ineffective and stated that an investment of £230million had been made in the locality by Shiva Hotel. He stated that the Premises previous location was different in comparison to the proposed site.
28. Mr Sutherland advised that Policy recommends that SEVs should submit a planning application before a licensing application. He said that the Application should either be deferred or refused and only be considered once a planning application has been determined. Following questions from the Sub-Committee, the Policy Officer advised that it was preferred for Planning Applications to be submitted before a Licensing Applications are made and not necessarily a mandatory requirement.
29. Mr Sutherland raised concerns regarding the Applicants operational style and advised the Applicant was only permitted to operate an SEV in Euston, London by Camden Council for a short period. He commented that there were several incidents which occurred in this locality, and this was detailed in the minutes of the Camden's Licensing Sub-Committee. Mr Sutherland

Stated that the SEV Premises which was based in Euston reverted to a night club. The Sub-Committee was informed that the Premises operational schedule differed to what occurred during the Premises opening hours. Mr Sutherland commented that a SEV was unsuitable for the site and advised that the areas character had altered and commented that these types of establishments should not be permitted in the vicinity. Mr Sutherland stated the Shiva Hotel would operate 24hrs and would be affected during the Premises operational hours.

30. The Sub-Committee were advised that the London Borough of Camden had reviewed their Policy on SEVs and had adopted a zero tolerance towards these types of establishments. Mr Bromley-Martin QC advised that the new policy applied to the Premises in Euston. He commented that Westminster City Council implemented a policy which included a diverse night-time economy, and this was one of the reasons the Applicants wished to relocate to the proposed site. Mr Sutherland said that the London Borough of Camden zero policy on SEVs had been in place for a considerable period and exceptions had been given to certain premises. He advised that a SEV had been in place at the Euston site before Sophisticats. The Sub-Committee noted that it was unlikely that the SEV Licence at the Euston site would have been renewed.
31. Mr Richard Lancaster, New Westend Company advised the Sub-Committee that the Group encompassed 600 occupiers and property owners. Mr Lancaster advised that the Oxford Street District had been mal impacted by the Covid-19 Pandemic. He said that the district was still recovering, and footfalls had still not risen to pre-Covid 19 Pandemic levels and that businesses were continuing to work to regain trade.
32. The Sub-Committee was advised that the Council's vision for the Oxford Street District to retain its 'Iconic Destination' and character would be compromised if an SEV was to locate within the proposed site. He highlighted that Policy required for the appropriateness and characteristics of the proposed locality of SEVs to be considered. He commented that the locality was renowned for its retail, had historic significance and was also a family entertainment and leisure destination.
33. Mr Lancaster advised that the Brazilian Consulate was located within the Premises and that a major retail and business complex was to be built in the same area. In response to the Sub-Committee, Mr Lancaster advised that representations had been maintained by the New Westend Company and this was due to the changing character of the Oxford Street District.
34. Mr Andrew Wall, Greenvale Capital, advised that his establishment had been based at Vere Street since 2015 and their lease had recently been extended. He advised that the Applicant's portrayal of the locality was incorrect, and that the area was frequented by families visiting the Brazilian Consulate and had a high footfall. Mr Wall said that the Marylebone Association had withdrawn their representation and highlighted that there were no residents within the locality. He advised that there were several businesses based in

the vicinity and that a number were unaware of the Application. Mr Wall informed that a Brazilian Restaurant on the site would be welcomed.

35. Mr Hall advised that Greenvale Capital was an international business and traded in the world markets and several of its offices operated in different time zones. He advised that employees such as service staff worked during the latter hours and there were concerns regarding safety. Mr Hall said that it was recognised that St Peters Church was no longer a consecrated building and commented that the building was still used by religious groups during the week. He advised that the Premises internal activities could not be viewed from street level and commented that its external operations such as pedal cabs, taxis, patron smoking and dispersals would affect the locality. Mr Hall said that Greenvale Capital had undertaken independent research on the area and acknowledged that findings could not be considered as they had not been circulated to the Sub-Committee and interested parties.
36. Mr Hall advised that there were concerns regarding security in relation to the fire escape being shared with the Brazilian Consulate. He commented that it was expected that the Foreign and Commonwealth Department and Diplomacy Service would make representation on these matters.
37. The Sub-Committee were also advised that the Premises would impact the Metropolitan Police resources as they would be required to patrol the area. Mr Hall commented that the Premises was inappropriate for the locality. In response to questions from the Sub-Committee, Mr Hall said that Vere Street was accessed by service staff during 23:00 to 05:00 and these included cleaning staff from various establishments. Mr Hall commented that there had been a mischaracterisation of Vere Street. The Sub-Committee noted that evidence had been provided regarding the footfall in the locality.
38. Mr Arthur Cobra Sobral da Fonseca, Legal Representative The Consulate General of Brazil in London advised that the Brazilian Consulate had operated in the building for over 15 years. Mr Cobra Sobral da Fonseca referred to Paragraph 3 s.12 of the Local Government Act 1982 and stated that the Legislation stipulated that SEV Licence Applications could be refused if it was deemed that their proposed location was inappropriate. He advised that the characteristics of the proposed site location needed to be taken into consideration.
39. Mr Cobra Sobral da Fonseca advised that an SEV based in the same building with the Brazilian Consulate would be detrimental to the latter. He advised that the Applicants amendments to their application would not override the expressed concerns and there had been media coverage in the United Kingdom about the proposed usage of the building's basement.
40. Mr Cobra Sobral da Fonseca advised that there were concerns regarding that the Brazilian Consulate would be 'associated' with a SEV. He stated that the two establishments 'nature of business' were 'incompatible. The Sub-Committee were advised that a Brazilian Restaurant associated with a SEV was not supported by the Consulate. Mr Cobra Sobral da Fonseca advised that the Brazilian Consulate had chosen a locality which would complement

their 'representative nature' and did not wish to be associated with 'controversial' activities.

41. Mr Cobra Sobral da Fonseca referred to Article 31 of the Vienna Convention for Consular Activities 1963 and noted that receiving States were required to 'protect premises of Consulates and prevent any disturbance of peace or impairment of its dignity'. Mr Cobra Sobral da Fonseca advised that these principles would not be upheld if the Application was granted.
42. Mr Cobra Sobral da Fonseca advised that there were concerns regarding the shared use of the fire escape with the Applicant. He advised that there were fears that individuals could gain entry to the Consulate and obtain access to confidential materials which are data protected. Mr Cobra Sobral da Fonseca advised that both the Brazilian Embassy and Consulate were not in support of the Application. He confirmed that the Brazilian Consulate had taken lead in making representation as the Premises was to be in the same building which they reside.
43. Mr Cobra Sobral da Fonseca advised that there had been press coverage about the proposed usage of the building's Basement as an SEV and this type of premises being associated with the Consulate. In response to questions from the Sub-Committee, Mr Cobra Sobral da Fonseca advised that there was no consultation held with the Brazilian Consulate prior to the Application. Following questions from the Sub-Committee, Mr Cobra Sobral da Fonseca advised that the Brazilian Consulate was open to the public during 09:00 to 17:00 and the building was used past these hours were required.
44. Mr Bromley-Martin informed the Sub-Committee that the Brazilian Consulate had been liaised with. He advised that the Consulate had also agreed for the fire exit to be used. Mr Cobra Sobral da Fonseca advised that part of the Consulate could be accessed via the lower floors and there were no concerns regarding the previous occupiers' style of activities.
45. Mr James Rankin representing Nikitas Korres for Pontegadea, advised that he endorsed Mr Kolvin submission regarding the law and the various points that were well made. Mr Rankin reminded the Sub-Committee that they were given the ability to determine the appropriateness of a locality when considering SEVs. He advised that the Marylebone Lane had a Licence for over 20 years. Mr Rankin advised that the Premises on Vere Street was more visible in comparison to the establishment in Marylebone Lane. The Sub-Committee were reminded that SEVs Licences were renewed each year, and this was to ensure the appropriateness of Licence and any changes to the character of the locality is considered. Mr Rankin advised that case law indicated that the Licensing Sub-Committee should take into consideration future development of the area. He advised that the developers and Freeholders had made considerable investment in the locality and were aligned with the Council vision for the Oxford Street District.

46. Mr Rankin advised that there were concerns with activities associated with the Premises. He advised that Mr Ian Smith MSyl, Director Shield Associates Partner, had observed Sophisticats at Brewer Street during a two-night period. Mr Smith had observed that there was touting, and these activities were being undertaken by pedicabs. Mr Rankin commented that these activities would be unsuitable for Vere Street.
47. Mr Rankin advised that St Peters Church despite being deconsecrated was still being used as a place of worship by religious groups. The Sub-Committee noted that an SEV application was refused for Duke Street, London by a Licensing Sub-Committee on 27 August 2020. He commented that the application was refused due to the iconic status of Oxford Street. Mr Rankin advised that the locality was inappropriate, and that the Application should be refused on this basis.
48. The Sub-Committee were advised that there was no right of appeal regarding decisions made in relation to the appropriateness of the locality of SEVs for either applicants or objectors.
49. The Sub-Committee were informed that the fire escape door had a complex mechanical system and that usage regarding access were stipulated by the Freeholder and this was included in the lease for all tenants.
50. In response to questions from Mr Horatio Chance the Legal Advisor to the Sub-Committee, Mr Bromley-Martin advised that a Welfare and Dispersal Policy had been submitted by the Applicant. This included an Arrival and Anti-Touting Policy. He advised that the Responsible Authorities had not raised any concerns regarding touting at the Applicants Premises in Marylebone Lane and Brewer Street. Mr Bromley-Martin advised that it would be no longer practised to 'give tips' to cab drivers who brought patrons to establishments. He advised that the sale of alcohol ceased 2 hours prior before the dispersal policy is implemented. This is to ensure that patrons are not under the influence of alcohol when leaving the Premises and that they do not cause any nuisance. The Premises closes at 05:00.
51. Following further question from the Legal Advisor Mr Bromley-Martin advised that all Conditions submitted by the Applicant was agreed.
52. The Sub-Committee were informed that Condition 38 should be amended to read that 'number of persons congregated at the basement should not exceed X and that this number should be determined following the clearance of the Works Condition and not exceed more than 110'. Mr Drayan advised that if an agreement is not reached between the Applicant and the Brazilian Consulate regarding use of the fire escape the capacity could be reduced. The Sub-Committee were advised that the fire escape should be made available during emergencies and that both the Applicant and Brazilian Consulate could negotiate its usage during other periods.



53. In his summary, Mr Kolvin highlighted that the objectors had not colluded or collaborated and noted that they all had a similar viewpoint in that the Application was inappropriate for the site. He commented that objectors were important stakeholders in the immediate areas, and this was sufficient ground for refusal. He remarked that Section 2.4.6 of Policy instructed the Licensing Sub-Committee to take into consideration the characteristics of the locality and whether it was high profile retail, of historic importance, iconic or family entertainment or leisure because the location had all these characteristics.
54. The Sub-Committee were advised that policy stipulated that it was 'normal' for planning applications to be submitted prior to licensing applications and highlighted that no reason had been given by the Applicant as to why they had not adhered to this process.
55. Mr Kolvin commented that the Applicant had acknowledged that pedicabs and touts 'plagued' SEVs despite measures being put in place to deter this occurrence. He advised that there was direct evidence that the Applicant colluded with touts in Brewer Street and that this was in breach of their Conditions which had recently been agreed. Mr Kolvin QC commented that there was no confidence that this Condition regarding touting would be adhered to by the Applicant.
56. The Sub-Committee was advised that the location was not quiet and would be transformed following redevelopment of 3500sqf and this would bring more footfalls and improve the public realm. Mr Kolvin advised the regeneration would result in the area being made more diverse and inclusive.
57. The Sub-Committee were advised that no indicators had been given about the Premises opening date. Mr Kolvin said that the Applicant's submission that the Brazilian restaurant would not open if the Application was refused was questionable and commented that construction and staff recruitment had started. The Sub-Committee were reminded that invitations for the opening night of the restaurant had been sent.
58. In response to the Legal Advisor, Mr Kolvin advised that a lease had been entered into by the Applicant with the Freeholder. He commented that an SEVs would be inappropriate in this setting. The Sub-Committee was advised that the Premises in Euston was not relevant and the appropriateness of the site of the application was a paramount factor.
59. In his summary, Mr Rankin commented that the Premises at Marylebone Lane and site was irrelevant. He emphasised that 5-year development plans of a locality needed to be considered and that the Oxford Street District was to be regenerated. Mr Rankin advised that he fully endorsed the submission made by Mr Kolvin and stated that the proposed site for the Premises was inappropriate.
60. In his Summary, Mr Sutherland advised that a considerable amount of investment had been made into the locality by interested parties. He highlighted that, objectors present at the Sub-Committee had submitted planning applications and that the Applicant had failed to disclose why they

did not follow this established process. Mr Sutherland advised that Shiva Hotels had worked closely with Westminster City Council about developing the area since 2015. He advised that the Applicant had failed to enable the Planning Sub-Committee to decide about use of the proposed site.

61. Mr Sutherland advised that the application should be refused on the grounds that the Premises and licence was inappropriate for the location and usage of the building. He further commented that the appropriate number for SEVs in the location should be deemed zero by the Sub-Committee. Mr Sutherland commented that the submissions regarding the Applicants sites in the London Borough of Camden, Marylebone Lane and Brewer Street was questionable. He advised that there were concerns in Brewer Street regarding pedicabs and touting.
62. In his summary, Mr Bromley-Martin advised that the Premises was in the North Central Activity Zone and that Policy enabled 25 SEVs Licence to be in operation in this area. There are currently only 14 SEVs in the North Central Activity Zone and 7 are in operation. Mr Bromley-Martin advised that Policy enabled SEVs to operate during the same hours of their operational hours. He advised that the locality's footfall and residential makeup was both low. The Sub-Committee were reminded that the Marylebone Residents Association had withdrawn their representation and the location was ideal for an SEV. Mr Bromley-Martin advised that the SEV application for Duke Street was a different type of application altogether and involved many residents and did not assist the Sub-Committee.
63. Mr Bromley-Martin highlighted that Environmental Health had advised that SEVs had little impact when compared to other late-night establishments. The Sub-Committee were advised that the Premises would be 'invisible' and operational times differed to both the Brazilian Consulate and St Peters Church. He advised that the Brazilian Consulate resided in the upper floors and that there would be no connection. The Sub-Committee were advised that service staff would not be aware that there was a SEV located in the same building. Mr Bromley-Martin advised that St Peter Church was used for studying Christianity and was not a place of worship.
64. Mr Bromley-Martin commented that objectors were largely business owners and that the main concerns regarding the Premises was related to 'image' and 'association'. He advised that there had been progress in views regarding SEVs. The Sub-Committee was advised that objector's customers, business associates, staff members and other parties would be unaware that the Premises existed.
65. The Sub-Committee was advised that the proposed 2-star Michelin Star Brazilian Restaurant would not be opened if the Application was not granted. He advised that the Premises had been vacant for over two years and may remain empty if the Application was not granted. The Sub-Committee were informed that the Premises could be used as a night club which would have a terminal hour of 05:00. Mr Bromley-Martin advised that there were no residents in the locality and the site was suitable for an SEV.

66. In response to questions from the Sub-Committee, Mr Wythe advised that the designated smoking area would not be on street level. He advised that the Sub-Committee's Decision would inform the Planning Sub-Committee and was of the view that the former was better qualified to consider the Application first. The Sub-Committee were informed that SEVs did not fall under Class E Permitted Development Rights. The Sub-Committee was advised that the Freeholder was supportive of the Application.

67. The Chair thanked all parties for their submission and attendance.

## **DECISION AND REASONS**

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

69. The Sub-Committee has determined an application for a New Sexual Entertainment Venue Premises Licence made by Clarmans Clubs Limited to operate the Premises as a Sexual Entertainment Venue between the hours of Monday to Tuesday 23:00 to 02:00 Wednesday to Saturday: 23:00 to 05:00 (the morning following).

70. The Sub-Committee having carefully considered the oral and written evidence by the parties decided to refuse the grant of an application for a New Sexual Entertainment Venue at these Premises.

71. The Sub-Committee noted that the Applicant had made a very detailed application but was not convinced having heard all the evidence from the various parties that had objected that the area would not be impacted by relevant entertainment taking place at the Premises.

72. The Sub-Committee was not persuaded by the arguments advanced by the Applicant that Policies LO1, LO2 and LO3 had been met by the Applicant. The key question for the Sub-Committee was whether this was an appropriate venue given the character of the locality and the use of the Premises. The Sub-Committee concluded on balance that this was not an appropriate venue to have an SEV licence operating at the Premises given the make-up of the area and its individual and unique characteristics.

73. The Sub Committee when determining the matter considered Paragraph 2.4.6 on page 16 of the SEV Policy which refers to whether the *character of the locality is predominately residential, high-profile retail, of historic importance or iconic in nature, or one of family entertainment or leisure* and concluded that these material factors were relevant in deciding upon whether the application should be granted. Clearly the area was iconic in nature and the nearby Debenhams site, whilst not yet completed would highlight the fact that the area was changing and would mean the requirements of paragraph 2.4.6 were not overcome by the Applicant as these specific points identified the very nature and character of the area by definition and helped shape and solidify the long-term vision for the Oxford Street area.

74. Accordingly, these key consideration under the policy could not be ignored by the Sub-Committee when considering the overall impact granting such an application for these Premises would have on the area as a whole.
75. The Sub-Committee noted the position of the Brazilian Consulate and the potential issues that could arise with the granting of the licence. In this respect the use and location of the Premises is not appropriate for this specific location.
76. When determining the application, the Sub-Committee had regard to the Applicants rights under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights in addition to its Public Sector Equality Duty contained under s.149 of the Equality Act 2010.

Having carefully considered the committee papers and the submissions made by all parties, both orally and in writing, **the Committee had decided to Refuse** the application for the above reasons pursuant to Paragraph 12 3 (d) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

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

**The Licensing Sub-Committee**  
**25 August 2022**