



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (4)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (4)** held on **Thursday 9th February, 2023**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Angela Piddock (Chair), Judith Southern and Jim Glen

Apologies for Absence: Councillor Jacqui Wilkinson

1. MEMBERSHIP

- 1.1 It was noted that Councillor Jim Glen had replaced Councillor Jacqui Wilkinson on the Licensing Sub Committee.

2. DECLARATIONS OF INTEREST

- 2.1 There were no declarations of interest.

1. WOK AND FIRE, 326 VAUXHALL BRIDGE ROAD, SW1V 1AA

WCC LICENSING SUB-COMMITTEE NO. 3 ("The Committee")

Thursday 9 February 2023

Membership: Councillor Angela Piddock (Chair) Councillor Judith Southern and Councillor Jim Glen

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Aaron Hardy
Committee Officer: Georgina Wills
Presenting Officer: Kevin Jackaman

Also Present: Anthony Lyons. Counsel, Treats Leisure Limited
James Rankin, Counsel, Treats Leisure Limited
Giovanni Costa, Applicant: Treats Leisure Limited
Jana Bralite - DPS Treats Leisure Limited
Councillor Barbara Arzymanow
Sally Fabbricatore, Environmental Health Service

**Application for a New Premises Licence in respect of Doner Shack
Basement And Ground Floor 102 Baker Street London W1U 6TL 22/11290/LIPN**

Declarations of Interest: Councillor Jim Glen declared an interest and advised that he knew some of the objectors and that these individuals were members of the same Group. Councillor Glen advised that no discussions had been held about the Application with any individual and therefore was able to determine the application with an open mind. Councillor Angela Piddock also made the same declaration.

FULL DECISION

Summary of Application

The Sub-Committee has determined an application for a New Premises Licence in respect of Doner Shack Basement and Ground Floor 102 Baker Street London W1U 6TL ("The Premises") under the Licensing Act 2003 ("The Act").

The Premises intends to operate as a restaurant and previously benefitted from a premises licence (19/05744/LIPDPS) but the licence lapsed due to the Licence Holder going into liquidation in October 2021.

The Applicant has proposed a number of conditions to form part of their operating schedule and can be found at **Appendix 4** of the report.

The Premises are located within the Marylebone Ward but is not located in either the West End Cumulative Impact Zone or Special Consideration Zone

Representations were received from the Environmental Health Service, Local Ward Councillor Karen Scarborough and 6 Local residents all citing concerns regarding public nuisance.

There is a resident count of 248.

Premises

Doner Shack
Basement And Ground Floor
102 Baker Street
London
W1U 6TL

Applicant

Treats Leisure Limited

Ward

Marylebone

Cumulative Impact

N/A

Special Consideration Zone

N/A

Activities and Hours applied for

Opening Hours for the Premises

Monday to Sunday 11:00 to 23:00

Sale by Retail of Alcohol (On Sales)

Monday to Sunday 11:00 to 23:00

Representations Received

- Environmental Health Service (Anil Drayan) (EHS)
- Councillor Karen Scarborough
- Six residents

Summary of Representations

- *The Environmental Health Service had maintained representation on the grounds of Protection of Children from Harm, Public Safety and the Prevention of Public Nuisance.*
- *On behalf of the Marylebone Ward Councillors I object to this application on the grounds it does not promote the Licensing Authorities objectives, subject to the following:*
- *There is no condition in relation to times of refuse collections and deliveries which should be in line with Westminster's policy. The proposed conditions, 1, 8 and 11 by the applicant are contradictory as they have only applied for "On Sales." We will not object if our standard condition that, sales of alcohol shall be ancillary to persons seated and taking a substantial table meal with waiter or waitress service is accepted throughout.*
- *Further Submissions received 24th January 2023*
Councillors for Marylebone would prefer no alcohol to be sold, but they have not applied for Off Sales, so that is noted. As already mentioned in the objection, there are a number of fast food restaurants at this end of Baker Street and the Marylebone Councillors are constantly liaising with the Police and City Inspectors about the congregation of delivery riders literally opposite this premises, causing a public nuisance, following complaints from residents. Another fast food restaurant in this location is the last thing the residents and area needs, but it is appreciated this is not a licensing consideration. We would like to see the following conditions added to the Licence should this application be granted: our standard condition that, sales of alcohol shall be ancillary to persons seated and taking a substantial table

meal with waiter or waitress service is accepted throughout (MC38),MC41 and MC43, MC37 (to be determined by EH) MC 34, MC35, No deliveries before 08:00.

- I write as a Director of a nearby block of circa 225 flats. The continued licensing of fast food shops in this zone is having a severely detrimental effect. Furthermore, the conditions are not sufficiently worded to prevent further deterioration of this area.*
- This area is already suffering from quite serious anti-social behaviour. We as residents are also suffering from a huge amount of delivery drivers who seem to loiter on the streets and don't seem to deliver food but rather engage in antisocial and illegal behaviour. I would like to object to unnecessary additions to restaurant operation.*
- This is a fast food take away serving alcohol can and will increase antisocial behaviour by people in the area. I would also suggest applying restrictions to third party deliver so as not to exasperate the delivery driver problem. Further I would suggest a close eye is kept on any food outlet and their operating hours. There seems to be a problem with sticking to authorisers operating hours in some outlets. As residents with families we are asking the council to be mindful of our concerns and daily problems. The antisocial behaviour/ delivery driver gang situation on Baker Street and the vicinity is getting worse by the day. Anything including limiting the sale of alcohol can only help Premises.*
- If delivery apps are to be used, can WCC put in place a condition which prevents bikes/bikers from delivery after a certain time in the day in order to ensure that there is less congregation and ASB caused in the area.*
- Another fast food shop, not exactly what we need here on Baker Street. Who will be managing the congregating delivery drivers? How can they demonstrate that they will not be adding to existing problems here? We now regularly see police officers trying to deal with the problems of using delivery apps. The only way that they can demonstrate that they will not be damaging the neighbourhood further is if they are not permitted to use delivery apps. Can WCC write this into the conditions or as a minimum have a very strict condition that can be enforced.*

Policy Considerations

Polices HRS1 and RNT1 apply under the City Council's Statement of Licensing Policy ("SLP")

Policy HRS1

A. Applications within the core hours set out below in this policy will generally be granted for the relevant premises uses, subject to not being contrary to other policies in the Statement of Licensing Policy.

B. 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.

2. If the application is located within a Special Consideration Zone they have demonstrated that they have taken account of the issues identified in that area and provided adequate mitigation.
 3. Whether there is residential accommodation in the proximity of the premises that would likely be adversely affected by premises being open or carrying out operations at the hours proposed.
 4. The proposed hours of the licensable activities and when customers will be permitted to remain on the premises.
 5. The proposed hours when any music, including incidental music, will be played.
 6. The hours when customers will be allowed to take food or drink outside the premises or be within open areas which form part of the premises.
 7. The existing hours of licensable activities and the past operation of the premises (if any) and hours of licensable premises in the vicinity.
 8. Whether customers and staff have adequate access to public transport when arriving at and leaving the premises, especially at night.
 9. The capacity of the premises.
 10. The type of use, recognising that some venues are more likely to impact the licensing objectives than others; for example, pubs and bars are higher risk than theatres, cinemas and other cultural and sporting venues due to the nature of the operation.
 11. The Licensing Authority will take into account the active measures proposed for a 'winding down' period including arrangements for people to be collected from the premises to travel home safely.
 12. Conditions on hours may be attached that require that the supply of alcohol for consumption on the premises ceases a suitable period of time before customers are required to leave the premises.
 13. The council, acting as the Licensing Authority, may reduce hours if, after review, it is necessary to impose conditions specifying shorter hours in order to promote the licensing objectives.
 14. Specific days for non-standard hours should be identified and justified as part of the application to allow responsible authorities and interested parties to evaluate the impact that these licensable activities may have, and to plan accordingly. The consideration of applications for later hours for Bank Holiday Mondays will take into account that later hours are generally granted for preceding Sundays and that the next day is a working day. Non-specific days are expected to be covered by Temporary Event Notices or variation applications.
- C. For the purpose of Clauses A and B above, the Core Hours for applications for each premises use type as defined within this policy are:
8. Restaurants
 - Monday to Thursday: 9am to 11.30pm.
 - Friday and Saturday: 9am to 12am.
 - Sunday: 9am to 10.30pm.
 - Sundays immediately prior to a bank holiday: 9am to 12am.
- D. Core hours are when customers are permitted to be on the premises and therefore the maximum opening hours permitted will be to the same start and terminal hours for each of the days where licensable activity is permitted.
- E. For the purposes of this policy, 'premises uses' are defined within the relevant premises use policies within this statement.

Policy RNT1

A. Applications outside the West End Cumulative Impact Zone will generally be granted subject to:

1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1.
2. The hours for licensable activities being within the council's Core Hours Policy HRS1.
3. The operation of any delivery services for alcohol and/or latenight refreshment meeting the council's Ancillary Delivery of Alcohol and/or Late-Night Refreshment Policy DEL1.
4. The applicant has taken account of the Special Consideration Zones Policy SCZ1 if the premises are located within a designated zone.
5. The application and operation of the venue meeting the definition of a restaurant as per Clause C.

B. Applications inside the West End Cumulative Impact Zone will generally be granted subject to:

1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1.
2. The hours for licensable activities are within the council's Core Hours Policy HRS1.
3. The operation of any delivery services for alcohol and/or latenight refreshment meeting the council's Ancillary Delivery of Alcohol and/or Late-Night Refreshment Policy DEL1.
4. The applicant has demonstrated that they will not add to cumulative impact within the Cumulative Impact Zone.
5. The application and operation of the venue meeting the definition of a restaurant as per Clause C.

C. For the purposes of this policy a restaurant is defined as:

1. A premises in which customers are shown to their table or the customer will select a table themselves to which food is either served to them or they have collected themselves.
2. Which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at a table.
3. Which do not provide any takeaway service of food and/or drink for immediate consumption, except if provided via an ancillary delivery service to customers at their residential or workplace address.
4. Where alcohol shall not be sold, supplied, or consumed on the premises otherwise than to persons who are bona fide taking substantial table meals and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.
5. The sale and consumption of alcohol prior to such meals may be in a bar area but must also be ancillary to the taking of such meal.

DECISION AND REASONS

Mr Kevin Jackaman, Senior Licensing Officer summarised the application set out in the report before the Sub-Committee. Mr Jackaman advised that the Application was for a New Premises Licence. The Applicant seeks to provide the sale of alcohol for consumption on the Premises. The EHS and seven interested Parties had maintained representation. There were additional representations submitted by the

EHS and two interested parties and these were circulated to all Parties. The Premises is situated in the Marylebone Ward and does not fall under the West End CIZ nor any Special Consideration Zone.

Mr James Rankin, Counsel appearing on behalf of the Applicant addressed the Sub-Committee and highlighted that the Premises was not situated in the West End CIZ or SCZ. Mr Rankin stated that the Premises previously traded as a Gourmet Burger Kitchen and that the restaurant had gone into liquidation. He informed that the same terms of conditions were applied for as the previous licence granted with a series of additional Conditions. The sale of alcohol will cease after 23:00 hours.

Mr Rankin advised that Doner Shack franchise originated from Berlin Germany and that the Premises would be the flagship premises and that a total of £1.5 million had been invested in the venue. This included a 'state of the art' kebab kitchen machinery which ensures that fresh produce is prepared to the highest quality and with minimum waste.

The Sub-Committee noted that alcohol sales would amount to 10% of overall sales of beverages and this equated to 1% of sales. The alcohol offer will be limited to lager only. Mr Rankin stated that the EHS had been consulted with.

The Sub-Committee was advised that Mr Giovanni Costa, Operations Director Treats Leisure Limited was an experienced Licence holder and had previously successfully addressed concerns regarding nuisance caused by delivery drivers. This resulted in delivery companies removing operating licence from employees following complaints from Mr Costa.

Mr Rankin advised that photographic evidence had been provided to the delivery companies by Mr Costa. A Condition had been accepted regarding food courier providers and that delivery drivers would be fully engaged and would be expected to adhere to the Premises rules.

Mr Costa stated that he would actively engage with both delivery drivers and the Council in addressing concerns such as loitering, congregating or public nuisance. Mr Rankin confirmed that Ms Jana Bralite (DPS) also had an extensive employment history and previously worked for notable companies such as the O2. Mr Costa and Ms Bralite would work collaboratively with residents, Responsible Authorities and Ward Councillors and this included providing their contact numbers.

Mr Rankin advised that several Conditions proposed by the EHS had been agreed. He stated that there were some duplications with the Conditions that had been proposed and highlighted those which should be removed or needed to be amended. This included Model Restaurant Condition MC38 meaning that the supply of alcohol at the Premises (including on the external private forecourt) shall only be to a person seated taking a substantial table meal.

In response to questions from the Sub-Committee, Mr Costa said that residents would be welcomed to have a tour of the Premises in order to gain a better insight into the business and its model and commented that the Premises was a good offer to the locality.

Following further questions from the Sub-Committee, Mr Rankin stated that sales of alcohol beyond core hours on Sunday was sought to ensure that there was conformity regarding sale purchases throughout the week. He advised that the alcoholic beverages selection was extremely limited and that there would be no 'off sales' as the external seating area was a private forecourt.

Mr Costa advised that the external seating would be rendered unusable at 21:00 hours and would accept a Condition to this effect. He also advised that patrons would be requested to respect the vicinity and would be managed to ensure that they do not cause nuisance when exiting the Premises. There will also be signage in place requesting this and that a dispersal policy would be strictly adhered to.

Sally Fabbricatore on behalf of the EHS advised that the Application had been discussed with the Applicant and the Premises had also been visited. Ms Fabbricatore advised that the Application was reasonable and confirmed that there would be no 'off sales' or late-night refreshments and that the Premises would operate as restaurant.

Mrs Fabbricatore said that the Applicant had agreed to a series of Conditions which included a delivery to only take place during certain hours and three times a week and reminding the Sub-Committee that deliveries were not a licensable activity.

Mrs Fabbricatore advised that there were no licensable activities being removed from the Premises nor were there any previous history regarding its former operations. The Premises capacity is currently 60 and 8 in the forecourt; a Works Condition requires for these numbers to be reviewed following completion of works. She advised that a Condition which required alcohol to be served by a waiter/ waitress had been proposed.

Mrs Fabbricatore confirmed that the EHS representation had been maintained to assist the Sub-Committee following resident's representations being maintained.

Councillor Barbara Arzymanow, local Ward Councillor Marylebone Ward, addressed the Sub-Committee and advised that all three Ward Councillors had maintained representations on the grounds of the Prevention of Public Nuisance.

Councillor Arzymanow advised that there were a high number of takeaways Premises between Baker Street, York Street and Marylebone Road. In addition, there was limited parking in the vicinity and that delivery drivers would congregate in large numbers in the area. She advised that there was no parking provision for Donar Shack and only one parking bay at York Street.

The Sub-Committee was informed that the Highways Department had disclosed that the parking bay could not be removed or moved to a side street. There have been meetings held with City Inspectorate, Neighbourhood Coordinators and Deliveroo regarding the behaviour of their drivers. Councillor Arzymanow stated Deliveroo had engaged with their drivers, but however had failed to enforce any actions. She advised that despite meetings delivery drivers continued to congregate in the vicinity and this recently occurred in which there were up to 25 in the locality.

The delivery drivers were reported to mostly congregate in the area during Fridays between 18:30 hours and 01:00 hours. Councillor Arzymanow advised that an incident which involved a bottle being thrown was reported to the Police. She advised that specialist glass fronts of neighbouring vendors had been damaged and had to be replaced. There is also anti-social behaviour which include the usage of prohibited substances by individuals in the locality.

Councillor Arzymanow said that there were concerns as to whether the Premises would be effective in engaging and controlling delivery drivers and commented that that the latter had failed to alter their behaviour despite multi-agencies such as the Police and Council Officer input. The Sub-Committee was informed that meetings had been held with residents and Council Officers and noted that there needed to be joined up working between all parties to address concerns.

Councillor Arzymanow advised that an additional take away provider in the vicinity would increase nuisance experienced by residents and other vendors. The Sub-Committee acknowledged these concerns and commented that granting a Premises Licence would enable for Conditions to be imposed which prohibited any public nuisance emanating from the Restaurant and this included delivery drivers. Mr Costa advised that all deliveries would cease at 23:00 and a Condition which stipulates this would be accepted.

Mr Horatio Chance, The Legal Advisor to the Sub-Committee stated that all Applications must be considered on their individual merits and based on the promotion of the Licensing Objectives.

In response to questions from the Legal Advisor, Mr Rankin advised that Conditions which prohibits delivery drivers from congregating or loitering within the vicinity of the Premises would be accepted.

In summing up Ms Fabbricatore reminded the Sub-Committee that all Conditions imposed must be made clear and enforceable.

In summing up Councillor Arzymanow commented that there should continue to be engagement with all stakeholders to address issues and that order numbers of delivery drivers who loiter in the vicinity should be shared.

Conclusion

The Sub-Committee realises that it has a duty to consider each application on its individual merits and did so when determining the application. There is no policy presumption to refuse the application for a Premises catering for a restaurant outside of the West End CIZ.

The Sub-Committee concluded that the Applicant had provided valid reasons as to why the application should be granted. There are a number of comprehensive conditions on the licence that will deal with the issue of nuisance so the right balance had been struck when considering the needs of local residents and the ability of the Applicant to run the Premises in a way that will promote the licensing objectives rather than hinder it.

The Applicant had demonstrated that the licensing objectives would be promoted, and additional Conditions had been imposed which would mitigate concerns raised by residents. This included discouraging delivery drivers from loitering and congregating within the vicinity of the Premises. The external area would also be rendered unusable at 21:00 hours each day.

The Sub-Committee recommended that the Applicant maintains effective dialogue with residents and the Local Ward Councillors going forward so that if problems do arise with the running of the Premises, they are dealt with swiftly by the Premises management.

Having carefully considered the committee papers and the submissions made by all parties, both orally and in writing, **the Committee had 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 the **Sale by Retail of Alcohol (On sales only)** Monday to Sunday 11:00 to 23:00 **Seasonal variations:** None
2. To grant permission for the **Opening Hours of the Premises** Monday to Sunday 11:00 to 23:00 **Seasonal variations:** None
3. That the Licence is subject to any relevant mandatory conditions.
4. That the Licence is subject to the following conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

Conditions imposed by the Committee after a hearing with agreement of the Applicant

5. The Supply of Alcohol shall be by waiter or waitress only or when ordered with food at the service bar.
6. 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.
7. All waste is to be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
8. No striptease, no nudity and all persons to be decently attired at all times.
9. There shall be no sale, supply or consumption of intoxicating liquor to or by any customers not seated at tables or bar stools within the premises and any such service shall be by waiter, waitress or bartender only.
10. Crime Prevention Literature or Posters will be displayed advising customers to not leave their property unattended.
11. Children shall be accompanied by a responsible adult at all times.

12. The Supply of Alcohol in the external part of the premises shall only be to persons taking a table meal there and consumption by such a person as ancillary to their meal.
13. The external tables and chairs must not be used after 21:00 on any day and must be made unusable after this time.
14. All outside tables and chairs shall be removed or rendered unusable by 23.00 each day.
15. The number of persons permitted in the premises at any one-time (excluding staff) shall not exceed (X) persons. (to be determined by Environmental Health on clearance of 'works' condition but it shall not be more than 60 including not more than 8 in the external area)
16. The supply of alcohol at the premises (including on the external private forecourt) shall only be to a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal.

For the purpose of this condition a 'Substantial Table Meal' means – a meal such as might be expected to be served as the main midday or main evening meal, or as a main course at either such meal and is eaten by a person seated at a table, or at a counter or other structure which serves the purposes of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure servicing the purposes of a table.

17.
 - (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.
18. 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.
19. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police. It must be completed within 24 hours of the incident and will record the following:
 - (a) all crimes reported to the venue
 - (b) all ejections of patrons

- (c) any complaints received concerning crime and disorder
 - (d) any incidents of disorder
 - (e) all seizures of drugs or offensive weapons
 - (f) any faults in the CCTV system, searching equipment or scanning equipment
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.
20. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
 21. 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.
 22. A Challenge 21 or Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
 23. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke or make a phone call, shall not be permitted to take drinks or glass containers with them.
 24. No deliveries to the premises shall take place between 23:00 and 08:00 hours on the following day except for in the Baker Street frontage which may be permitted to have deliveries from 07:00 to 23:00 hours
 25. Takeaways of food by use of a courier service shall only be with a courier service who have agreed that their delivery drivers have been give clear, written instructions to use their vehicles in a responsible manner so as not to cause a nuisance to any residents or generally outside the licenced premises; not to leave engines running when the vehicles are parked; not to obstruct the highway.
 26. A direct telephone number for the manager at the premises shall be publicly available at all times the premises are open. This telephone number and/or is to be made available to residents and businesses in the vicinity.
 27. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 08.00 hours on the following day unless collections are arranged during the times for the Council's own commercial waste collection service for the street.
 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 of business.

29. No licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.
30. The premises licence holder shall ensure that riders/drivers will be instructed not to congregate or loiter within the vicinity of the premises.

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

**The Licensing Sub-Committee
9 February 2023**

2. DONER SHACK, BASEMENT AND GROUND FLOOR, 102 BAKER STREET, W1U 6TL

**WCC LICENSING SUB-COMMITTEE NO. 3
("The Committee")**

Thursday 9 February 2023

Membership: Councillor Angela Piddock (Chair) Councillor Judith Southern and Councillor Jim Glen

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Aaron Hardy
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Sally Fabbicatore, Environmental Health Service

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FULL DECISION

Summary of Application

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Ward

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Special Consideration Zone

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- *I write as a Director of a nearby block of circa 225 flats. The continued licensing of fast food shops in this zone is having a severely detrimental effect. Furthermore, the conditions are not sufficiently worded to prevent further deterioration of this area.*
- *This area is already suffering from quite serious anti-social behaviour. We as residents are also suffering from a huge amount of delivery drivers who seem to loiter on the streets and don't seem to deliver food but rather engage in*

antisocial and illegal behaviour. I would like to object to unnecessary additions to restaurant operation.

- *This is a fast food take away serving alcohol can and will increase antisocial behaviour by people in the area. I would also suggest applying restrictions to third party deliver so as not to exasperate the delivery driver problem. Further I would suggest a close eye is kept on any food outlet and their operating hours. There seems to be a problem with sticking to authorisers operating hours in some outlets. As residents with families we are asking the council to be mindful of our concerns and daily problems. The antisocial behaviour/ delivery driver gang situation on Baker Street and the vicinity is getting worse by the day. Anything including limiting the sale of alcohol can only help Premises.*
- *If delivery apps are to be used, can WCC put in place a condition which prevents bikes/bikers from delivery after a certain time in the day in order to ensure that there is less congregation and ASB caused in the area.*
- *Another fast food shop, not exactly what we need here on Baker Street. Who will be managing the congregating delivery drivers? How can they demonstrate that they will not be adding to existing problems here? We now regularly see police officers trying to deal with the problems of using delivery apps. The only way that they can demonstrate that they will not be damaging the neighbourhood further is if they are not permitted to use delivery apps. Can WCC write this into the conditions or as a minimum have a very strict condition that can be enforced.*

Policy Considerations

Polices HRS1 and RNT1 apply under the City Council's Statement of Licensing Policy ("SLP")

Policy HRS1

A. Applications within the core hours set out below in this policy will generally be granted for the relevant premises uses, subject to not being contrary to other policies in the Statement of Licensing Policy.

B. 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.
2. If the application is located within a Special Consideration Zone they have demonstrated that they have taken account of the issues identified in that area and provided adequate mitigation.
3. Whether there is residential accommodation in the proximity of the premises that would likely be adversely affected by premises being open or carrying out operations at the hours proposed.
4. The proposed hours of the licensable activities and when customers will be permitted to remain on the premises.
5. The proposed hours when any music, including incidental music, will be played.

6. The hours when customers will be allowed to take food or drink outside the premises or be within open areas which form part of the premises.
 7. The existing hours of licensable activities and the past operation of the premises (if any) and hours of licensable premises in the vicinity.
 8. Whether customers and staff have adequate access to public transport when arriving at and leaving the premises, especially at night.
 9. The capacity of the premises.
 10. The type of use, recognising that some venues are more likely to impact the licensing objectives than others; for example, pubs and bars are higher risk than theatres, cinemas and other cultural and sporting venues due to the nature of the operation.
 11. The Licensing Authority will take into account the active measures proposed for a 'winding down' period including arrangements for people to be collected from the premises to travel home safely.
 12. Conditions on hours may be attached that require that the supply of alcohol for consumption on the premises ceases a suitable period of time before customers are required to leave the premises.
 13. The council, acting as the Licensing Authority, may reduce hours if, after review, it is necessary to impose conditions specifying shorter hours in order to promote the licensing objectives.
 14. Specific days for non-standard hours should be identified and justified as part of the application to allow responsible authorities and interested parties to evaluate the impact that these licensable activities may have, and to plan accordingly. The consideration of applications for later hours for Bank Holiday Mondays will take into account that later hours are generally granted for preceding Sundays and that the next day is a working day. Non-specific days are expected to be covered by Temporary Event Notices or variation applications.
- C. For the purpose of Clauses A and B above, the Core Hours for applications for each premises use type as defined within this policy are:
8. Restaurants
- Monday to Thursday: 9am to 11.30pm.
Friday and Saturday: 9am to 12am.
Sunday: 9am to 10.30pm.
Sundays immediately prior to a bank holiday: 9am to 12am.
- D. Core hours are when customers are permitted to be on the premises and therefore the maximum opening hours permitted will be to the same start and terminal hours for each of the days where licensable activity is permitted.
- E. For the purposes of this policy, 'premises uses' are defined within the relevant premises use policies within this statement.

Policy RNT1

- A. Applications outside the West End Cumulative Impact Zone will generally be granted subject to:
1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1.
 2. The hours for licensable activities being within the council's Core Hours Policy HRS1.
 3. The operation of any delivery services for alcohol and/or latenight refreshment meeting the council's Ancillary Delivery of Alcohol and/or Late-Night Refreshment Policy DEL1.

4. The applicant has taken account of the Special Consideration Zones Policy SCZ1 if the premises are located within a designated zone.
 5. The application and operation of the venue meeting the definition of a restaurant as per Clause C.
- B. Applications inside the West End Cumulative Impact Zone will generally be granted subject to:
1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1.
 2. The hours for licensable activities are within the council's Core Hours Policy HRS1.
 3. The operation of any delivery services for alcohol and/or latenight refreshment meeting the council's Ancillary Delivery of Alcohol and/or Late-Night Refreshment Policy DEL1.
 4. The applicant has demonstrated that they will not add to cumulative impact within the Cumulative Impact Zone.
 5. The application and operation of the venue meeting the definition of a restaurant as per Clause C.
- C. For the purposes of this policy a restaurant is defined as:
1. A premises in which customers are shown to their table or the customer will select a table themselves to which food is either served to them or they have collected themselves.
 2. Which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at a table.
 3. Which do not provide any takeaway service of food and/or drink for immediate consumption, except if provided via an ancillary delivery service to customers at their residential or workplace address.
 4. Where alcohol shall not be sold, supplied, or consumed on the premises otherwise than to persons who are bona fide taking substantial table meals and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.
 5. The sale and consumption of alcohol prior to such meals may be in a bar area but must also be ancillary to the taking of such meal.

DECISION AND REASONS

Mr Kevin Jackaman, Senior Licensing Officer summarised the application set out in the report before the Sub-Committee. Mr Jackaman advised that the Application was for a New Premises Licence. The Applicant seeks to provide the sale of alcohol for consumption on the Premises. The EHS and seven interested Parties had maintained representation. There were additional representations submitted by the EHS and two interested parties and these were circulated to all Parties. The Premises is situated in the Marylebone Ward and does not fall under the West End CIZ nor any Special Consideration Zone.

Mr James Rankin, Counsel appearing on behalf of the Applicant addressed the Sub-Committee and highlighted that the Premises was not situated in the West End CIZ or SCZ. Mr Rankin stated that the Premises previously traded as a Gourmet Burger Kitchen and that the restaurant had gone into liquidation. He informed that the same terms of conditions were applied for as the previous licence granted with a series of additional Conditions. The sale of alcohol will cease after 23:00 hours.

Mr Rankin advised that Doner Shack franchise originated from Berlin Germany and that the Premises would be the flagship premises and that a total of £1.5 million had been invested in the venue. This included a 'state of the art' kebab kitchen machinery which ensures that fresh produce is prepared to the highest quality and with minimum waste.

The Sub-Committee noted that alcohol sales would amount to 10% of overall sales of beverages and this equated to 1% of sales. The alcohol offer will be limited to lager only. Mr Rankin stated that the EHS had been consulted with.

The Sub-Committee was advised that Mr Giovanni Costa, Operations Director Treats Leisure Limited was an experienced Licence holder and had previously successfully addressed concerns regarding nuisance caused by delivery drivers. This resulted in delivery companies removing operating licence from employees following complaints from Mr Costa.

Mr Rankin advised that photographic evidence had been provided to the delivery companies by Mr Costa. A Condition had been accepted regarding food courier providers and that delivery drivers would be fully engaged and would be expected to adhere to the Premises rules.

Mr Costa stated that he would actively engage with both delivery drivers and the Council in addressing concerns such as loitering, congregating or public nuisance. Mr Rankin confirmed that Ms Jana Bralite (DPS) also had an extensive employment history and previously worked for notable companies such as the O2. Mr Costa and Ms Bralite would work collaboratively with residents, Responsible Authorities and Ward Councillors and this included providing their contact numbers.

Mr Rankin advised that several Conditions proposed by the EHS had been agreed. He stated that there were some duplications with the Conditions that had been proposed and highlighted those which should be removed or needed to be amended. This included Model Restaurant Condition MC38 meaning that the supply of alcohol at the Premises (including on the external private forecourt) shall only be to a person seated taking a substantial table meal.

In response to questions from the Sub-Committee, Mr Costa said that residents would be welcomed to have a tour of the Premises in order to gain a better insight into the business and its model and commented that the Premises was a good offer to the locality.

Following further questions from the Sub-Committee, Mr Rankin stated that sales of alcohol beyond core hours on Sunday was sought to ensure that there was conformity regarding sale purchases throughout the week. He advised that the alcoholic beverages selection was extremely limited and that there would be no 'off sales' as the external seating area was a private forecourt.

Mr Costa advised that the external seating would be rendered unusable at 21:00 hours and would accept a Condition to this effect. He also advised that patrons would be requested to respect the vicinity and would be managed to ensure that they do not cause nuisance when exiting the Premises. There will also be signage in place requesting this and that a dispersal policy would be strictly adhered to.

Sally Fabbricatore on behalf of the EHS advised that the Application had been discussed with the Applicant and the Premises had also been visited. Ms Fabbricatore advised that the Application was reasonable and confirmed that there would be no 'off sales' or late-night refreshments and that the Premises would operate as restaurant.

Mrs Fabbricatore said that the Applicant had agreed to a series of Conditions which included a delivery to only take place during certain hours and three times a week and reminding the Sub-Committee that deliveries were not a licensable activity.

Mrs Fabbricatore advised that there were no licensable activities being removed from the Premises nor were there any previous history regarding its former operations. The Premises capacity is currently 60 and 8 in the forecourt; a Works Condition requires for these numbers to be reviewed following completion of works. She advised that a Condition which required alcohol to be served by a waiter/ waitress had been proposed.

Mrs Fabbricatore confirmed that the EHS representation had been maintained to assist the Sub-Committee following resident's representations being maintained.

Councillor Barbara Arzymanow, local Ward Councillor Marylebone Ward, addressed the Sub-Committee and advised that all three Ward Councillors had maintained representations on the grounds of the Prevention of Public Nuisance.

Councillor Arzymanow advised that there were a high number of takeaways Premises between Baker Street, York Street and Marylebone Road. In addition, there was limited parking in the vicinity and that delivery drivers would congregate in large numbers in the area. She advised that there was no parking provision for Donar Shack and only one parking bay at York Street.

The Sub-Committee was informed that the Highways Department had disclosed that the parking bay could not be removed or moved to a side street. There have been meetings held with City Inspectorate, Neighbourhood Coordinators and Deliveroo regarding the behaviour of their drivers. Councillor Arzymanow stated Deliveroo had engaged with their drivers, but however had failed to enforce any actions. She advised that despite meetings delivery drivers continued to congregate in the vicinity and this recently occurred in which there were up to 25 in the locality.

The delivery drivers were reported to mostly congregate in the area during Fridays between 18:30 hours and 01:00 hours. Councillor Arzymanow advised that an incident which involved a bottle being thrown was reported to the Police. She advised that specialist glass fronts of neighbouring vendors had been damaged and had to be replaced. There is also anti-social behaviour which include the usage of prohibited substances by individuals in the locality.

Councillor Arzymanow said that there were concerns as to whether the Premises would be effective in engaging and controlling delivery drivers and commented that that the latter had failed to alter their behaviour despite multi-agencies such as the Police and Council Officer input. The Sub-Committee was informed that meetings

had been held with residents and Council Officers and noted that there needed to be joined up working between all parties to address concerns.

Councillor Arzymanow advised that an additional take away provider in the vicinity would increase nuisance experienced by residents and other vendors. The Sub-Committee acknowledged these concerns and commented that granting a Premises Licence would enable for Conditions to be imposed which prohibited any public nuisance emanating from the Restaurant and this included delivery drivers. Mr Costa advised that all deliveries would cease at 23:00 and a Condition which stipulates this would be accepted.

Mr Horatio Chance, The Legal Advisor to the Sub-Committee stated that all Applications must be considered on their individual merits and based on the promotion of the Licensing Objectives.

In response to questions from the Legal Advisor, Mr Rankin advised that Conditions which prohibits delivery drivers from congregating or loitering within the vicinity of the Premises would be accepted.

In summing up Ms Fabbricatore reminded the Sub-Committee that all Conditions imposed must be made clear and enforceable.

In summing up Councillor Arzymanow commented that there should continue to be engagement with all stakeholders to address issues and that order numbers of delivery drivers who loiter in the vicinity should be shared.

Conclusion

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

There is no policy presumption to refuse the application for a Premises catering for a restaurant outside of the West End CIZ.

The Sub-Committee concluded that the Applicant had provided valid reasons as to why the application should be granted. There are a number of comprehensive conditions on the licence that will deal with the issue of nuisance so the right balance had been struck when considering the needs of local residents and the ability of the Applicant to run the Premises in a way that will promote the licensing objectives rather than hinder it.

The Applicant had demonstrated that the licensing objectives would be promoted, and additional Conditions had been imposed which would mitigate concerns raised by residents. This included discouraging delivery drivers from loitering and congregating within the vicinity of the Premises. The external area would also be rendered unusable at 21:00 hours each day.

The Sub-Committee recommended that the Applicant maintains effective dialogue with residents and the Local Ward Councillors going forward so that if problems do arise with the running of the Premises, they are dealt with swiftly by the Premises management.

Having carefully considered the committee papers and the submissions made by all parties, both orally and in writing, **the Committee had 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 the **Sale by Retail of Alcohol (On sales only)** Monday to Sunday 11:00 to 23:00 **Seasonal variations:** None
2. To grant permission for the **Opening Hours of the Premises** Monday to Sunday 11:00 to 23:00 **Seasonal variations:** None
3. That the Licence is subject to any relevant mandatory conditions.
4. That the Licence is subject to the following conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

Conditions imposed by the Committee after a hearing with agreement of the Applicant

5. The Supply of Alcohol shall be by waiter or waitress only or when ordered with food at the service bar.
6. 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.
7. All waste is to be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
8. No striptease, no nudity and all persons to be decently attired at all times.
9. There shall be no sale, supply or consumption of intoxicating liquor to or by any customers not seated at tables or bar stools within the premises and any such service shall be by waiter, waitress or bartender only.
10. Crime Prevention Literature or Posters will be displayed advising customers to not leave their property unattended.
11. Children shall be accompanied by a responsible adult at all times.
12. The Supply of Alcohol in the external part of the premises shall only be to persons taking a table meal there and consumption by such a person as ancillary to their meal.
13. The external tables and chairs must not be used after 21:00 on any day and must be made unusable after this time.
14. All outside tables and chairs shall be removed or rendered unusable by 23.00 each day.

15. The number of persons permitted in the premises at any one-time (excluding staff) shall not exceed (X) persons. (to be determined by Environmental Health on clearance of 'works' condition but it shall not be more than 60 including not more than 8 in the external area)
16. The supply of alcohol at the premises (including on the external private forecourt) shall only be to a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal.

For the purpose of this condition a 'Substantial Table Meal' means – a meal such as might be expected to be served as the main midday or main evening meal, or as a main course at either such meal and is eaten by a person seated at a table, or at a counter or other structure which serves the purposes of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure servicing the purposes of a table.

17.
 - (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.
18. 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.
19. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police. It must be completed within 24 hours of the incident and will record the following:
 - (a) all crimes reported to the venue
 - (b) all ejections of patrons
 - (c) any complaints received concerning crime and disorder
 - (d) any incidents of disorder
 - (e) all seizures of drugs or offensive weapons
 - (f) any faults in the CCTV system, searching equipment or scanning equipment
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.
20. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.

21. 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.
22. A Challenge 21 or Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
23. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke or make a phone call, shall not be permitted to take drinks or glass containers with them.
24. No deliveries to the premises shall take place between 23:00 and 08:00 hours on the following day except for in the Baker Street frontage which may be permitted to have deliveries from 07:00 to 23:00 hours
25. Takeaways of food by use of a courier service shall only be with a courier service who have agreed that their delivery drivers have been give clear, written instructions to use their vehicles in a responsible manner so as not to cause a nuisance to any residents or generally outside the licenced premises; not to leave engines running when the vehicles are parked; not to obstruct the highway.
26. A direct telephone number for the manager at the premises shall be publicly available at all times the premises are open. This telephone number and/or is to be made available to residents and businesses in the vicinity.
27. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 08.00 hours on the following day unless collections are arranged during the times for the Council's own commercial waste collection service for the street.
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 of business.
29. No licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.
30. The premises licence holder shall ensure that riders/drivers will be instructed not to congregate or loiter within the vicinity of the premises.

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

**The Licensing Sub-Committee
9 February 2023**

3. FIVE GUYS, 59-63 QUEENSWAY, W2 4QH

The Sub Committee noted that the Applicant had withdrawn their application.

4. CA JAPANESE PANCAKES, 324 VAUXHALL BRIDGE ROAD, SW1V 1AA

**WCC LICENSING SUB-COMMITTEE NO. 3
("The Committee")**

Thursday 9 February 2023

Membership: Councillor Angela Piddock (Chair) Councillor Judith Southern
and Councillor Jim Glen

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Aaron Hardy
Committee Officer: Georgina Wills
Presenting Officer: Kevin Jackaman

Also Present Ayesha Bolton, Environmental Health
Peter Mayhew, Agent, Beyond the Blue, Global Partners Bd
Limited Mohammed Siraj – Director, Global Partners Bd Limited
Mr Hillman, Resident

**Application for a New Premises Licence in respect of Wok and Fire 326
Vauxhall Bridge Road London SW1V 1AA 22/11099/LIPN**

FULL DECISION

Summary of Application

The Sub-Committee has determined an application for a New Premises Licence under the Licensing Act 2003 ("The Act") in respect of Wok & Fire at 326 Vauxhall Bridge Road London SW1V 1AA. Wok & Fire is a chain of three restaurants and take-aways which serve traditions Pan Asian Fusion Cuisine for consumption on the premises and for take-away and delivery. The food is cooked to order for customers attending the Premises, which is located on the ground floor with a small preparation area and small office space on the first floor.

The Premises have the benefit of two existing premises licences (Licence numbers 16/03312/LIPDPS and 16/06647/LIPN). Both Licences are currently suspended for non-payment of the annual fee by the previous licence holder.

The Premises are located within the Vincent Square Ward and have been operating for almost three years. They are now seeking to licence the Premises for Late Night Refreshment until 01.00 with no alcohol sales.

The Applicant is aware that the hours applied for fall outside Westminster's core hours policy under its SLP. However, the Applicant asserts that the nature of the food served at the Premises and the ability for people to remain inside when ordering or eating, along with the proposed measures/conditions to be put in place to prevent nuisance, means that Public Nuisance will be less of a concern than with similar styles of premises.

There is no policy presumption to refuse applications outside of the West End CIZ. Therefore, the Applicant must demonstrate that they have had regard to the considerations contained in the Victoria SCZ under the terms of the SLP. The matter was assessed on its individual merits having regard to the evidence before the Licensing Sub-Committee and the promotion of the licensing objectives.

Representations were received from the Environmental Health Service, Metropolitan Police Service and one local resident all citing concerns regarding public nuisance and crime and disorder.

There is a resident count of 99.

Premises

Wok and Fire
326 Vauxhall Bridge Road
London
SW1V 1AA

Applicant

Global Partners Bd Limited

Ward

Vincent Square

Cumulative Impact

N/A

Special Consideration Zone

Victoria

Activities and Hours applied for

Opening Hours for the Premises

Monday to Saturday 11:00 to 01:30

Sunday 11:00 to 00:30

Late Night Refreshments

Monday to Friday 23:00 to 01:00

Sunday 23:00 to 00:00

Representations Received

- Metropolitan Police Service (PC Dave Morgan) **withdrawn**
- Environmental Health Service (Ayesha Bolton) (EHS)
- One resident

Summary of Representations

- *The granting of the application as presented would have the likely effect of causing an increase in Public Nuisance within the area and may impact on Public Safety.*
- *I am writing to inform you that the Metropolitan Police, as a Responsible Authority, are objecting to this application as it is our belief that if granted, the application would undermine the Licensing Objectives, namely the Prevention of Crime and Disorder. The applicant is seeking Late Night Refreshment for: Monday to Saturday: 2300 to 0100 Sunday: 2300 to 0000. The venue is situated within the Victoria Special Consideration Zone and the hours sought are beyond Westminster Councils Core Hours Policy.*
- *As stated in Westminster Councils Fast Food Policy, venues 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. I am therefore concerned that this venue could become a 'destination point' for people who have consumed alcohol which may lead to further antisocial issues within the area. Although you have supplied a number of conditions to help promote the licensing conditions, there are some further conditions that I would like to see added to the licence. However, before I send these, can you please provide me with further information on how your client will regulate your conditions 7 and 9 (i.e. have you considered the need for SIA?)*
- *This premises forms part of the ground floor of our residential block. I & my neighbours strongly object to this licence which will further exacerbate the late night nuisance, particularly noise & smell, caused by this establishment. The existing problems caused until 23.30hrs (often exceeded) is bad enough without an additional attraction to 'late nighters' of extended opening hours. As the granting of this licence is contrary to permitted hours of Westminster Licensing it should be refused on those grounds alone*

Policy Considerations

Policies SCZ1, and FFP1(A) apply under the City Council's Statement of Licensing Policy ("SLP")

SCZ1

A. In addition to meeting the other policies within this statement, applications within a designated Special Consideration Zone should demonstrate that they have taken account of the issues particular to the Zone, in question as identified within the 2020 Cumulative Impact Assessment, and should set out any proposed mitigation measures in relation to those issues within their operating schedule. For the purpose of Clause A, the designated Special Consideration Zones for this application is the Victoria SCZ.

FFP1 (A)

A. Applications outside the West End Cumulative Zones will generally be granted subject to:

1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1.
 2. The hours for licensable activities are within the council's Core Hours Policy HRS1.
 3. The operation of any delivery services for alcohol and/or latenight refreshment meeting the council's Ancillary Delivery of Alcohol and/or Late-Night Refreshment Policy DEL1.
 4. The applicant has taken account of the Special Consideration Zones Policy SCZ1 if the premises are located within a designated zone.
 5. The application and operation of the venue meet the definition of a fast food premises in Clause D.
- D. For the purposes of this policy a Fast Food Premises is defined as:
1. A premises that provides late night refreshment, either by way of fast food over a counter, via a self-seating basis or take away for immediate consumption.
 2. Food and drink are:
 - a. Available on the premises for self-selection.
 - b. Prepared on the premises.
 - c. Cooked or produced off the premises but brought to that premises in advance of its sale to customers.
 3. The food and drink are provided in pre-sealed or open disposable packaging which is intended for immediate consumption.
 4. A fast-food premises can provide a delivery service as part of its operation, however that service must be ancillary to the main function of the premises as defined within sub-clauses D,1 to D,3 above.

DECISION AND REASONS

Mr Kevin Jackaman, Presenting Officer summarised the application set out in the report before the Sub-Committee. He explained that the application was for a New Premises Licence in respect of Wok and Fire at 326 Vauxhall Bridge Road London SW1V 1AA. The Applicant is seeking to provide late night refreshment until 01:00. The EHS and a resident had maintained representation. The MPS withdrew their representation on 5 January 2023. The Premises is situated in the Vincent Square Ward and located within the Victoria CIZ.

Mr Peter Mayhew Agent appearing on behalf of the Applicant addressed the Sub-Committee. Mr Mayhew advised that the Premises was a small venue with a simple menu. Food was prepared at the front of the Premises and that customers could either consume produce in the Premises or be provided a 'take away'. He advised that the application was 'low risk' as no alcohol or regulated entertainment had been applied for and that the EHS had been consulted upon regarding all aspects of the application.

Mr Mayhew stated that the Premises sought to attract post theatre audience, late night shift workers and night-time commuters. The Premises operating schedule had been amended since the application was submitted in November and now included some 20 proposed Conditions. He advised that mitigations were in place to prevent public nuisance and that capacity would be limited to 10 customers after 23:00 and that there were seven/eight Conditions proposed to deal with this specific issue, including signage being displayed which requires that customers respect neighbours and the local area upon dispersal.

Mr Mayhew gave an outline of the proposed Conditions and highlighted that the Applicant had to comply with the Council's waste collection timetable. He advised that the proposed Condition by the EHS which required for no entry to the Premises after 23:00 hours would impact the business operational model and prove difficult. Mr Mayhew said that no food would be served after 01:00 hours and that the policy requirements would be met. There has been liaison with residents and the Premises contact details would be made available to this group which would be an ongoing dialogue dealing with any issues of nuisance including odours escaping from the Premises.

Mr Mayhew confirmed that the Premises would have three staff members present during operational hours and would receive appropriate training. Accordingly, there will be a written training manual for staff members to consult and comply with as necessary.

In answer to questions from the Sub-Committee, Mr Mayhew advised that staff members would be required to work with delivery drivers to ensure that they do not cause nuisance such as noise and advised that delivery companies also had in-house training for their employees. There would be limited parking in front of the Premises also.

Ms Ayesha Bolton appearing on behalf of the EHS addressed the Sub-Committee. Ms Bolton advised that she had undertaken an inspection of the Premises and that most of the trade was during the lunch period and customers were mainly office

workers although it is accepted the Premises are situated in a largely residential area. The Premises does not have a restaurant setting and there are no public conveniences available for customers.

Ms Bolton advised that customers were required to wait for their food once they have placed orders and that seating was provided. She advised that during her inspection there were 10 customers inside the Premises and informed that the majority of sales were for take aways. Ms Bolton advised that there were concerns that the proposed number of customers permitted inside the Premises may cause a nuisance alongside delivery drivers.

Ms Bolton confirmed that the Applicant would be required to comply with the Council's waste and refuse collection scheduled as previously stated by Mr Mayhew. In response to questions from the Sub-Committee, Ms Bolton stated that the Premises capacity should be reduced to seven customers seated with three permitted to stand. She said that delivery drivers should be required to remain in the Premises when collecting deliveries and that the proposed conditions were satisfactory.

Mr Hillman a local resident addressed the Sub-Committee. He advised that there were concerns regarding nuisance escaping from the Premises and this included noise, odour and customers loitering outside the vicinity. He advised that resident's kitchen and bedroom windows were located near the Premises and odour would 'tunnel up' through these entrances. He felt this type of nuisance would worsen during the summer months. The Sub-Committee noted that there was restricted parking outside the Premises and uncertainty where delivery drivers would park their vehicles as well as concerns on their impact on traffic and congestion.

Following discussions, the Sub-Committee noted that a Condition had been proposed which prohibited any odour from being emitted from the Premises and were informed that a £10,000 investment in the venue had been made to address this specific issue. The Sub-Committee was informed that the extractors should be regularly serviced, and it was preferred for them to have an eco-friendly operational system.

In response to questions from the Sub-Committee, Ms Bolton advised that extractors funnel should be at least 1 metre away from buildings and that all appliances would be required to eliminate odours and that residents could report any breaches to Environmental Health which would be properly investigated.

In response to questions from Mr Horatio Chance, the Legal Advisor to the Sub-Committee, Mr Mayhew advised that a Condition which limited the Premises capacity to 10 would be agreed and that Model Condition 24 which required for a member of staff's contact number to be made available would be accepted. The Conditions proposed by Environmental Health would also be accepted.

In summing up to the Sub-Committee, Mr Hillman advised that there were concerns regarding loitering and individuals congregating near the Premises. He advised that dining should be prohibited after 23:00 hours.

In summing up to the Sub-Committee Ms Bolton advised that the Premises operated as a café, had permission to operate as a full kitchen and was a small unit. She advised that the EHS did not object to the Application and that the Sub-Committee was required to determine what operations would be appropriate after core hours.

In his summing up to the Sub-Committee, Mr Mayhew advised that the Premises was a small unit and that measures had been implemented to address concerns of residents that will promote the licensing objectives. He advised that the Premises capacity would not exceed 10 and that the Condition which stipulates that no entry to the Premises should take place after 23:00 hours should be removed as it did not support the operational business model.

Conclusion

The Sub-Committee 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 Applicant operates a chain of three restaurants and take-aways which serve traditional Pan Asian Fusion Cuisine for consumption on the premises and for take-away and delivery. The food is cooked to order for customers attending the Premises, which is located on the ground floor with a smaller preparation area and small office space on the first floor. This particular Premises has operated for nearly three years and is now seeking to licence the Premises for Late Night Refreshment until 01.00 which is outside Westminster's core hours policy.

There is no policy presumption to refuse the application for a Premises catering for fast food outside of the West End CIZ.

The Sub-Committee concluded that the Applicant had provided valid reasons as to why the application should be granted. There are a number of comprehensive conditions on the licence that will deal with the issue of nuisance so the right balance had been struck when considering the needs of local residents and the ability of the PLH to run his Premises in a way that will promote the licensing objectives rather than hinder it.

The Sub-Committee noted the concerns of the local resident when it came to the issue of potential nuisance but there was no evidence before the Sub-Committee to suggest that the Applicants running of the Premises would lead to the matters complained of in the representation for a refusal of the application when open until 01:00. The key test before the Sub-Committee is to establish whether the licensing objectives are to be promoted by the Applicant when running the Premises until the terminal hour and what necessary safeguards are to be put in place.

The Sub-Committee concluded based on the evidence that the Applicant would promote the licensing objectives with the conditions that are now imposed on the Premises Licence. These conditions will help mitigate the concerns raised by those who had objected to the application namely the EHS and local resident on public nuisance grounds. The Sub-Committee took comfort from the fact that the Applicant was to work in partnership with local residents going forward when it came to noise and fumes emanating from the Premises to ensure this would not create problems and thus promote the licensing objectives.

However, the Sub-Committee took the view also that if problems do occur regarding nuisance issues, then residents are advised to report their concerns in the first instance to the Council's EHS for investigation.

The Sub-Committee noted that the Premises was located in the Victoria Special Consideration Zone and that the requirements of Paragraph D54 under the City Council Statement of Licensing Policy had been demonstrated by the Applicant.

Having carefully considered the committee papers and the submissions made by all parties, both orally and in writing, **the Committee had 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 **Late Night Refreshment (Indoors)** Monday to Saturday 23:00 to 01:00 Sunday 23:00 to 00:00 **Seasonal variations: None**
2. To grant permission for the **Opening Hours of the Premises** Monday to Saturday 11:00 to 01:30 Sunday 11:00 to 00:30 **Seasonal variations: None**
3. That the Licence is subject to any relevant mandatory conditions.
4. That the Licence is subject to the following conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

Conditions imposed by the Committee after a hearing with agreement of the Applicant

5. Appropriate induction training shall be undertaken with all relevant staff to cover appropriate subjects for their role including:
 - a. The hours of operation
 - b. Preventing Public Nuisance
 - c. Fire safety & emergency evacuation procedures
6. All training shall be recorded and training records made available on request to an authorised officer of the Licensing Authority or the Police.
7. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police, which will record the following:
 - a. all crimes reported to the venue
 - b. all ejections of patrons
 - c. any complaints received concerning crime and disorder
 - d. any incidents of disorder
 - e. all seizures of drugs or offensive weapons
 - f. any faults in the CCTV system or searching equipment or scanning equipment
 - g. any visit by a relevant authority or emergency service.
8. The delivery of food shall only be made to a residential or business address, where the customer uses that address as an official place of residence or their

recognised designated place of work. The delivery of alcohol shall not be made or completed in a public place (on the street, in a park, by the bus stop, etc.

9. 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 preceding 31-day period.
10. 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.
11. A Zero Tolerance Policy towards the use, possession and supply of illegal drugs shall be adopted and enforced.
12. No new admissions or re-admissions shall be allowed to the premises after 01.00. Signage to this effect shall be displayed at the premises
13. A fire risk assessment shall be conducted and regularly reviewed. In-line with the Fire Risk Assessment:
 - a. An integrated fire detection and alarm system is installed, checked, regularly tested and maintained by a competent person.
 - b. Fire extinguishers are installed in accordance with the recommendations of the fire risk assessment.
 - c. Emergency lighting is installed in accordance with the recommendations of the fire risk assessment.
 - d. All emergency exits are marked on the premises plan.
14. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
15. Deliveries related to the permissible Licensable Activities shall not take place between the hours of 22.00 and 06.00
16. 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.

17. 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.
18. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number and/or is to be made available to residents and businesses in the vicinity.
19. No amplification system or speakers shall be used in the external areas of the premises.
20. Delivery drivers shall be given clear, written instructions to use their vehicles in a responsible manner so as not to cause a nuisance to any residents or generally outside the licence premises; not to leave engines running when the vehicles are parked; and not to obstruct the highway.
21. Unaccompanied children under the age of 18 years shall not be permitted on the premises after 23.00 on any day.
22. The number of persons accommodated at the premises after 23:00 at any one time shall not exceed 10 persons (excluding staff).
23. The premises Licence Holder shall ensure that riders/drivers will be instructed not to loiter in the vicinity of residential premises.
24. The premises Licence Holder shall ensure that riders/drivers will not be permitted to congregate in the immediate vicinity of the premises.
25. The premises Licence Holder shall ensure that riders/drivers will not be permitted to smoke in the immediate vicinity of the premises.
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26. All outside tables and chairs shall be rendered unusable by 23:00 each day.
27. All windows and external doors shall be kept closed after 23:00 hours except for the immediate access and egress of persons.
28. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
29. 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.
30. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 06.00 hours on the following day.
31. 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.

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

**The Licensing Sub-Committee
9 February 2023**

The Meeting ended at 3.00 pm