



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (2)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (2)** held on **Thursday 2nd November, 2023**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Maggie Carman (Chair), Judith Southern and Caroline Sargent

1. MEMBERSHIP

1.1 It was noted that there were no changes to the membership.

2. DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1. CAFFE FORESTA, GROUND FLOOR, 95 CHARLWOOD STREET, SW1V 4PB

WCC LICENSING SUB-COMMITTEE NO. 2 ("The Committee")

Thursday 2 November 2023

Membership: Councillor Maggie Carman (Chair), Councillor Judith Southern and Councillor Caroline Sargent

Officer Support Legal Advisor: Michael Feeney
Policy Officer: Daisy Gadd
Committee Officer: Sarah Craddock
Presenting Officer: Kevin Jackaman

Others present: Mrs Chouleebhorn Messing (Applicant), Mr Messing, Mr Maxwell Koduah (Environmental Health Service), Mr Richard Brown (Solicitor, Westminster Citizens Advice) representing a local resident and five local residents.

Application for a New Premises Licence in respect of Caffe Foresta, Ground Floor, 95 Charlwood Street, SW1V 4PB

Full Decision

Premises

Caffe Foresta
Ground Floor
95 Charlwood Street
SW1V 4PB

Applicant

Mrs Chouleebhorn Messing

Ward

Pimlico North

Cumulative Impact Area

N/A

Special Consideration Zone

N/A

Activities and Hours applied for

Sale by retail of alcohol (On Sales Only)

Monday to Friday: 09:00-18:30
Saturday to Sunday: 09:00-20:00

Hours Premises Are Open to the Public

Monday to Friday: 07:30-18:30
Saturday to Sunday: 09:00-20:00

Summary of Application

This is an application for a New Premises Licence under the Licensing Act 2003 ("The Act"). The Premises currently operate as a café serving pre-prepared cold/heated food sandwiches, cakes, soft drinks, juices and tea/coffee. During consultation, the Applicant reduced the start time for the sale of retail of alcohol Monday to Friday from 07:30 to 09:00 hours. There is a resident count of 406.

Representations Received

Metropolitan Police Service (withdrawn on 2 June 2023)
Environmental Health Service
Five local residents

Issues raised by Objectors

- The hours requested will have the likely effect of causing an increase in Public Nuisance within the area and may impact on Public Safety.
- The area is mainly residential with only a few commercial shops.
- Absence of the café owner.
- Litter and rubbish generated by the café.
- Tables and chairs block the pavement and people's doors.
- Dogs fouling on the fake grass situated outside the café.
- Potential noise nuisance and anti-social behaviour.
- Detrimental to the Licensing Objectives.

Policy Considerations

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.

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 Councils Core Hore Policy HRS1.
- 3.The operation of any delivery service for alcohol and/or late night refreshment meeting the Council's Ancillary Delivery of Alcohol and/or Late Night Refreshment Policy DEL1.
- 4.The applicant has taken account of 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.

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 in 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.

SUBMISSIONS AND REASONS

The Presenting Officer, Kevin Jackaman, Senior Licensing Officer, introduced the application to the Committee.

Mr Messing outlined the application along with Mrs Messing (Applicant). He advised that the café wished to sell alcohol to compete with the other Premises in the area who already had a Premises Licence. He outlined that it would still operate as a café, however, the granting of the application would allow the Premises the opportunity to serve a glass of wine to their customers on request with food. He highlighted how customers had already requested a glass of wine with their food order and when declined had gone elsewhere. He outlined that the Applicant's vision was for people to enjoy a conversation with a glass of wine and a toasted sandwich/piece of cake. The intention was not to turn the café into a pub.

Mr Messing confirmed that all the conditions proposed by the Metropolitan Police Service and Environmental Health Service had been agreed. He then discussed the Applicant's ability to provide substantial food to customers as the Premises did not have the facilities to cook food but only to re-heat pre-packaged food and/or pastries/toasted sandwiches. He confirmed that the Premises did not have the space or the ventilation to cook restaurant style meals.

In response to questions from the Sub-Committee, Mr Messing emphasised that the Applicant needed the Premises Licence to sustain the café as currently they were losing business to their competitors. He outlined how the Applicant had marked the outside seating area with fake grass to indicate to patrons where they could sit and/or leave their prams to prevent obstruction of the pavement. He confirmed that most of the outside space belonged to the Premises, and they also had a Table and Chairs Pavement Licence. He further confirmed that all tables and chairs were removed at closing time. He highlighted that waste/rubbish was a nuisance across the whole of the street and how the café staff kept the outside of the Premises clean and tidy by frequently picking up litter. He outlined that the fake grass had been added to the outside area because the landlord did not want to contribute to fixing the bumpy floor/pavement. He advised that it had reduced the noise nuisance and had clearly set out the outside space/seating area for customers.

Mrs Messing confirmed that CCTV was situated inside, outside and in the stock room of the Premises and that although she was often not physically present she monitored the Premises 24/7. She outlined how she would not hesitate to contact the Police if an incident occurred on the Premises and/or there was abuse towards her staff. She advised that the capacity was for 25 patrons (10 patrons seated outside and 15 seated patrons inside the Premises) and there were always two to three staff on duty at any one time. She highlighted her love and passion for good coffee and how she was continuously learning about the café/catering business. She confirmed that she did not wish for the hours for the sale of alcohol to be reduced any further because the hours applied for were within the Council's Core Hours Policy and she wished to have the flexibility to offer her customers a glass of wine with brunch. She further outlined that alcohol would only be served with food, never by itself and would be limited to one or two glasses per customer.

Mr Max Koduah (Environmental Health Service, EHS) advised that EHS had maintained their representation to assist the Sub-Committee. He further advised that the EHS did not have any major concerns regarding public nuisance and public safety because of the conditions that had been proposed and agreed by the Applicant. He confirmed that EHS's concern had further reduced with the scaling back of the hours to 09:00 hours. He further confirmed that the Premises would be unable to provide substantial food as outlined in the Metropolitan Police Service's proposed conditions and therefore he had suggested a different condition setting out 'That the supply of alcohol at the premises shall only be to a person seated at a table and for consumption ancillary to food.' He advised that he considered that the Applicant had made a genuine error by agreeing to the Police's proposed MC66 condition, as this condition was only imposed on restaurant style operations. He confirmed that the proposed conditions and the amended hours should alleviate residential concerns.

In response to questions from the Sub-Committee, Mr Koduah advised that a substantial meal was one that was served by a restaurant and not a pastry or toasted sandwich. He confirmed that the Premises would be unable to comply with MC66 so a more appropriate condition should be offered and placed on the Premises Licence if the Sub-Committee were minded to grant the application.

Ms J. S, a local resident, advised that the café was located in a very residential area where there many young families living and that walking past people drinking and being loud during the day could be quite threatening for some people. She requested how residents could go about reporting any misgiving to the Council. Mr Feeney, the legal advisor, informed her that she could get in touch with the Council's Enforcement Team who would investigate any complaint and if there were serious issues the Licensing Authority could call for a Review of the Premises Licence. She advised that she did not believe that the Applicant often attended the Premises.

Ms E. B, a local resident, advised of the location of her property and how she often picked up rubbish found in the street from the café. She highlighted how dogs had been attached to her gate so she could not leave her property and how the dogs used the fake grass as a toilet. She advised that she respected local businesses and that she purchased a lot of coffee from the café, however, she saw no benefit of this Premises Licence to the community. She advised of her irritation of the fact that there had been very little engagement with the Applicant and of her worry regarding broken glass and increasing noise nuisance in the area if the application were granted.

Mr D.P, a local resident, advised of the location of his property, how he and his wife had welcomed the café and had been customers for years and how very upset they were regarding the lack of community engagement regarding this application. He considered that the neighbourhood was a close community and although the Applicant had talked about good intentions once the Premises had a Premises Licence it could be easily transferred to a new occupier. He highlighted how the café could not serve substantial food because they had very little space and he believed that the alcohol licence would attract people to the area who just wanted to drink which would increase anti-social behaviour and noise nuisance. He advised that the granting of this application could set a precedent for other cafés to apply for a

Premises Licence. He considered that it would be inappropriate to grant this application and that it would be the 'thin end of the wedge.'

In response to questions from the Sub-Committee, Mrs Messing advised that a member of her staff had undertaken training and would be in charge of the day-to-day operation of the café.

Mr Richard Brown (Solicitor, Westminster Citizens Advice), representing a local resident emphasised the residents' lived experience and how there was always tension between commercial and residential properties in cities such as Westminster and that in reality they needed to coexist next to one another. He highlighted the risk regarding the lack of substantial food available at the Premises in terms of disturbances to local residents. He emphasised how the Metropolitan Police Service had withdrawn on the understanding that substantial food would be available and requested that the food offer at the Premises be made very clear on the Premises Licence if the Sub Committee were minded to grant the application. Mr Brown also noted that according to Google the café currently closed at 5:30pm, so in some respects the application represented an extension of hours.

The Sub-Committee noted that the Applicant had not engaged with the residents regarding the application for a new Premises Licence and encouraged her to do so in the future. The Applicant agreed to have MC24 regarding the provision of a direct telephone number attached to the Premises Licence if the Sub-Committee were minded to grant.

Mr Feeney, Legal Advisor to the Committee, discussed the wording of the proposed conditions (if the application were granted), with all parties.

During his summing up, Mr Brown advised that the local residents had their reservations regarding the grant of this Premises Licence. The local residents reiterated their concerns and also drew attention to the fact that the Premises was near an Alcoholics Anonymous centre.

During his summing up, Mr Messing advised that they had every intention of operating the café as a café first and foremost and that the alcohol offer would only form a small part of the business. He advised that there were other shops in the area and that some of these (such as the Tesco's across the road) would be more likely to appeal to those wishing to drink alcohol. He also stated that the staff in future would do better at clearing up rubbish.

Conclusion

The Committee has determined an application for a grant of a New Premises Licence under the Licensing Act 2003. The Sub-Committee realises that it has a duty to consider each application on its individual merits and did so when determining this application.

The Sub-Committee in its determination noted that the Environmental Health Service was satisfied with the application and had no concerns given the conditions that had been agreed. The Sub-Committee placed great weight on the position of EHS as the responsible authority with primary expertise concerning the licensing objective of public nuisance.

The Sub-Committee felt that the imposition of the proposed conditions would ensure that the Premises would operate as a genuine café and not become alcohol-led. As it became clear during the meeting that the Premises could not offer substantial table meals (and did not intend to do so), the Sub-Committee felt that it was appropriate and necessary to amend one of the conditions proposed by the Metropolitan Police (condition 22) so that the supply of alcohol must be ancillary to the consumption of 'food' rather than a 'substantial table meal'. The Sub-Committee recognised that the Metropolitan Police had withdrawn their representation on the basis of the earlier version of the condition, but the Metropolitan Police at the time cannot have been aware that the Premises was not capable of providing substantial table meals. The Sub-Committee considered that the revised condition 22 (alongside the other conditions) would effectively uphold the licensing objectives and would ensure that the Premises operates as a café rather than as a pub or bar with vertical drinking. In reaching this decision, the Sub Committee again placed great weight on the position of EHS.

The Sub-Committee noted the concerns of local residents concerning rubbish and litter but felt that this could be addressed by way of conditions (see conditions 12-14, 16 below). As the Premises currently does not have a premises licence the grant of a licence with appropriate conditions could help improve the situation. The Sub-Committee also placed weight on condition 11, which states that no noise generated on the Premises shall give rise to a nuisance.

The Sub-Committee also considered that the Applicant had taken appropriate steps to prevent tables and chairs being placed outside the designated areas by providing astroturf. Finally, the Sub-Committee noted the lack of engagement described by local residents so considered the imposition of MC24 concerning the provision of a telephone number to be appropriate and necessary. It is hoped that this will allow a constructive dialogue between the Premises and local residents to exist in future.

The application is not alcohol-led, the Premises is not within a Special Consideration Zone or the West End Cumulative Impact Zone and the application is within core hours. Overall, the Sub-Committee therefore considered that the proposed conditions would promote the licensing objectives and ensure that the Premises operates as a café without causing public nuisance or leading to a rise in crime or disorder.

Having carefully considered the committee papers, the additional papers and the submissions made by all of the parties orally, the Sub-Committee has decided, after taking into account all of the individual circumstances of this particular case and the promotion of the four licensing objectives:-

1. To grant permission for:

Sale by retail of alcohol (On Sales Only)

Monday to Friday: 09:00-18:30

Saturday to Sunday: 09:00-20:00

Hours Premises Are Open to the Public

Monday to Friday: 07:30-18:30

Saturday to Sunday: 09:00-20:00

2. To add relevant Mandatory Conditions to apply.
3. To add conditions proposed to form part of the operating schedule:
9. The supply of alcohol shall be by waiter or waitress service only.
10. Food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
11. 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.
12. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
13. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 19.00 hours and 08.00 hours on the following day.
14. No collections of waste or recycling materials (including bottles) from the premises shall take place between 19.00 hours and 08.00 hours on the following day.
15. No deliveries to the premises shall take place between 19.00 hours and 08.00 hours on the following day.
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. The approved arrangements at the premises, including means of escape provisions, emergency warning equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.
18. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 25 persons.
19. All tables and chairs shall be removed from the outside area by 20.00 hours each day.

20. 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 and will include the external area immediately outside the premises entrance. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.
21. 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.
22. The supply of alcohol at the premises shall only be to a person seated at a table and for consumption ancillary to food.
23. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the premises by the police or an authorised officer of the City Council at all times whilst the premises is open.
24. 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
25. A Challenge 21 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
26. 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 glass containers with them.

27. Alcohol consumed outside the premises building shall only be consumed by patrons seated at tables within authorised seating areas.
28. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.

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

**The Licensing Sub-Committee
2 November 2023**

2. CANWOOD55 55 FRITH STREET, W1D 4SJ

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO.2
("The Committee")

Full Review Decision
Thursday 2 November 2023

Membership: Councillor Maggie Carman (Chairman) Councillor Judith Southern and Councillor Caroline Sargent

Officer Support: Legal Advisor – Michael Feeney
Committee Officer – Sarah Craddock
Presenting Officer – Kevin Jackaman

Application for a Review of a Premises Licence – Canwood55 55 Frith Street, London, W1D 4SJ

List of persons:

Premises Licence Holder

The Premises Licence Holder (PLH) is 8Uerte Limited. The PLH did not attend the hearing.

The Licensing Authority ('The Applicant')

Heath Richards
James Hayes

Environmental Health Service

Maxwell Koduah

Metropolitan Police

PC Reaz Guerra
Counsel: James Rankin

Soho Ward Panel

Jane Doyle (represented by Richard Brown, Westminster Citizens Advice)

The Soho Society

Marina Temple and Wendy Hardcastle (represented by Richard Brown, Westminster Citizens Advice). Ms Temple did not attend.

Freeholder of the Premises

Robert Shutt
Alun Thomas of Thomas & Thomas

Cumulative Impact Zone

West End Cumulative Impact Zone

Ward

West End

Summary of Application

This is an application for a Review of a Premises Licence in respect of Canwood55 55 Frith Street London W1D 4SJ ("The Premises") under the Licensing Act 2003 ("The Act"). The Premises are a ground floor premises and hold a premises licence which was granted in November 2020. The Premises Licence was granted with conditions that the Premises would operate as a restaurant where alcohol would be ancillary to food.

The licence holder is 8Uerte Limited. During the consultation period for the review application, the Designated Premises Supervisor ('DPS') applied to remove himself from the licence. The Premises are within the West End Ward. There is a resident count of 112.

On 1 and 2 July 2023, activity was detected at the Premises which was not authorised either through the Premises Licence or through a Temporary Event Notice ('TEN'). It was found that the Premises was carrying out unlicensed sales of alcohol and unlicensed regulated entertainment. City Inspectors and Licensing Police visited on numerous occasions and issued a series of verbal warnings to the management team. These warnings however were repeatedly ignored, and even with the serving of a Section 19 closure notice issued by PC Adam Deweltz, the Premises continued to engage in unlicensed activity.

From August 2022, City Inspectors and Licensing Police tried on multiple occasions to engage and work with the premises to ensure compliance with the conditions of their Premises Licence, in particular the restaurant condition (condition 13). The Premises repeatedly demonstrated a disregard for complying with licence conditions and by extension, the promotion of the licensing objectives. The incidents on 1 and 2 July 2023 are a testament to this.

Westminster Council wrote to the premises licence holder and designated premises supervisor on many occasions, inviting them to respond and put their case forward following persistent non-compliance of licence conditions and unsatisfactory management of the Premises. All formal letters sent by the Council remained unanswered as at the date of the meeting.

There were also two test purchases on 15 July 2023 and 27 July 2023, both of which showed that the Premises was not running as a restaurant.

The Licensing Authority has no confidence that the negative behaviour of the PLH and/or the designated premises supervisor towards Westminster Council, Licensing Police and licensing requirements was likely to change. Applying further conditions to the licence was not considered a solution as the Premises struggled to follow their current conditions.

The PLH did not submit any representations and did not attend the hearing.

Representations

The application received a representation in support of the review from the Metropolitan Police on 05 October 2023 on the grounds that the premises is failing to promote the licensing objectives. A copy of the representation and supporting evidence can be found at Appendix D.1 of the Agenda Report.

The Application received a representation in support of the review from the Environmental Health Service on 11 October 2023 on the grounds that the premises is failing to promote the licensing objectives and can be found at Appendix D.2 of the Agenda Report.

Three interested parties submitted representations. Two of those supported the review. The remaining representation was from the Premises freeholder (NW3 Frith Street Ltd), who objected to the review on the grounds that the PLH had been removed from the Premises and so revocation was not necessary. All interested party representations can be seen at Appendix D.3 of the Agenda Report.

In the Additional Information Pack, the Soho Society submitted a representation in support of the review, and the Premises freeholder submitted a letter expanding on their previous representation, arguing that the Premises Licence should not be revoked.

Activities and Hours

The Premises currently benefits from the following:-

Sale by Retail of Alcohol:

Monday to Saturday 10:00 to 23.30 hours

Sunday 12:00 to 22.30

Opening Hours

Monday to Saturday: 10:00 to 23:30 hours

Sunday: 12:00 to 22:30 hours

Hearing:

1. The Chairman introduced the Members of the Sub-Committee and outlined the procedure to the Parties in attendance.
2. Mr Jackaman, Presenting Officer, outlined the application to the Sub-Committee. He advised that this was an application for a review of an existing Premises Licence which had been submitted by the Licensing Authority on the grounds of the Prevention of Crime and Disorder, Public Safety and the Prevention of Public Nuisance. He advised that the representations as summarised above had been received.
3. The Premises are situated in the West End Cumulative Impact Zone.

The Licensing Authority

4. Mr Richards (City Inspector) said that he relied on the case papers, but he wished to give a summary of the reasons why it was necessary to submit a review. The evidence in front of the Sub-Committee was damning, and the evidence was not contested by the landlord or their legal team. As a result of serious failings, the Licensing Authority had had no choice but to submit a review application and instigate prosecution proceedings at the same time. There had been persistent non-compliance and a dismissive attitude to licensing law (with at least one instance of police officers being obstructed). The Premises had failed to take remedial action after a closure notice had been served, there were instances of the Premises operating beyond its terminal hour and there were several instances of the Premises not operating as a restaurant. As a testament to this last point, there had been two separate test purchases.
5. There had been zero engagement from the PLH. Every single formal letter and email had remained unanswered, and the licence holder had not provided any explanation for their serious and persistent breaches which had been witnessed first hand by police and the Premises' own CCTV.
6. Mr Richards then summarised the chronology of visits made by Licensing Officers and the Police as set out in the Agenda Report (see Appendix B of the

Agenda Report). Mr Richards added that the Premises sits within the Cumulative Impact Zone and that from an impact perspective the Premises was right at the heart of the CIZ on Frith Street. This reinforced the proportionality of asking for revocation. Additional licensing conditions would not make a difference as there was non-compliance with the current conditions.

7. Mr Richards referred to a tenancy agreement that had been provided by the landlord, noting that clause 4.20.3 states 'The tenant shall comply with all legislation which affects the property, its use or occupation,,,'. Mr Richards said that a review application would not have been necessary if the landlord and tenant had ensured that this was robustly adhered to. This showed that there had not been due diligence in place and that there had not been communication between the landlord and the licence holder which would have prevented enforcement action from being taken. There was a duty to protect the integrity of the licensing regime, especially in stress areas which by their nature have increased footfall and increased chance of harm to the licensing objectives. Mr Richards recommended revocation.
8. Mr Hayes then described in particular what had happened during Pride Weekend on 1-2 July 2023. Mr Hayes said that the Council expects businesses to adhere to the terms and conditions of their licence and act in a way that minimises impact to residents. The Premises was visited prior to Pride Weekend to outline clearly what they should be doing, but despite this during Pride Weekend City Inspectors had to visit on more than one occasion. There had been music, dancing and vertical drinking with no food, which were in breach of the Premises Licence conditions. On the first visit, the person spoken to turned out to be the DPS but claimed not to be involved and obstructed police. Then later that night at 2am there was another noise complaint and nothing had changed. It was beyond the terminal hour, and it was the DPS in charge. After speaking to the DPS again he closed the Premises down. There had therefore been two instances within two hours, showing no regard for complying with the terms and conditions of the Premises Licence. Mr Hayes advised that the Council was prosecuting the licence holder and the DPS under section 136 of the Act, as the public interest test to prosecute had been met. Mr Hayes agreed that revocation was appropriate and added that the failure of the PLH to attend the hearing was also significant.
9. In response to the landlord's suggestion that a suspension might be more appropriate, Mr Hayes argued that all of this happened under the same ownership and the same tenancy, so there was no guarantee that it would not all happen again. He advised that the Licensing Authority had questions about what oversight had been in place. He added that the licence had always been the Premises Licence of the PLH; they had applied for it in 2020 and it had never been the landlord's Premises Licence. Revoking the licence would not therefore amount to taking anything away. Finally, Mr Hayes added that the only reason the landlord knew about the review application was because he had contacted them as a courtesy when he saw the eviction notice.
10. In response to questions from the Sub-Committee, Mr Richards advised that there should be mechanisms in place to ensure that all legislation is being complied with and it was his feeling that if the term in the lease he had referred

to had been robustly adhered to then the Premises Licence would not have had to be reviewed. It was all about a clear line of communication which did not exist. In response to a question from Mr Thomas, Mr Richards confirmed that the Licensing Authority had not made any steps to contact the landlord. The Licensing Authority had the addresses for the licence holder and used those along with the details on the Premises Licence and the email address of the DPS.

Environmental Health Services

11. Mr Koduah drew attention to condition 13, which is a model condition requiring that the Premises operates as a restaurant, and condition 15, which imposed a capacity of 35. It was on this basis that the Premises Licence had been granted in 2020. Given the letters that had been sent to the PLH and the DPS it was obvious that they knew about the review or ought to have known.
12. Mr Koduah added that in July 2023 the PLH had applied for TENs to extend activities to 2am and to supply alcohol not ancillary to food. One application had been deemed invalid and another application in August 2023 had been refused. It was clear that the intention was never to operate as a restaurant but to operate as an alcohol-led premises. EHS had no confidence in the ability of management to uphold the licensing objectives and supported revocation.

Metropolitan Police

13. Mr Rankin noted that the licensing regime was not complicated. The Premises Licence had conditions which had to be followed but which had been persistently breached. Usually, a Premises will comply when they are given a warning or verbal warning but that had not happened in this case. On Pride Weekend, the Premises had been visited by police and Mr Hayes at 9pm in the evening, and they had been given a section 19 closure notice because they were breaching conditions. Despite this, Mr Hayes had to return at 1:30am because the Premises was still breaching its conditions and trading well past its hours.
14. Mr Bidias at the Premises had been obstructive, had assaulted PC Muldoon (by pushing him with open hands) and had challenged the police's right to be on the Premises. PC Muldoon had had to show Mr Bidias the statutory power allowing a right of entry on his mobile phone. PC Muldoon had said that the Premises had been the worst run premises throughout the entire Pride Weekend. The behaviour of the operator was completely unacceptable and fell short of what is expected.
15. In response to Mr Thomas's argument on behalf of the landlord that the Premises Licence should only (at most) be suspended, Mr Rankin said that this was closing the stable door after the horse had bolted. If the landlord had been diligent and conducted their due diligence in the first place, then it may have been possible that all of this could have been avoided. The landlord could have registered an interest under section 178 but had not done so. The landlord also could have applied for a shadow licence or made proactive visits to the Premises. Mr Thomas's submission mentioned arrears of rent for £130,000;

this should have set the alarm bells ringing and prompted a visit to the Premises.

16. Mr Thomas appeared to suggest that the onus was on the police or the Licensing Authority to get in touch with the landlord. In fact, it was the other way round. If the landlord wanted to present as a diligent landlord, then they needed to do the legwork. If the licence were suspended then at the end of three months it would revert back to 8Uerte Limited, the people that no-one wanted to hold the licence. The landlord only had themselves to blame, as they had sat on their hands and done nothing. Deterrence is a recognised concept in licensing, and revocation would send a message to fellow non-diligent landlords who had chosen to sit on their hands and do nothing.
17. In response to questions from the Sub-Committee, PC Guerra confirmed that the area of Soho in which the Premises were situated had one of the highest crime rates in Westminster. PC Guerra also added that the police did not routinely get in contact with landlords or freeholders; the focus of engagement was with the PLH

The Soho Society and the Soho Ward Panel

18. Mr Brown adopted Mr Rankin's points on the need for landlords to conduct due diligence and the fact that it was not for the police, EHS or the Licensing Authority to proactively contact landlords. All these bodies had an incredibly busy workload and were not expected to routinely engage with landlords. The answer for a landlord is a section 178 notice, which would have alerted the landlord to the review as soon as possible. It was only through the courtesy of Mr Hayes that the landlord had become aware of the review application.
19. There had been fundamental breaches of fundamental conditions. Page 145 of the Agenda Report (the residents' representations) made it clear that what is in the Licensing Authority's review application is not the entire story, as the residents themselves had tried to engage with the operator. Breach of model condition 66 goes to the integrity of the licensing regime, and the Council often relied on compliance with that condition when reaching decisions. Mr Brown agreed with Mr Rankin's point on deterrence. It would be entirely the wrong approach to take a lesser approach because the lease had been forfeited; this was too little, too late and the landlord only became aware that something was amiss when owed £130,000 in rent. This was a significant build-up of rent, and a complaint had been made by a resident to the landlord. Mr Brown stated that after this the landlord should have got in touch with responsible authorities, and that would have been the way to deal with it, not to wait.
20. Ms Hardcastle added that residents had been shocked to read of the serious breaches and disregard for licence conditions. Ms Hardcastle stated that there should be a clean break as far as the Premises Licence was concerned, which would give an opportunity for a new business moving in to start with a clean slate.

21. Ms Doyle stated that she lived nearby and had seen many breaches which had been referred to. She had often heard a lot of noise and seen lots of alcohol with no food in sight. There had been loudspeakers playing music in the doorway and often there was no SIA. Ms Doyle agreed that there should be a clean slate and confirmed that this was a very high crime area.
22. Mr Brown, Ms Doyle and Ms Hardcastle all supported revocation.

The Freeholder/Landlord

23. Mr Thomas started by responding to Mr Brown's points. The freeholder knew that rent was not being paid, but after Covid this was not unusual and did not ring immediate alarm bells. In addition, for a one-off noise complaint the landlord would not contact the Council, they would inform the tenant which is what they did in this case.
24. In any form of commercial letting, there are tenants who do not do things properly. The landlord had not been aware of what was going on and there was no reason for it to be aware on a granular basis. Mr Thomas accepted that there was no duty on the police to contact the landlord but argued it would be useful for them to do so since the landlord can take action such as forfeiting the lease. The landlord could not do anything if it was not aware of the problem.
25. With regards to the lease, under the term cited it was for the tenant to comply with the legislation. The lease had been granted five years ago to 8Uerte Limited. Robin Lloyd back then had run an art gallery and café and that is how the Premises had run for almost the entire period of the lease. There seemed to have been some form of underletting, which the landlord became aware of around June. This coincided with the time when the landlord first became aware that there might have been a falling out between the business partners in 8Uerte Limited and when the issues began to occur in earnest, in June/July.
26. Mr Brown had suggested a section 178 notice as a solution, but a section 178 notice only means that the landlord is made aware of applications for review, transfer, change of DPS or TENS. It does not include a section 19 closure notice so would not have brought this to the landlord's attention and would not have brought the problems to the attention of the landlord before the review application.
27. Mr Thomas stated that there was no evidence that the landlord should have known about the problems with the Premises, and if someone had contacted the landlord then they would have been able to do something about it. There was no connection between the PLH and the landlord apart from the lease. The lease would expire on 31 December and so the licence could be suspended until 1 January, with conditions added ensuring that 8Uerte Limited could have no involvement with the Premises.
28. Mr Thomas advised that the landlord had submitted a transfer application which had been invalidated. This was only because there had not yet been enough time to demonstrate that the landlord had taken all reasonable steps to

obtain the consent of the PLH. Once the landlord had sent two or three rounds of letters and waited about a month, then the landlord would have taken all reasonable steps to obtain consent and the Premises Licence would be transferred. The landlord would then be the licence holder and would be able to hold it until it was granted to a more responsible operator. When the lease had been granted five years ago, it had been granted to a responsible operator. The landlord had forfeited the lease for non-payment of rent on 10 October which had been the easiest way to get the PLH out of the Premises.

29. The Licensing Authority had been right to bring a review, and the landlord did not challenge any of the evidence that had been presented. Since the review had been brought, however, the tenants were no longer in occupation and were not going to be back in occupation because they would have to pay the rent in arrears and would have to apply for relief from forfeiture, which would take months to resolve in the courts. There was no possibility that the PLH would be able to get back into the Premises and begin trading again. The statute provided the Sub-Committee with several options, and Mr Thomas advised that the most appropriate would be suspending the lease and adding conditions preventing the PLH from being involved with the Premises.
30. Mr Thomas stated that the landlord had not caused the problems, and there was nothing in policy about the duties of landlords. The issue was whether it was appropriate to revoke a licence where the tenant was not longer in operation. Mr Rankin had referred to a deterrent, but it was not clear what deterrent effect revocation would have.
31. Mr Thomas then introduced Robin Shutt, who worked for the managing agents who managed the Premises on behalf of NW3 Frith Street Ltd. Mr Shutt advised that the tenant at 55 Frith Street had been expected to maintain everything internally so there was no reason to go and inspect the Premises. The managing agents had attended on an annual basis to see what was going on and this was industry standard. Those inspections took place during work hours (09:00-17:00) and inspections did not take place at nighttime. Those inspecting had never seen anything or been told anything during the daytime. Mr Shutt stated that he had been there to check things such as whether fire escapes were blocked, and he had not been there to judge trading.
32. Mr Thomas added that with reference to the deterrent effect, the real deterrent would come from the prosecutions being undertaken and not revoking the Premises Licence. The Statutory Guidance states that remedial action should be directed at the causes of the problem and should be no more than what is appropriate and proportionate to address the causes of concern. Other measures would not be insufficient because the PLH would not be able to continue trading. Further, paragraph 11.27 did not list breach of conditions as one of the examples of criminality which should be taken seriously, and paragraph 14.45 stated that Cumulative Impact Areas should never be used as a ground of revoking a licence.
33. In response to questions from the Sub-Committee, Mr Shutt stated that they believed that Robin Lloyd had been ousted as a director of 8Uerte Limited and that the Premises had been illegally sublet in around June. Mr Thomas added

that this situation could not occur again because the lease had been forfeited. The landlord vetted tenants as much as they could, and the landlord could not have known when it granted the lease that Mr Lloyd would be ousted as a director of 8Uerte Limited. Mr Thomas also advised that in future with a re-granted lease the landlord would take proactive steps to carry out inspections going forward. It was easy for others to say that the landlord should have known but going forward the landlord would ensure that there were further procedures in place to make sure that inspections were carried out. Mr Shutt added that a new lease could put stricter clauses in specifying operating hours. There had already been internal discussions concerning this.

Summing Up

34. Mr Brown referred to paragraph 14.45 of the Statutory Guidance. This paragraph stated that location in the CIZ should not be a ground for revoking a licence, but in this case the location in the CIZ was not a ground for revoking a licence, the grounds for revoking the licence were the impacts on public nuisance, prevention of crime & disorder and public safety. Mr Brown referred to Policy CIP1 of the Council's Statement of Licensing Policy, which states that in determining a review of a premises licence within the West End CIZ the Licensing Authority would take into account the need to reduce cumulative impact. The presence of the Premises within the CIZ was therefore a relevant factor when considering what steps were necessary. Mr Brown added that this review was not a review of the landlord, but the question is what they could have done earlier, whether the alarm bells should have been ringing earlier.
35. Mr Rankin stated that the Sub-Committee should not be concerned about the landlord. There was plenty that the landlord could have done. For example, the landlord could have carried out an inspection at nighttime to see what was going on. The landlord had also received a noise complaint and that should have been a red flag. The landlord should have been more proactive than they had been. Finally, in terms of deterrent, revoking the licence would deter other landlords from being indolent.
36. Mr Koduah did not have much to add. The Premises Licence had been breached repeatedly, and Mr Koduah referred again to the TENs that had been applied for.
37. Mr Richards added that he had been working as a licensing enforcement officer for over 17 years, and he had never come across such a clear pattern of persistent non-compliance with licensing conditions. It was necessary to revoke the licence to protect local residents and the integrity of the licensing regime.
38. Mr Thomas argued in response to Mr Brown that the location of the Premises was in effect the ground for review but accepted that the location was a factor to consider. However, the Premises had only been adding to cumulative impact because of the way it had been operated and so cumulative impact was not relevant. There was no evidence that the landlord did know what was going on, and it was not fair to say that the landlord should have known. The Premises had been operating normally for most of the term of the lease, and it had only gone downhill particularly sharply in recent months. Suspension for the

maximum period would be an appropriate deterrent, as this could be the end of someone's business. The landlord could apply for a new licence, but there would be objections to that application because of the location in the West End CIZ. The Council could end up with another empty premises, and the landlord did not wish to go through the long route of appeal.

The Sub-Committee's Decision and Reasons

Review Decision

39. Being mindful of the Home Office Guidance, the Act and having carefully considered the review application, the evidence and the representations made by all the parties, both orally and in writing, the Sub-Committee decided that it was appropriate and proportionate in order to promote the licensing objectives to take the following step: -

- To Revoke the Premises Licence of the above Premises.

Reasons

40. The Sub-Committee recognised that the proceedings set out in the Act for reviewing Premises Licences represent a key protection for the community when problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. The Act provides the Licensing Authority with a range of powers on determining a review that it may exercise where it considers them appropriate for the promotion of the licensing objectives. In deciding which of these powers to invoke, the Licensing Authority should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response. Each case has to be determined on its own merits.

41. The Sub-Committee placed great weight on the evidence provided by the Licensing Authority and the Metropolitan Police of serious and repeated breaches of fundamental conditions on the Premises Licence. The Sub-Committee likewise placed great weight on the fact that the PLH had failed to engage with Responsible Authorities and had at times been actively obstructive. This was exacerbated by the fact that the PLH had not submitted any representations in respect of the review application and had not attended the hearing. The Sub-Committee agreed that the PLH had acted in such flagrant and persistent breach of the licensing regime that the integrity of the licensing regime was at stake. Although the location of the Premises within the West End CIZ was not determinative, the need to ensure high standards particularly within the CIZ was a relevant factor to be taken into account.

42. The Sub-Committee noted that none of the extensive evidence compiled by the Licensing Authority and the Metropolitan Police had been challenged. The main issue therefore was whether the Premises Licence should not be revoked but lesser steps taken because the landlord had already forfeited the lease and assured the Sub-Committee that the PLH would not be able to return to the Premises and resume trading.

43. Notwithstanding the arguments made by the freeholder, the Sub-Committee agreed with all other parties that revocation was proportionate and appropriate in the circumstances. Paragraph I22 of the Council's Statement of Licensing Policy states: 'The council recognises that landlords have powers over their tenants outside of the licensing regime and would expect responsible landlords to exert that control to promote the licensing objectives.' Although the review application was not a review of the landlord's behaviour but of the Premises Licence, the Sub-Committee agreed that the landlord could have and should have taken more proactive steps to monitor what was occurring at the Premises. This was recognised to some extent by the landlord when Mr Thomas said that if the licence were not revoked then in future the landlord would ensure that more proactive measures were taken to inspect the Premises. The evidence of Mr Shutt was that inspections would take place annually during the daytime and that this was industry standard. The Sub-Committee's fundamental concern was that if the licence were not revoked then the same situation could occur again with a different tenant.
44. The Sub-Committee also agreed with the Metropolitan Police that revocation of the Premises Licence would represent an effective deterrent that would encourage landlords and freeholders to monitor their premises to ensure that their tenants were not acting in flagrant breach of licence conditions. The persistent non-compliance in this case had been particularly egregious and serious, with Mr Richards saying that in his 17 year career he had never come across such a clear pattern of persistent non-compliance. The Sub-Committee was entitled to expect that conditions would be adhered to, and the licensing regime could only function effectively if Premises Licence Holders adhered to the conditions on their licence. The persistent non-compliance had had a serious impact on the prevention of crime & disorder, public nuisance and public safety, and the Sub-Committee considered that revocation was the appropriate and proportionate response.
45. In all the circumstances of the case and having carefully considered the application for the full review and the evidence presented by all the parties, both verbally and in writing, the Sub-Committee concluded it was appropriate and proportionate to Revoke the Licence in order to promote the licensing objectives.

The determination of the revocation does not have effect until the end of the period given for appealing against the reasoned decision, or if the decision is appealed against, until the appeal is concluded.

The Applicant for the Review, the Premises Licence Holder and any Party who has made a relevant representation to the review application may appeal against this Decision to Westminster Magistrates Court, 181 Marylebone Road, London, NW1 5BR, within 21 days of receiving this Decision.

The Licensing Sub-Committee
2 November 2023

The Meeting ended at 1.50 pm