



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (1)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (1)** held on **Thursday 1st February, 2024**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Aziz Toki (Chair), Iman Less and Melvyn Caplan

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. BASEMENT AND GROUND FLOOR, 9 BERWICK STREET, W1F 0PJ

WCC LICENSING SUB-COMMITTEE NO. 1 ("The Committee")

Thursday 1 February 2024

Membership: Councillor Aziz Toki (Chair), Councillor Iman Less and Councillor Melvyn Caplan

Officer Support Legal Advisor: Horatio Chance
Policy Officer: Aaron Hardy
Committee Officer: Jonathan Deacon
Presenting Officer: Roxsana Haq

Others present: Mr Marcus Lavell and Mr Jim Sollars (Complete Licensing, representing the Applicant), Mr Labinot Pacolli and Ms Altima Sopi (Applicant Company), Mr Dave Nevitt (Expert Witness, on behalf of the Applicant), Ms Karyn Abbott (Licensing Authority), Mr Anil Drayan (Environmental Health Service), Mr Richard Brown, Licensing Advice Project (on behalf of The Soho Society), the Chair of The Soho Society and a local resident on

behalf of The Soho Society, John Wallace Commercial Director,
Soho Housing Association and a local resident.

**Application for a New Premises Licence in respect of Basement and Ground
Floor 9 Berwick Street London W1F 0PJ 23/07557/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 Basement and Ground Floor 9 Berwick Street London W1F 0PJ. The Premises intends to operate as a café and restaurant. There was a previous application in October 2003 but this was refused by the Licensing Sub-Committee on location and public nuisance grounds giving rise to the undermining of the public nuisance licensing objective.

The Premises have also had the benefit of a number of Temporary Event Notices. A full history can be found at **Appendix 3** of the agenda report.

The Applicant agreed an amended condition with the Metropolitan Police Service and on that basis the Police did not raise a representation to the application. The amended condition appears at **Appendix 4** of the report.

The Premises are located within the West End Ward and the West End CIZ. There is no policy presumption to refuse applications for a restaurant premises inside the West End CIZ provided that they do not add to negative cumulative impact. 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.

There is a resident count of 264.

Representations were received from the Environmental Health Service, Metropolitan Police Service (**withdrawn**) The Soho Society and 17 local residents (**including 9 in support**) all citing concerns regarding public nuisance and crime and disorder.

Premises

Basement and Ground
Floor 9 Berwick Street
London
W1F 0PJ

Applicant

The Soho Social & Co Limited

Cumulative Impact Area

West End Cumulative Impact Zone ("West End CIZ")

Activities and Hours

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

Monday to Saturday 10:00 to 23:00

Sunday 10:00 to 22:30

Seasonal variations: The premises may open for the sale of alcohol from the terminal hour on New Year's Eve through to the commencement time on New Year's Day.

Opening Hours of the Premises

Monday to Sunday: 10:00 to 23:00

Seasonal variations: The premises may open for the sale of alcohol from the terminal hour on New Year's Eve through to the commencement time on New Year's Day.

Representations received

- The Licensing Authority (Karyn Abbot).
- Environmental Health Service (EHS) (Anil Drayan).
- Mr Derek Bradford The Cottage 9 Berwick Street London W1F 0PJ (Support)
- Trevor Langford-Read Kemp House W1
- Mark Butcher 6 Hopkins Street London W1F 0DP (Support)
- H Berry 9 Berwick Street W1 (Support)
- John Wallace 18 Hanway Street London W1T 1UF
- Rob Allen 98 Berwick Street London W1F 0QB (Support)
- Robert Lord Second to Third Floor Flat 16 Broadwick Street London W1F 8HR
- Soho Business Alliance Board (Support)
- Mr Patrick Daykin Flat 11 2 Hopkins Street London W1F 0DP (Support)
- Edon Krasniqi Flat 48 2 Hopkins Street London W1F 0DP (Support)
- Sharon Cooper Flat 27 Kemp House Berwick Street London W1F 0QT
- Farida Dungarwalla Flat 23 2 Hopkins Street London W1F 0DP (Support)
- Morgan Evans 6 Kemp House Berwick Street W1F 0QT (Support)
- Ulrike Schmidt Flat 38, 103 Berwick Street, LONDON W1F 0Q.
- Jenifer Cooper 28 Kemp House Berwick Street W1F 0QT
- The Soho Society (Marina Tempia).
- .Andrew Murray 53 Kemp House Berwick Street London W1F 0QU
- John Reber Flat 5 106 Berwick Street London W1F 0DX

Summary of Representations

- *The Supply of Alcohol 'On' the premises and for the hours requested may lead to an increase in Public Nuisance in the West End CIZ. Environmental Health also makes the following further comments:*
- *The premises previously operated as a retail shop and this proposed use may result in nuisance from the internal transfer of noise to other users within the building block. The applicant is therefore requested to provide information,*

such as in an acoustic report, to demonstrate this is unlikely to occur - standards to be achieved are outlined in Appendix 11 of Westminster's Statement of Licensing Policy.

- The Licensing Authority notes that a previous application was submitted and refused at Licensing Sub-Committee on the 5 October 2023 as members came to the decision that the Public Nuisance Licensing Objective would be seriously undermined. Can the applicant provide further details as to how they have looked at rectifying these concerns within this application? The Licensing Authority may reference the full decision once it has been published and submit further submissions in due course. The Licensing Authority would like the applicant to provide answers to the questions above so the application can be assessed further and against any other relevant policy considerations.*
- On behalf of Soho Housing Association, John Wallace, Commercial Director, we strongly object to the licence application for the extended hours to 11pm (10:30 on Sunday). The premises are in a mixed use area, with a significant number of residential occupiers. Soho Housing have residential units directly above the premises, including family units. We also have a number of other residential buildings in close proximity. The proliferation of licensed premises, especially those with late licenses directly affects the amenity of local occupiers. Granting this license would only exacerbate the situation and could potentially result in residential occupiers leaving the area. The cumulative impact bringing noise, disruption, late night servicing and general loss of amenity as well as the potential health and safety issues to local residents is a huge concern. We strongly oppose the application and ask that it to be refused.*
- This appears to be identical to an application made a few months ago by the same applicant that was refused. The proper approach is an appeal not to make repeated applications. This application should not proceed as it's an abuse of process. Residents shouldn't have to spend half their lives appearing at 64 Victoria Street in order to be able to sleep at night. Please ask the applicant for information on whether this application differs from the one that was recently refused and then add than information to the site. If it's a repeat of the same application it should be refused as nothing has changed*
- The Soho Business Alliance would be grateful for the Licensing Authority's consideration of this representation in support of the above premises licence application, based upon the promotion of all four licensing objectives.*
- The Soho Business Alliance provides a unified voice for all businesses in Soho, with the aim of protecting and growing the economic diversity of the area in which we do business, through engaging with each other, our residents, other amenity groups and Westminster City Council. We currently represent almost 100 businesses in the Soho area, with hospitality, retail and property being our current focus.
Formed in 2020, initially as a forum to help each other face the unprecedented challenges of the Covid-19 pandemic, we are now focused on partnership working through the Covid-19 recovery period and beyond.*
- We are all committed to safeguarding Soho's iconic status as a world class destination for independent retail, cutting edge food, live entertainment and Soho's very special culture that defines our community and its unique heritage. Soho Social have submitted an application with a very modest closing time of 11.00 pm and also included the full restaurant conditions which*

the City Council and residents would rightly and normally expect. The SBA believes that in its amended and re-submitted form, this application promotes the licensing objectives and would not have a negative impact on local amenity. It would provide further opportunities for employment and a varied food offer for visitors. The SBA therefore makes a representation in support of the application and we would be grateful if you would keep us informed as regards its progress

- I wholeheartedly support this application, as someone who has lived or worked in Soho for 15 years I believe this is a very good addition to Soho. As someone with a young son I have enjoyed eating there and see it as a great business. It adds to the positive character of Soho. It has the potential to be a fantastic local amenity - they are very locally and community oriented. They are a small family business - something we need far more of. I do hope that Westminster will determine this application as a positive addition to a street that is improving positively.*
- I would like to send this email in support of Soho Social to obtain their alcohol licence. I was very much looking forward to a new venue on Berwick Street, it will be a great addition to our area. They are intending to be a neighbourhood restaurant and will cater towards local users. We know that they will not be able to trade successfully in this area without a licence and it would be a shame for them to face closure because of this I am not sure whether I actually submitted my objection to the re-application by the proprietor of this property at No 9 Berwick Street?*
- I would like to repeat my objections in the strongest terms possible. The effrontery of the man! He is already operating as a fully licensed bar under the TENS licensing system. This seems to me to show a real disrespect for the reasons given in full by local residents, the Soho Society, and to the members of the Licensing Committee at the recent licensing meeting when the Counsellors first refused this application. I hope to be allowed to present the same arguments against permitting this license, a second time?*
- I am repeating my objection, which I sent to you about 23/03810/LIPN since there are very few differences between this 'new' application and the previous one. Indeed the previous one was rejected by the licensing sub-committee and I fully support the decision. It is confusing that the applicant did not appeal the previous decision and submitted a 'new' application instead, when, if I remember correctly, the hours had already been amended to the ones now proposed and still they were not granted the license. I would like to ask them to explain why this is their strategy now. While I am aware that they are allowed to apply afresh, it does feel like a waste of precious local government time and I would like to see a reasonable explanation why WCC should have to sit for a hearing again for broadly the same application.*
- As you can see from my address above, I am living directly opposite of the premises, and have lived in this street for 25 years, and in Soho for 32 years. Soho is already most saturated; there are over 40 venues in our neighbourhood which close after 23.00;*
- My main concern with this type of premise so close to the residential building Kemp House, where I reside, is the impact of noise disturbance, especially from music. The application also does not indicate whether outdoor table service is to be permitted or not, and if so what role music would have there.*

- *The bulk of my objection is the same as my objection to an earlier application for the same premises, 23/03810/LIPN, which was refused at a licensing hearing last month. It is repeated below in italics.*
- *I note that there is a small change to the hours requested in the application, but also an increase in the maximum number of customers permitted on the premises compared with the previous application.*
- *I do not regard these changes as materially affecting the reasons given for refusal of the previous application by the licensing sub-committee in such a way as to allow for a licence to be granted. While there is a reduction, the hours applied for would still add to the potential for noise nuisance in the immediate area, as detailed below. Over a given period, it would be likely that there would be an increased number of disturbances to sleep for residents up until at least 11.20pm, when all customers would reasonably be expected to be finally dispersed.*
- *The increase in the proposed number of customers on the premises obviously adds to the potential for noise nuisance.
The premises has utilised TENs since the licence refusal. This is disappointing. It may be that there was the intention to demonstrate that there would be no nuisance. In my view that is an inappropriate solution to what I recognise is a significant problem for the applicant. (A much earlier finishing hour may have met a different response from some residents.) But in any case, a very brief trial period could not replicate the long term reality of a permanent licence and so should not be taken into account.*
- *I object to the granting of a premises licence for late night refreshment and supply of alcohol for Soho Social at 9 Berwick Street on the grounds of the likelihood of increased public nuisance. I am a resident of Kemp House, opposite the premises in question, and have lived here with my family since 1997.*
- *The application would introduce a new alcohol-based venue to a significantly residential location. The market stretch of Berwick Street has several licensed premises at the top of the market but none lower down. In this lower stretch, where 9 Berwick St is situated, there are residential properties above ground floor retail on the east side and the Kemp House tower block above retail on the west side. Residents by and large have tolerated an increase in noise from the existing licensed premises further up the street, partly due to a response to the pandemic. Even at some distance, this can have an impact. However, granting a premises licence for 9 Berwick Street would bring potential noise nuisance much closer to a larger number of residents in what is currently the quieter end of this part of the street. Noise is often more of a problem in social housing and older flats which usually lack air conditioning. This is exactly the sort of residential accommodation in this location. When the weather is warm windows need to be opened. Any additional disturbance, especially later in the evening, will have an impact on the ability of some residents to sleep.*
- *Visitors are often unaware of the presence of residents in the West End, and have little understanding of the impact of noise on local people. It seems that the applicant may have fallen into the same trap. The assumption often is (and councillors have been known to share this assumption) that the West End is noisy and a little extra noise won't make much difference. This is not the case. For one thing, noise travels further than people imagine. Ordinary conversations on Berwick Street can regularly be heard on the 16th floor of*

Kemp House. Passing conversations are one thing, but there is a greater impact when those talking (or worse) are static for some time. Of course, there are plenty of other sources of noise in the West End, ranging from early morning street cleaning and deliveries, through daytime construction to evening outdoor eating and drinking and late-night customers leaving hospitality and entertainment venues, together with all sorts of traffic noise, including emergency service sirens, at any hour. However, some sounds are more likely to disturb than others.

- My experience is that noise from customers leaving licensed premises is one of the most common causes of disturbance. It often takes several minutes for a group to disperse. The noise level of their conversation is likely to be higher than normal due to the effect of alcohol and the volume of noise they have been exposed to within the premises they are leaving. As a result, without any intention to do so, they can disrupt the process of residents falling asleep or else actually cause residents to wake up. (Sometimes there will naturally be more than conversation, with shouting and/or singing.) Whatever the level, these concentrated periods of sharply louder sound have a disproportionate impact, especially when the general noise level in the area has reduced. We already experience something of this effect from the licensed premises further up the street. The effect would obviously be greater if it were to be on our doorstep.*
- There are areas of Soho in which it might be hard to argue that a similar application would make a difference to the level of public nuisance but that is not the case here. As we are in a cumulative impact area where there is an existing residential community it would be wrong to place an additional burden onto residents. If a licence were to be granted, however well-intentioned the management at times there will inevitably be loud groups outside a premises where there has previously been no regular noise nuisance (since until recently it has been a retail shop). This is clear from experience across Soho. Similar groups to that described above are common to all licensed premises. Notices of the sort proposed in the licence conditions have little discernible effect and staff have no power to move people on.*
- If the council grants this application, it will therefore be ignoring the impact on local residents and be responsible for increasing the number of times residents will have their sleep disturbed. It is hard to see why that should be permitted.*
- I would like to register my support for Soho Social's licencing application. It is a real shame to see the restaurant empty in the evening which leaves a gap in the vibrancy of Berwick Street. I think the council should be supportive of independent bars, restaurants and shops. Berwick Street is up and coming with some comparing it to Carnaby Street. However, where Carnaby Street has become commercialised with lots of international high street brands and chains, Berwick Street has an opportunity to have a greater mix of independent businesses and community premises.*
- The Soho Social is a wonderful restaurant, serving great food and makes a great addition to the road. The owners are extremely friendly and welcoming and have made a great effort to integrate with the locals. As a neighbour I don't see it causing any additional street noise or disturbance as everything is behind the closed doors of the restaurant. In fact as one of the quieter roads in Soho it would be nice to see a few more restaurants on the street which in many ways makes the street safer in the evenings*

- *We write to object to this second application for a new café/restaurant licence on the grounds it will fail to promote the licensing objectives and will increase cumulative impact in the West End Cumulative Impact Zone.*
- *The Committee will be aware the first application (23/03810/LIPN) was refused at the Licensing Sub-Committee hearing on 5 October. The summary decision states: ‘The Sub-Committee realises that it has a duty to strike the right balance when considering the business needs of the Applicant along with those parties that had objected to the application particularly the many long-term residents who have lived in Soho for several decades (who are effectively considered Experts in their local area in terms of their invaluable experiences both Licensing premises operating in the area coupled with local knowledge and therefore well acquainted with the many issues surrounding nuisance. The Sub-Committee took the view that the right balance has been struck when considering the needs of those residents living above the premises and the global impact granting such an application would have on the area as a whole.’*
- *We may submit further submissions following the publication of the full decision, however, the Sub-Committee clearly balanced the issues when determining this application. There has been a small reduction in hours and removal of off-sales but our concerns relating to noise disturbance to residents living above the premises and those living in the immediate vicinity, the impact on crime and disorder and cumulative impact has not changed.*
- *The concern of a new licensed premises with more people consuming alcohol in the West End Cumulative Impact Zone is highlighted in the recently published draft Cumulative Impact Assessment 2023. It confirms crime levels in Westminster has reached pre-COVID levels and since the last Cumulative Impact Assessment 2020 crimes have concentrated even further in the West End.*
- *In summary this is the second application for a new café / restaurant. The first application was refused in October and we find no reason to go against the decision of the previous Sub-Committee. The onus is on the applicant to demonstrate they will not increase cumulative impact and will promote the licensing objectives. This applicant has failed to do so, and we respectfully request the Licensing Sub Committee to refuse this application.*

Policy Considerations

Policies CIP1, HRS1 and RNT1 apply under the City Council’s Statement of Licensing Policy (“SLP”).

Policy CIP1

It is the Licensing Authority’s policy to refuse applications within the West End Cumulative Impact Zone for: pubs and bars, fast food premises, and music and dancing and similar entertainment, other than applications to:

1. Vary the hours within Core Hours under Policy HRS1, and/or
2. Vary the licence to reduce the overall capacity of the premises.

C. Applications for other premises types within the West End Cumulative Impact Zones will be subject to other policies within this statement and must demonstrate that they will not add to cumulative impact.

D. For the purposes of this policy the premises types referred to in Clause A are defined within the relevant premises use policies within this statement.

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:

6. Pubs and bars, Fast Food and Music and Dance venues

Monday to Thursday: 10am to 11.30pm.

Friday and Saturday: 10am to Midnight.

Sunday: Midday to 10.30pm.

Sundays immediately prior to a bank holiday:

Midday to Midnight.

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.

Note: The core hours are for all licensable activities but if an application includes late night refreshment, then the starting time for that licensable activity will be 11pm.

Policy RNT1

Policy RNT1 applies 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 late-night 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.

SUBMISSIONS AND REASONS

1. Ms Roxsana Haq, the Presenting Officer, Roxsana Haq introduced the application to the Sub-Committee.

2. Mr Marcus Lavell Counsel, representing the Applicant, outlined the application with the assistance of Mr Sollars, Mr Pacolli of the Applicant Company and Mr Nevitt as Environmental Health Expert. Mr Lavell emphasised that the Applicant would operate a small family run restaurant at the Premises in Berwick Street. The full restaurant model condition, MC66, was being offered by the Applicant. It was his submission that Berwick Street is a mixed use environment in common with Soho as a whole with residents living in close proximity to mixed use businesses. He stated that a balance was being struck between the needs of residents and the Applicants business as it was proposed that the restaurant would operate within Core Hours.
3. Mr Pacolli was asked by Mr Lavell to set out how the Premises would operate. He explained that customers would be welcomed at the door by waiters, they would be asked respectfully to leave quietly when at their tables and again when they were leaving the restaurant. There was a sign displayed also reminding customers to respect local residents. There were a few smokers out of the capacity of 40 and they were also asked to be quiet outside the Premises.
4. Mr Nevitt, a retired former Environmental Health Officer at the Council, had submitted a report having been asked by the Applicant to assess a number of elements relating to the operation of the Premises. He had visited the Premises on Saturday 9 December 2023 between 21:15 hours and 22:00 hours. He had found that when he stood outside, noise had been contained within the Premises from the restaurant activities. He had also visited the flat above the Premises and found that there were no issues for the occupiers. He expressed the view that given the modest capacity, the fact that the restaurant was operating to Core Hours, the way in which it was being managed currently and the proposed conditions being offered, there was a minimal risk of public nuisance and the application would promote the licensing objectives.
5. Mr Nevitt commented that cumulative impact would be very low because of the number of patrons and the opportunities for dispersal were very good. Any noise was likely to be absorbed into what was already in the locality. A modest behaviour would be expected at the restaurant premises (customers would be seated when having a meal) and the way in which they dispersed.
6. Mr Sollars, who had previously been a PC on the beat in Soho and had worked in Police licensing at the Council, stated that he had witnessed the Premises, including when alcohol was being sold. He had full confidence in the management to run a restaurant. He added that the Police perceived there to be very limited risk to the licensing objectives in contrast to late hours bars and music and dance venues. Mr Sollars referred to the fact that the MPS were not objecting to the application.
7. Mr Lavell, in response to a question from the Sub-Committee, made the point that the Premises had not generated queues and had been trading as a business since October whether via Temporary Event Notices (TENs) or without licensable activities.

8. Mr Lavell referred, in response to a Sub-Committee question, to the refusal of the previous application for the Premises in October 2023. He commented that the specific concern that had been raised at that time was that noise would travel through the building to the flats above. Mr Nevitt had been tasked with examining this point and had attended when a TEN was in operation and the restaurant was full. It had been Mr Nevitt's findings that there was no noise nuisance to the flat above or outside the Premises. Mr Lavell added that there was a representation in support of the application from the tenant living in the flat above the restaurant.
9. Mr Nevitt clarified that in making an acoustic assessment he looked at who was most likely to be affected and this was the residents in the flats above the Premises. He had then considered the neighbours either side, including smokers, deliveries and refuse collections. He had also assessed the impact on those living directly opposite and had found that the noise breakout would be very minimal when the restaurant doors were closed and minimal when the doors were opened. Background music was played at the restaurant. There was no regulated entertainment.
10. It was confirmed by Mr Lavell that no takeaway was sought. It was proposed that there would be a maximum of two café style tables on the private forecourt where four people could sit.
11. The Sub-Committee heard from Ms Karyn Abbott on behalf of the Licensing Authority (LA). She stated that the LA had previously had some concerns regarding the Premises with the previous application having been refused. However, she had met with the Applicant recently and what was being proposed was a restaurant that was in keeping with Model Condition MC66 and the Council's Restaurant Policy operating within Core Hours. She had maintained her representation to assist the Sub-Committee due to there being resident representations.
12. Mr Anil Drayan on behalf of the EHS referred to the Applicant having offered the MC66 restaurant condition, a Core Hours operation and agreed capacities with EHS based on safety and the adequate number of sanitary accommodation. Whichever was the lower figure based on safety and sanitary accommodation would be what EHS would assign as the capacity. Mr Drayan confirmed that the Applicant could provide takeaway of hot food and drink before 23:00 hours as it was not a licensable activity. It was covered by MC66.
13. Mr Drayan commented that the only issue for EHS was whether there was the potential for noise breakout from within the Premises. He had originally requested that the Applicant provide an acoustic report. Residents at the hearing in October had expressed concerns regarding noise breakout. Mr Drayan advised that the Applicant had consulted EHS in relation to the current application and had provided sufficient information, including from Mr Nevitt's observations, for EHS to reach a conclusion that the Premises would not cause nuisance to people living within the building block. Mr Drayan was also

of the view that the resident living immediately above the Premises would be the person most affected and he referred to the resident having written that he was not being disturbed by the operation. Based on the information received Mr Drayan had not required the Applicant to provide a formal acoustic report. Mr Drayan concluded with the point that he had only maintained his representation to assist the Sub-Committee.

14. In response to questions from the Sub-Committee, Mr Drayan advised that the number of smokers would be minimal and they would be in Berwick Street during the Core Hours operation when the street was very busy. He confirmed that EHS had received no complaints in relation to the trading of the restaurant.
15. The Sub-Committee was addressed by Mr Richard Brown of the Licensing Advice Project on behalf of The Soho Society. Mr Brown advised there had been residents who had been able to attend the hearing for the previous application for the premises in October 2023 when the application had been refused but were unable to attend on this occasion. There had also been a resident who had made a representation at the original hearing and lived above the Premises. Mr Brown asked that it be noted that she had since moved out and the lack of a representation on this occasion was not due to her concerns being addressed. Equally he was not suggesting her moving away was due to noise breakout. He added that there were residents present at the current hearing who had lived for many decades in the locality and had an extensive knowledge of it.
16. Mr Brown stated that whilst this application before the Sub-Committee was a new application and not an appeal against the previous application, he believed it was necessary if the Sub-Committee were minded granting to take the view that there were a change of circumstances that justified departing from the decision to refuse in October 2023. Reasons for refusal had included cumulative impact and the ability to promote the licensing objectives.
17. Mr Brown explained that the Soho Society's objection was not based on the aptitude of the Applicant. A specific concern related to the additional impact acoustically, including through the building, from the operation of the Premises and when customers left the Premises.
18. Mr Brown spoke about the representations noting that 9 Berwick Street was the quieter end of the street. He commented that for some residents this meant that they were keen to have a licensed premises at this location whilst others felt that the cumulative impact was problematic. Mr Brown drew the Sub-Committee's attention to a representation from a resident living in Kemp House objecting to the application who had stated he could hear noise from ground floor level. He made the point that Mr Nevitt had not attended this flat and could not visit all the flats in the area.
19. Mr Brown re-iterated that the Soho Society's objection from the previous application in October 2023 was that there would be yet another licensed premises in this locality adding to cumulative impact. Even if the capacity was

40 people, it was still adding to cumulative impact. Mr Brown referred to the cumulative impact assessment having been published for the area.

20. The Sub-Committee heard from Tim Lord being the Chair of the Soho Society. Mr Lord stated that four premises that had previously been retail outlets in the locality were now restaurants. He said that the noise levels were getting worse and by way of example it had been necessary to spend additional money on soundproofing in his home. Mr Lord said that additional licensed premises led to more activity, including dispersals and deliveries. There was additional waste as well as noise. He commented about the population of Soho reducing due to the growth of the night-time economy. He had particular concerns about the impact of noise on the residents of Kemp House.
21. The Sub-Committee was also addressed by a local resident in relation to the number of residents that lived in the area. It was stated that the effect of customers leaving the premises and dispersing was not only on people living in the vicinity but those living en route to Shaftesbury Avenue and Piccadilly Circus, including Peter Street and Green Court. The concerns were expressed that crowds and noise would move down the street to the more residential part of Berwick Street. The local resident and a local resident on behalf of The Soho Society both also expressed concerns regarding the noise impact resulting from dispersals or smoking when residents wished to open the windows of their flats.
22. The Sub-Committee heard from John Wallace the Commercial Director of the Soho Housing Association. He advised that the Soho Housing Association owned 250 flats/houses and over half were family units. They were the landlord to residents of four flats living above the Premises. It was noted that the flat immediately above the Premises that was owned by a resident who supported the application was now vacant. It was Mr Wallace's understanding that the local resident who had previously made a representation objecting to the application in October (which Mr Brown had referred to) but had since moved out had left in part because the environment was not conducive to bringing up a family. It was the Housing Association's wish that there was a mixed residential and commercial community, Soho attracted families and that they wished to stay there. He expressed disappointment that an acoustic report had not been provided.
23. Mr Wallace referred to the night time in the area as 'feral' and was driven primarily by the type of people who were visiting. He believed the cumulative impact would continue to directly affect residents. He confirmed that there were no issues with the Applicant but it was his view that an increase in alcohol would drive bad behaviour. He emphasised that the Housing Association represented people, including those who were vulnerable, who might otherwise have objected or been present at the hearing.
24. In response to questions from the Sub-Committee, Mr Lavell stated that currently the Applicant could not sell alcohol and in the event the application was granted, alcohol would be ancillary to a substantial table meal as required with the MC66 restaurant condition. Mr Lavell and Mr Pacolli emphasised that

employees of the Premises would have a dialogue with customers, advising them to leave quietly and there was a lack of noise from people leaving. Mr Lavell commented that taxis were not used by customers from the pedestrianised street.

25. In response to questions from the Sub-Committee, Mr Wallace confirmed that the resident living above the Premises who had supported the application had left recently. He was asked whether he was aware of any issues that had been raised about the Premises on the Basement and Ground Floor of 9 Berwick Street and replied that he had not received any complaints from current residents but that it was the potential additional impact if the application was granted.
26. Mr Brown, in response to a question from the Sub-Committee, remarked that the planning use class changes had allowed retail outlets to become restaurants and not be required to go through the planning process. He clarified that the objection related to another premises serving alcohol at this precise location at the quieter end of Berwick Street. He provided the analogy of the full bath and the dripping tap where every additional premises becomes a drip until the bath overflows.
27. Whilst it was understood that the Soho Society were objecting to the application, Mr Brown was asked if there were any conditions that would help to allay residents' concerns. Mr Brown replied that it was the Soho Society's view that the proposed conditions were fairly comprehensive. However, in the event the Sub-Committee was minded granting, he was suggesting to personalise the use of the licence. It was felt that it would be preferable if the restaurant remained in the ownership of the small, independent family business and the licence could not be transferred to a conglomerate.
28. Mr Brown was asked by the Sub-Committee how he would compare an application being granted with conditions attached with a premises that could potentially trade as a Bring Your Own without a premises licence. Mr Brown responded that it was a valid point that the Premises could sell hot food until 23:00 hours with a BYO or with TENS. However, if a licence was granted which could be transferred to anyone, that was a different matter. It was also the case that it was difficult to make a BYO operation profitable.
29. Mr Lavell confirmed, in the event the Sub-Committee was minded granting the application, that his client was content to agree the incident log model condition (MC49), MC67 which required smokers to use the designated smoking area and MC99 that a copy of the premises' dispersal policy would be made readily available at the premises for inspection by a police officer and/or an authorised officer of Westminster City Council. It was noted that the designated smoking area was likely to be in front of the premises. Mr Lavell also confirmed that the Applicant would be willing to agree a personalised licence condition.

30. In his summing up, Mr Lavell stated that the previous decision to refuse involved a previous application and not the current one. He made the point that no precedent had been set by the previous decision but there had been guidance within it setting out what the Sub-Committee wished to see addressed and he believed that is what had happened. He placed emphasis on there being no evidence that the Premises had caused noise nuisance. It had now been trading for several months, including via TENs. The representations had set out that there were concerns there would be noise nuisance not detailing instances of it. He added that whilst a local resident living above the premises who had written in support of the application had now moved out it had still been the case that they had been willing to support the application whilst living there and had identified they had not experienced noise nuisance. Mr Nevitt had advised having visited the flat that he had not witnessed any noise nuisance promulgating through the building. There was also an additional resident who was still living on the first floor of 9 Berwick Street who had written in support of the application.
31. Mr Lavell commented that there was no dripping tap for restaurants and the Council's cumulative impact policy did not identify restaurants as a problem. He stated that the Responsible Authorities and those assisting the Applicant had given evidence that the application would not add to cumulative impact. This was a family owned restaurant trading within Core Hours and not an alcohol led premises or nightclub.
32. Mr Wallace wished to clarify that the resident in the flat directly above the Premises who had supported the application had moved and there was a resident who had objected who had now moved.

Conclusion

33. The Sub-Committee realises that it has a duty to consider each application on its individual merits and did so when determining this application. It is not bound by the Refusal Decision made on 5 October 2023 in any event and so no binding precedent can be set. Furthermore, this is a new application and distinct from the previous one in October 2003.
34. The Sub-Committee had regard not only to the written and oral evidence but also to the Act, the Revised Home Office Guidance issued under section 182 of the Act and the City Council's SLP, in particular policies CIP1, HRS1 and RNT1.
35. The Sub-Committee noted that there was no presumption to refuse an application of this type in the West End CIZ provided it did not add to negative cumulative impact and be contrary to policies CD1, PS1, PN1 and CH1. In reaching this Decision the concerns that were highlighted in the previous application had been satisfactorily addressed by the Applicant by the Expert Report provided by Mr Nevitt advising that from his inspection of the first floor flat directly above the Premises that there was no noise transference.

36. Mr Drayan from the Councils EHS also confirmed that he was happy with the application along with Ms Abbot from the Licensing Authority. With the measures the Applicant has taken to safeguard the public nuisance licensing objective it was the Sub-Committee's considered view that a refusal of the application given the careful and diligent approach taken by the Applicant when submitting the application to address the previous concerns of nuisance would not have been appropriate nor indeed justified based on the evidence before the Sub-Committee.
37. The Sub-Committee noted the continued concerns of local residents objecting to the application. However, there were a number of factors which Members considered had made the circumstances of the current application different from the previous application considered in October 2023. A key aspect was that the Premises had been able to operate over a number of months, including with the sale of alcohol when TENs were applied. It was the case that there was no record of public nuisance complaints during this time.
38. The Sub-Committee noted, in reaching the decision, that the Applicant could have sold hot food and hot drink until 23:00 without a licence. The licence for the Premises trading within Core Hours enabled conditions to be attached which promoted the licensing objectives. These conditions included MC66, the restaurant model condition. Conditions had been agreed with the Responsible Authorities namely the EHS and the Licensing Authority had advised that they would have withdrawn their representations had they not been present to assist the Sub-Committee and local residents. The Police were not objecting to the application.
39. The Sub-Committee did not attach a condition requiring a personalised licence as it was not considered appropriate nor proportionate.
40. The Sub-Committee took the view that the right balance has now been struck when considering the needs of those residents who had objected to the application and the commercial needs of the Applicant who has a duty to run his Premises to the highest professional standards and in accordance with the promotion of the licensing objectives. It is hoped that the parties going forward can work together to ensure that a fruitful dialogue is maintained whereby any issues are resolved expeditiously.
41. The Sub-Committee having carefully considered the matter and the evidence before it decided to **Grant** the Premises Licence with the licensable activities and to core hours. The Sub-Committee considered that this was the right balance when considering the resident objections for the start time and terminal hours accordingly.
42. The Sub-Committee noted the various undertakings and commitments given by Mr Lavell on behalf of the Applicant company into the daily running of the Premises and the robust management practices the Applicant was to employ as well as the many offered conditions which would have the desired effect of promoting the licensing objectives.

43. The Sub-Committee considers that the conditions it has imposed on the premises licence to include licence CCTV by way of security, signage, age verification, staff training, dispersal policy for when customers leave the Premises, no vertical drinking or off sales of alcohol, deliveries and collections of waste to the Premises within permitted hours so as to prevent nuisance and the inclusion of Model Condition MC66 requiring that the supply of alcohol at the Premises shall only be to a person seated taking a substantial table meal by waiter/waitress service to be appropriate and proportionate and will have the overall effect of promoting the licensing objectives, in particular the prevention of public nuisance and crime and disorder licensing objectives.
44. The Sub-Committee concluded based on the evidence and the agreement by the EHS and Licensing Authority that they were content with the application, together with the offer of conditions would ensure the application would not undermine the licensing objectives.
45. In reaching its decision, the Sub-Committee concluded that the conditions attached to the licence would mitigate and alleviate the residents' concerns of the parties who had objected and were appropriate, proportionate, enforceable and would have the desired effect of promoting the licensing objectives.

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 the Premises)** Monday to Saturday 10:00 to 23:00 Sunday 10:00 to 22:30 **Seasonal Variations:** The premises may remain open for the sale of alcohol from the terminal hour on New Year's Eve through to the commencement time on New Year's Day.
2. To grant permission for the **Opening Hours of the Premises** Monday to Saturday 10:00 to 23:00 Sunday 10:00 to 22:30 **Seasonal Variations:** The premises may remain open for the sale of alcohol from the terminal hour on New Year's Eve through to the commencement time on New Year's Day.
3. That the Licence is subject to any relevant mandatory conditions.
4. That the Applicant is to provide within the next 7 days a revised premises plan to the Licensing Authority demarking the smoking area directly to the front of the Premises with reference to hatching and in accordance with Condition 23 as specified below.
5. 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:

6. The premises shall only operate as a restaurant
 - (i) in which customers are shown to their table,
 - (ii) where the supply of alcohol is by waiter or waitress service only,
 - (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery,
 - (iv) which do not provide any takeaway service of food or drink for immediate consumption,
 - (v) which do not provide any takeaway service of food or drink after 23.00, and
 - (vi) where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.

The premises will install and maintain a comprehensive CCTV system covering all parts of the premises as per the minimum requirements of the Metropolitan Police. Further:

- (a) All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.
 - (b) The CCTV system will continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises.
 - (c) All recordings will be stored for a minimum period of 31 days with date and time stamping.
 - (d) Viewing of recordings will be made available immediately upon request of the Metropolitan Police or Responsible Authority Officer throughout the preceding 31 day period, providing the request complies with the Data Protection Act or any other Primary Legislation
 - (f) A staff member from the premises who is conversant with the operation of the CCTV system will be always on the premises when the premises are open. This staff member will be able to provide Metropolitan Police or Authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested, providing the request complies with the Data Protection Act or any other Primary Legislation.
 - (g) The CCTV system will be maintained bi-annually and details of maintenance will be made available upon request to the council.
 - (h) The recording equipment and data storage devices will be kept in a secure environment and fitted with security functions (such as passwords) to prevent recordings being tampered with.
 - (i) The system will be register with the Information Commissions Office.
 - (j) The system will abide by the Surveillance Camera Code of Practice.
7. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 40 persons.

8. 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.
9. 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.
10. 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.
11. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
12. All windows and external doors shall be kept closed after (21:00) hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.
13. 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.
14. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 08.00 on the following day.
15. No deliveries to the premises shall take place between 23.00 and 08.00 on the following day.
16. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
17. A 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.
18. 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

- (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.
19. The premises may remain open for the sale of alcohol from the terminal hour for those activities on New Year's Eve through to the commencement time for those activities on New Year's Day.
20. The premises licence holder shall ensure that all staff are trained commensurate with their roles at the premises including:
- a) The Licensing Act 2003, responsibilities in supporting the four key licensing objectives.
 - b) Crime Scene Preservations
 - c) Welfare and Vulnerability Engagement (WAVE) training.
21. Patrons permitted to temporarily leave and then re-enter the premises to smoke shall be restricted to a designated smoking area defined as the area directly outside of the Premises as shown hatched on the premises plan.
22. A copy of the premises' dispersal policy shall be made readily available at the premises for inspection by a police officer and/or an authorised officer of Westminster City Council.

If problems are experienced then a review of the premises licence can be Made under section 51 of the Act.

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

**The Licensing Sub-Committee
1 February 2024**

2. 30 OLD BURLINGTON STREET, W1S 3AP

This Application was Granted under Delegated Authority.

3. 31 WARDOUR STREET, W1D 6PT

WCC LICENSING SUB-COMMITTEE NO. 1 ("The Committee")

Thursday 1 February 2024

Membership: Councillor Aziz Toki (Chair), Councillor Iman Less and Councillor Melvyn Caplan

Officer Support Legal Advisor: Horatio Chance
 Policy Officer: Aaron Hardy
 Committee Officer: Jonathan Deacon
 Presenting Officer: Roxsana Haq

Others present: Mr Alun Thomas (Thomas and Thomas, representing the Applicant), Ms Jessica Donovan (Licensing Authority), Ms Kudzy Mondhlani (Environmental Health Service) and PC Steve Muldoon (Metropolitan Police Service)

Application for a New Premises Licence in respect of 31 Wardour Street London W1D 6PT 23/07475/LIPN

FULL DECISION

Summary of Application

The Sub-Committee has determined and application for a New Premises Licence under the Licensing Act 2003 ("The Act") in respect of 31 Wardour Street London W1D 6PT. The Premises intends to operate as a shop/café. Previously a premises licence was in place at the Premises (07/10675/WCCMAP) however this was surrendered on 31 July 2023. A copy of this licence can be seen at **Appendix 3** of the agenda report.

A summary of the Applicants proposals can be seen at **Appendix 2**.

The Premises are located within the West St James's Ward and the West End CIZ. There is no policy presumption to refuse applications for a shop premises inside the West End CIZ provided that they do not undermine the licensing objectives. 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 Licensing Authority, Environmental Health Service and Metropolitan Police Service all citing concerns regarding public nuisance and crime and disorder.

There is a resident count of 72.

Premises

31 Wardour Street
London
W1F 6PT

Applicant

Shaftesbury CI Limited

Cumulative Impact Area

West End Cumulative Impact Zone ("West End CIZ")

Activities and Hours

Late Night Refreshment (Indoors)

Monday to Sunday: 23:00 to 05:00

Sale by Retail of Alcohol (Off the Premises)

Monday to Saturday 08:00 to 23:00
Sunday 10:00 to 22:30

Seasonal variations: On weekdays, other than Christmas Day 08:00 to 23:00, On Sundays, other than Christmas Day 10:00 to 22:30. On Christmas Day 12:00 to 15:00 and 19:00 to 22:30 On Good Friday 08:00 to 22:30.

Opening Hours of the Premises

Monday to Saturday: 08:00 to 05:00
Sunday: 10:00 to 05:00

Seasonal variations: The premises may open for the sale of alcohol from the terminal hour on New Year's Eve through to the commencement time on New Year's Day.

Representations Received

- The Licensing Authority (Jessica Donovan).
- Environmental Health Service (EHS) (Kudzy Mondhlani).
- Metropolitan Police Service (MPS) (PC Adam Deweltz)

Summary of Representations

- *The supply of alcohol may have the likely effect of causing an increase in Public Nuisance in the area and may also impact on Public Safety in the West End CIZ.*

- *The provision of late-night refreshment may have the likely effect of causing an increase in Public Nuisance and may impact on Public Safety in the West End CIZ.*
- *The granting of this application as presented may have the likely effect of causing an increase in Public Nuisance and may also impact on Public Safety in the West End CIZ.*
- *The premises is located within the West End Cumulative Impact Zone and as such various policy points must be considered, namely CIP1, HRS1 and FFP1. The Licensing Authority notes that the applicant is seeking to reinstate premises licence 07/10675/WCCMAP due to the licence lapsing but after further investigation it appears that the licence has not lapsed and was surrendered by the applicant in July 2023. It is noted that the application has been made on the same terms and conditions as premises licence 07/10675/WCCMAP.*
- *The Licensing Authority require the applicant to provide submissions as to how the operation of the premises will not add to cumulative impact in the West End cumulative impact zone, in accordance with policy CIP1.*
- *The Police have concerns that a new premises, which provides Late Night Refreshment until 05:00 hours every day of the week, will adversely impact the area. The crime levels within the CIZ are significant. Wardour Street, in particular, is already saturated by late night premises, which bring crime and disorder to the area. The Police would like people dispersed from the area, however, 31 Wardour Street, would likely keep people remaining in the vicinity because hot food and drink is attractive. This can make revellers a target for robberies and assaults. General Anti-Social Behaviour could also increase.*
- *The police are already struggling to cope with the excessive crime levels within the West End. Westminster's Statement of Licensing Policy 2021 states under its Fast Food Premises Policy ("FFP1") section B: "It is the Licensing Authority's policy to refuse applications within the West End Cumulative Impact Zone other than: 1. Applications to vary the existing Licence hours within the councils core hours policy HRS1." The Police request that that the licensing sub-committee take into account all the above points, and we respectfully ask that this application is refused.*

Policy Considerations

Policies HRS1 and SHP1 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:

11a. Shops (all licensable activities that are provided as ancillary to the primary use of the premises as a shop except the off sale of alcohol)

Monday to Thursday: 9am to 11.30pm.

Friday and Saturday: 9am to Midnight.

Sunday: 9am to 10.30pm.

Sundays immediately prior to a bank holiday: 9am to Midnight.

11b. Shops (off-sales of alcohol where it forms either the Ancillary or primary use of the premises)

Monday to Saturday: 8am to 11pm.

Sunday: 9am to 10.30pm.

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.

Note: The core hours are for all licensable activities but if an application includes late night refreshment then the starting time for that licensable activity will be 11pm.

Policy SHP1

B. Applications for a shop inside the West End Cumulative Impact Zone will be considered on their own merits and 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 meeting the council's Ancillary Alcohol and/or Late-night Refreshment Delivery Service Policy DEL1.

4. The applicant having 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 shop in Clause C.

C. For the purposes of this policy:

1. A shop is defined as a stall, vehicle, vessel, temporary structure, building or part of a stall, vehicle, vessel, temporary structure or building where the primary activity is the sale of goods or services to customers upon payment.

2. The licensable activities for the sale of alcohol for consumption on the premises, regulated entertainment and/or late night refreshment must be ancillary to the primary use of the premises as a shop.

3. The licensable activity of the sale of alcohol for consumption off the premises must be an ancillary function to the primary use of the premises unless that primary use is to sell alcohol for consumption off the premises, e.g. a traditional off licence.

Submission and Reasons

Ms Roxsana Haq the Presenting Officer introduced the application. She advised that this was an application for a new premises licence. She confirmed that the previous licence holder for the premises had surrendered the licence in July 2023.

Mr Alun Thomas Solicitor, representing the Applicant, Shaftesbury Ci Limited outlined the application to the Sub-Committee. He advised whilst the Applicant had submitted a new application, it was for the same licensable activities and hours as had been permitted on the previous licence at the Premises. It was his submission that the application would not add to cumulative impact as the premises licence had been surrendered approximately two months before the landlord had become aware of the fact and had submitted the new application.

Mr Thomas stated that it had been an error on the part of the City Council that his client had not been notified under Section 178 of the Act when the previous premises licence had been surrendered. Had Shaftesbury as a responsible landlord known about the surrender of the premises licence they would have had a 28 day window to submit a transfer application but were not given this opportunity.

Mr Thomas acknowledged that the Council's SLP did not refer to instances of surrendered licences directly. However, he believed this particular situation was comparable to cases where licences lapsed due to insolvency which the Council would generally grant if it was considered that the replacement of the previous premises licence would promote the licensing objectives. It was similarly a licence lost to the landlord for reasons outside their control. He added that there had been no issues at the Premises. He expressed the view that the grounds for the replacement of the licence were an exception to policy if the Sub-Committee required an exception to policy to grant the application.

Mr Thomas raised a technical point as to whether the premises licence had in fact been correctly surrendered by the previous licence holder in the event it was only confirmed by e-mail and not formally in writing and if the original licence was not returned.

The Sub-Committee was advised by the Licensing Authority that most notifications of the surrender of premises licences were received by e-mail and this was deemed common practice and therefore an acceptable method of notification by the Licensing Authority.

Mr Horatio Chance the Legal Advisor to the Sub-Committee clarified whether the Licensing Authority whether the premises licence has been surrendered and it was confirmed that the Licensing Authority did consider the licence to have been validly surrendered.

Mr Thomas referred to the conditions in the event the Sub-Committee was minded granting the application. He expressed the view that because the Applicant would have transferred the licence had they been informed of the surrender within the 28 day window, the conditions should be transferred across from the surrendered licence in their entirety. However, he had no objection to specific conditions being updated in line with the Council's model conditions.

The Applicant's proposed conditions were set out in Thomas & Thomas' 'Summary of Proposals' at Appendix 2 of the main report. Mr Thomas advised that having discussed the matter further with the MPS, he would have no objection if the Sub-

Committee was minded to attach the model conditions namely; MC30 and MC85 ('No single cans or bottles of beer or cider or spirit mixtures shall be sold at the premises' and 'No miniature bottles of spirits of 20 cl or below shall be sold from the premises') in the event the application was granted.

Mr Thomas also referred to the EHS proposed conditions set out in the Additional Information Pack. The majority of these were model condition updates from the conditions on the previous licence should the Sub-Committee be minded granting the application. He explained that Applicant did not wish to agree a condition that 'the licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a night café' because it would change the nature of the use from before and was not a re-wording of the Rules of Management condition.

Mr Thomas was content to agree EHS other proposed update model conditions but his preference was that two additional conditions, MC24 and MC87 (*'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'* and *'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'*) were not attached in the event of a grant.

It was clarified by Mr Thomas in response to questions from the Sub-Committee that the surrender of the licence had only come to light in October 2023 when an annual review of licences had taken place. It had been discovered that the licence had been surrendered and had not been advised by the Council. The previous Licence Holder had not been permitted under agreed covenants to surrender the licence without Shaftesbury's consent but had proceeded to do so.

Mr Thomas stated that he believed the premises had operated as a shop. It had a grocery counter and there was no customer seating. Takeaway of hot food and drink had previously been permitted until 05:00 hours. Whilst he acknowledged that the application would have been unlikely to have been granted under the current policy, he commented that he was seeking to reinstate or replace the licence rather than seek a brand new licence in the CIZ. In the event the licence was granted, it would be transferred from the landlord to an appropriate tenant who was yet to be confirmed.

Mr Aaron Hardy the Policy Advisor to the Sub-Committee was asked by the Sub-Committee to advise which premises use policy was applicable to the premises. Mr Hardy advised that he considered that Policy SHP1 (Shops Policy) was applicable. The licence if granted could allow policies SHP1 and FFP1 (Fast Food Premises Policy) depending on the nature of the operation and the operator.

Mr Thomas confirmed that he did not accept that Sunrise had been a night café and this was why he resisted the EHS proposed condition. He expressed the view that attaching such a condition to the licence would not be of benefit to the Licensing Authority, the Applicant or any future tenant.

The Sub-Committee heard from Ms Jessica Donovan on behalf of the Licensing Authority (LA). The LA was maintaining its representation as the establishment was located in the West End CIZ. Ms Donovan referred to the fact that the Applicant was relying on Paragraphs B15 and D21 of the Council's SLP in terms of putting forward the case for the replacement of the previous licence. However, the premises licence had been surrendered and the application needed to be determined on its own merits. It was for the Sub-Committee to consider whether the application would add to cumulative impact in the CIZ.

It was accepted by the LA in response to a question from the Sub-Committee that the Applicant should have been notified of the surrender of the premises licence.

The Sub-Committee was advised by Ms Kudzy Mondhlani that the EHS was maintaining its representation based on the location of the premises in the CIZ and the terminal hour for Late Night Refreshment of 05:00. She had proposed model conditions MC24 and MC87 because she was of the view that there was the possibility of public nuisance based on the terminal hour. She added that there had been no record of complaints in relation to the previous operation of the premises.

The Sub-Committee heard from PC Steve Muldoon on behalf of the MPS. He explained that it had been necessary for the MPS to consider the application as a new application in the West End CIZ. He confirmed that he had agreed conditions with the Applicant, including model conditions MC30 and MC85, in the event the Sub-Committee was minded granting the application. PC Muldoon also clarified that the proposed terminal hour of 23:00 Monday to Saturday and 22:30 on Sunday for off licence was not of concern but 05:00 for Late Night Refreshment was. He commented that the area had become busier with many more late night venues than when the previous premises licence had been granted in 2007. He proposed a terminal hour of midnight for Late Night Refreshment as it had the potential for people to leave late night bars or clubs, congregate in the street when consuming the hot food and drink and remain in the West End CIZ. Wardour Street was in terms of the statistics a crime hotspot.

PC Muldoon in response to a question from the Sub-Committee confirmed that the MPS were not aware of any issues or incidents in relation to the previous operation of the premises.

Mr Thomas clarified that he had no objection to conditions on the previous premises licence that did not have proposed model condition updates being added to the new licence if granted. This included that 'No more than (15)% of the sales area shall be used at any one time for the sale, exposure for sale, or display of alcohol'.

Ms Kudzy Mondhlani brought to the Sub-Committee's attention that MC87 was sought as there would be a change of tenant and it was not known at this stage how intensive the cooking would be which was why she was seeking the 'No fumes, steam or odours shall be emitted' proposed condition. Mr Thomas responded that he did not object to the condition being attached based on the reasoning given.

In his summing up, Mr Thomas re-iterated the point that the licence should not have been permitted to lapse. He was able to provide further information that the previous licence holder was believed to have been arrears in paying rent at the Premises. Mr

Thomas also stated that it was the case that Section 28 of the Licensing Act 2003 did require the premises licence holder, if he or she wished to surrender the licence, to give the relevant licensing authority a notice to that effect. The notice also needed to be accompanied by the premises licence or, if that was not practicable, by a statement of the reasons for the failure to provide the licence. Mr Thomas did add that the Applicant had received confirmation from the Licensing Authority that the surrender of the licence had been accepted.

Conclusion

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

The Sub-Committee had regard not only to the written and oral evidence but also to the requirements of the Act, The Home Office Guidance issued under section 182 of the Act and the City Councils SLP in the main policies HRS1 and RNT1.

The Premises operated as a shop under Policy SHP1 and so there is no policy presumption to refuse an application of this type provided that the licensing objectives are not undermined.

The Sub-Committee, having carefully considered the circumstances relating to the reasons for the application, decided to **GRANT** the application, subject to conditions. It was considered that the application was appropriate for the area and that it would not add to cumulative impact because the previous premises licence would have been transferred had the Applicant been correctly notified within the 28 day window of the former licence holder's surrender of the licence and the application was in fact to reinstate what was previously there and so would not add to cumulative impact in the West End CIZ.

The Sub-Committee decided to attach the conditions that were on the previous premises licence and also replace those with the Council's Model Conditions where applicable as proposed by the Responsible Authorities.

The Sub-Committee did not consider it appropriate nor proportionate to add the proposed condition that *'the licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a night café'* as it was likely the operation was still covered by the licence and it was not a re-wording of the Rules of Management condition.

In reaching its decision, the Sub-Committee concluded that the conditions attached to the licence would mitigate and alleviate the concerns of the Responsible Authorities who had objected and were appropriate, proportionate, enforceable and would promote the licensing objectives.

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 Sunday 23:00 to 05:00. **Seasonal Variations:** None.
2. To grant permission for the **Sale by Retail of Alcohol (Off the Premises)** Monday to Saturday 08:00 to 23:00 Sunday 10:00 to 22:30 **Seasonal Variations:** On weekdays, other than Christmas Day 08:00 to 23:00, On Sundays, other than Christmas Day 10:00 to 22:30, On Christmas Day 12:00 to 15:00 and 19:00 to 22:30 on Good Friday 08:00 to 22:30.
3. To grant permission for the **Opening Hours of the Premises** Monday to Saturday 08:00 to 05:00 Sunday 10:00 to 05:00 **Seasonal Variations:** None.
4. That the Licence is subject to any relevant mandatory conditions.
5. 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:

6.
 - (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.
7. 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.
8. 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
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.

9. 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.
10. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
11. Outside of the hours authorised for the sale of alcohol and whilst the premises are open to the public, the licence holder shall ensure that all alcohol within the premises (including alcohol behind the counter) is secured in a locked store room or behind locked grilles, locked screens or locked cabinet doors so as to prevent access to the alcohol by both customers and staff.
12. No super-strength beer, lagers, ciders or spirit mixtures of 5.5% ABV (alcohol by volume) or above shall be sold at the premises, except for premium beers and ciders supplied in glass bottles and cans.
13. No single cans or bottles of beer or cider or spirit mixtures shall be sold at the premises.
14. No more than (15)% of the sales area shall be used at any one time for the sale, exposure for sale, or display of alcohol.
15. There shall be no self-selection of spirits on the premises, save for spirit mixtures less than 5.5% ABV.
16. Prominent signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises, where alcohol is on public display, and at the point of sale.
17. No miniature bottles of spirits of 20 cl or below shall be sold from the premises.
18. This licence is subject to all the former regulations made by Westminster City Council prescribing standard conditions for annual night café licences, effective from 1 October 2001.
19. 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.
20. 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.

21. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 08.00 hours on the following day.
22. No advertisements of any kind (including placard, poster, sticker, flyer, picture, letter, sign or other mark) that advertises or promotes the establishment, its premises, or any of its events, facilities, goods or services shall be inscribed or affixed upon the surface of the highway, or upon any building, structure, works, street furniture, tree, or any other property, or be distributed to the public.
23. Outside of the hours authorised for the sale of alcohol and whilst the premises are open to the public, the licence holder shall ensure that all alcohol within the premises (including alcohol behind the counter) is secured in a locked store room or behind locked grilles, locked screens or locked cabinet doors so as to prevent access to the alcohol by both customers and staff.
24. 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.
25. 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
1 February 2024**

The Meeting ended at 12.30 pm

CHAIRMAN: _____

DATE _____