



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (2)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (2)** held on **Thursday 22nd February, 2024**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Maggie Carman (Chair), Md Shamsed Chowdhury and Tim Mitchell

1. MEMBERSHIP

1.1 There were no changes to the membership.

2. DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1. UNIT 2, 26 AYBROOK STREET, W1U 4AN

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

Thursday 22 February 2024

Membership: Councillor Maggie Carman (Chair)
Councillor Md Shamsed Chowdhury
Councillor Tim Mitchell

Officer Support Legal Advisor: Michael Feeney
Policy Officer: Daisy Gadd
Committee Officer: Sarah Craddock
Presenting Officer: Jessica Donovan

Others present: Mr Jack Spiegler (Solicitor, Thomas and Thomas on behalf of the Applicant) and Mr Gavin de Klerk (Applicant)

Mr Anil Drayan (Environmental Health Service)
Mr Richard Brown - Licensing Advice Project (on behalf of the Marylebone Association)
Mr G.A (Marylebone Association)

Ms E. Q, Mr J.S and Mr ML (Local residents)
Mr Richard Brown - Licensing Advice Project (on behalf of St Vincent Catholic Primary School)
Ms M.C (Headteacher of St Vincent Catholic Primary School)
Mr L.C (Chair of Governors at St Vincent Catholic Primary School)

Application for a New Premises Licence in respect of Unit 2, 26 Aybrook Street, London, W1U 4AN - 23/08470/LIPN

FULL DECISION

Premises

Unit 2
26 Aybrook Street
W1U 4AN

Applicant

Moxon Street Residential (Luxembourg) S.a R.l.

Ward

Marylebone

Cumulative Impact

None

Special Consideration Zone

None

There is a resident count of 184.

Summary of Application

This is an application for a new Premises Licence under the Licensing Act 2003 ("The Act"). The Premises intend to operate as a restaurant unit within the Marylebone Square development. This is a new Premises Licence application and therefore no Premises history exists.

Representations Received

- Environmental Health Services (EHS)
- Metropolitan Police Services (MPS) (**Withdrawn**)
- Marylebone Association
- Councillor Karen Scarborough (Marylebone Ward Councillor)
- Resident x 8

Issues raised by Objectors.

The EHS states that the proposal may undermine the licensing objectives of Prevention of Public Nuisance, Public Safety and Prevention of Harm to Children. The Applicant has offered an extensive list of conditions but these may not be sufficient to allay Environmental Health concerns, in particular further information is requested on capacity, prevention of internal noise transfer, prevention of odour and dispersal at closing time.

The residents main concerns were:

- the new restaurants in Marylebone Square would create noise and be disruptive in a highly residential area.
- the Applicant was seeking to operate beyond the Council's Core Hours Policy which would disrupt the quiet neighbourhood at night.
- the dispersal of patrons.
- the close proximity of the proposed venue to a primary school is not conducive with having a safe environment for children.
- antisocial behaviour increasing in the area due to the presence of the venue.
- noise pollution in the area.
- the litter impact on the neighbourhood from increased traffic - waste, cigarette butts, glasses etc.
- school children having to walk past the effects of antisocial behaviour and litter on the way to school.
- research shows the presence of these venues near schools poses a long term risk to children in terms of increased use of alcohol, as they go through the stages of child development.
- Moxon St and Aybrook St were very busy thoroughfares during the day.
- Tables and chairs outside the Premises.
- Delivery and waste collections in the area.

Policy Considerations

Policy HRS 1 states:

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.

C. For the purpose of Clauses A and B above, the Core Hours for **Restaurants:**

Monday to Thursday: 9 am to 11.30pm.

Friday and Saturday: 9 am to 12am.

Sunday: 9am to 10.30pm.

Sundays immediately prior to a bank holiday: 9 am to 12am.

Policy RNT1 states:

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 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 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.

SUBMISSIONS

The applications for Unit 2, 26 Aybrook Street, W1U 4AN, Unit 3, 11 Cramer Street, W1U 4EA and Unit 9, 7 St Vincent Street, W1U 4DA were considered together. The submissions summarised below therefore relate to all three applications. The submissions made by Mr Richard Brown on behalf of the St Vincent Catholic Primary School, by Ms M.C (Headteacher of St Vincent Catholic Primary School) and Mr L.C (Chair of Governors at St Vincent Catholic Primary School) related only to the application for a new Premises Licence at Unit 9, 7 St Vincent Street, London, W1U 4DA.

The Presenting Officer, Jessica Donovan, introduced the applications to the Committee.

Mr Jack Spiegler (Solicitor, Thomas and Thomas on behalf of the Applicant) outlined the applications along with Mr Gavin de Klerk (on behalf of the Applicant Company).

Mr Spiegler informed the Committee that the Applicant was the developer of the recently completed Marylebone Square building in the former Moxon Street carpark bounded by Aybrook Street, Moxon Street, Cramer Street and St Vincent Street. He outlined how the development comprises fifty-four residential homes, boutique shops, a community hall and three proposed restaurants subject to the current Premises Licence applications. He explained that the Applicant had sold longer leasehold interests in the residential homes situated on the upper floors of the building and that the commercial uses on the ground and basement floor were not yet occupied but still an important part of the redevelopment of the area.

Mr Spiegler advised how the Applicant would remain the freeholder and assume responsibility for the general management of the building block, so it was very much in the Applicant's interest's own interest to ensure that all residential, commercial and community tenants coexists harmoniously. He emphasised that the three proposed licensed restaurants would be self-policed by the Applicant.

Mr Spiegler described how the Applicant had been proactive in seeking pre-application advice and was now being responsible by submitting the three Premises Licence applications at the pre-letting stage which would ensure:

- Uniformed and comprehensively conditioned licences with appropriate hours, avoiding the possibility of individual tenants applying for Premises Licences on unreasonable and inconsistent terms and;
- Approved Premises Licences at a pre-letting stage assists the Applicant in attracting the highest calibre restaurant tenants to the Development.

Mr Spiegler outlined how the Applicant would then market the Premises to the highest calibre of restaurant tenants and how all potential tenants would be subject to robust lease controls which would safeguard the professional and responsible operation of the restaurants alongside existing and new local residents in Marylebone. He explained how the Applicant was proposing a much more restricted operation than authorised by the Planning Authority because they cared about the local community and wanted to ensure that the residents moving into the homes on the upper floors were not disturbed by the commercial occupiers on the lower floors.

Mr Gavin de Klerk (on behalf of the Applicant Company) advised that it was a mixed-use development which included twenty-five affordable apartments and a community space ultimately gifted to Westminster for their use as a community hall. He outlined how the residential part of the development was important but also set out how the commercial element on the ground floor sets the tone and feel of the area. He advised how the three Premises would bring the opportunity of new employment for local people. He explained how the Applicant had been operating within the area for three decades and therefore wanted to be an active and positive member of the community. He emphasised how the Applicant had actively engaged with the community leading up to and throughout the construction and that following careful consideration of the objections to the applications had reduced the scope of the application by making substantial amendments to all three applications. He highlighted how the Applicant would remain as owners of the building and that there would be active management through concierges, general managers and maintenance teams. He confirmed that the tenants would complement the Marylebone area and would not be well-known high street brands/chains but would be original bespoke high-class establishments.

Mr Spiegler summarised the Applicant's engagement with the Marylebone Association and Ward Councillors which had resulted in the following amendments to the applications:

- the closing times were to be in line with the Council's Core Hours Policy.
- removal of any bar use within the restaurant units by volunteering Model Condition MC66 to apply throughout the entirety of each Premises.
- removal of the external areas from the on-licence demise and that any external seating would need to be scrutinised under the pavement licence application process which were only granted on a temporary basis allowing a robust monitoring process by the Responsible Authorities.
- a change of layout of Unit 9 introducing a secondary means of escapes following feedback from the District Surveyor.

Mr Spiegler outlined that the Applicant had prepared a comprehensive servicing and management plan with independent consultants which had been approved by the Planning Authority. He highlighted how waste would be taken directly to internal subterranean waste refuse areas before being taken up to ground floor at scheduled collection times and deliveries would be made via an internal loading bay before being distributed internally via servicing corridors. He emphasised that this would reduce the traffic and activity at street level from it previously being a carpark.

Mr Spiegler advised that there would be no regulated entertainment and that appropriate noise conditions had been agreed during the planning process. He highlighted that the Applicant would not want any of the restaurants to create noise because it would disturb their own residents living above the three Premises. He advised that the Applicant had submitted a Dispersal Plan which would be enforced by Model Condition MC99 attached to the Premises Licences.

Mr Spiegler advised that Unit 9 had been built in accordance with Planning Permission and that model conditions regarding the Prevention of Harm to Children had been proposed. He highlighted that the busier restaurant trading periods were unlikely to clash with school pick up/drop off times and that the Applicant would ensure that any restaurant tenant would be carefully vetted for all the Units but especially for Unit 9. He confirmed that it would not become a McDonalds or any high street chain brand but that it would be a sophisticated restaurant.

Mr Spiegler outlined that all Premises would operate as restaurants in accordance with the Council's Model restaurant Condition 66. He referred to Policy RNT1 which states, 'Applications outside the West End cumulative impact zone will generally be granted' and the proposed hours for licensable activities and Premises opening are within Core Hours. He further referred to the Core Hours Policy HRS1 which states '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. He highlighted, therefore, that the proposed hours, as amended, were now less than the hours anticipated and permitted in the planning permission.

Mr Spiegler advised that the Premises were not located within a Cumulative Impact Area (CIA) or a Special Consideration Zone (SCZ) and would be operated within the Council's Core Hours Policy with the model restaurant conditions MC66 being attached to the Premises Licence. He emphasised such applications would generally be granted and he requested that the Committee grant the amended application accordingly.

In response to questions from the Committee, Mr Spiegler outlined the District Surveyors estimated capacity for each unit as follows:

- Unit 2 – between 120 to 160 patrons
- Unit 3 – between 160 to 180 patrons
- Unit 9 - between 120 to 130 patrons.

Mr Spiegler emphasised that these figures were assessed on fire escape only and that once the kitchen and fixtures and fittings had been installed the Applicant was expecting the final capacity of each unit to be lower than the District Surveyors estimations. He outlined that Unit 2 and Unit 3 were of a similar arrangement, but that Unit 9 was slightly different. He advised that the Applicant was happy to leave the Environmental Health Service to determine the final capacities once all the works had been carried out and confirmed that the works model condition would be attached to each Premises Licence.

Mr Spiegler again confirmed that the high street brands such as McDonalds and Burger King would not be considered for any of the units. He outlined that conversations were being had with a well-known chef who was internationally known and who had operated within Westminster for about 15 years, but no further details could be given due to the confidentiality of the business deal. He added, however, that the offer would be individualistic and bespoke and would blend in with the businesses already operating in the area.

Mr Spiegler confirmed that the Applicant would encourage the operators to offer apprenticeships to local people as a way into the hospitality industry and to pay the London Living Wage to their staff. He advised that to apply for a Shadow Licence there first needed to be a primary Premises Licence which was why the Applicant was proactively seeking to apply for the three Premises Licence themselves to ensure they had control over them, everything was uniform and in order to attract the highest calibre of tenants.

Mr Gavin de Klerk referred to Google Maps and the plans of the three units and indicated to the Committee where the three units were situated in Marylebone Square and the whereabouts of the exit/entrances for each of the units. He advised that for Unit 9 the entry/exit point was onto Aybrook Street and for Unit 2 and 3 the entry/exit point was onto Moxon Street. Mr Spiegler advised that a variation would be needed to change any of the entry/exit points as they had all be agreed during the planning process.

Mr Spiegler confirmed how unit 9 had been determined appropriate for restaurant use by the Planning Authority and that the exit/entry to these Premises was around the corner and further down from the entrance of the school. He outlined that the Applicant had anticipated that school drop off/pick up times would not clash with busy restaurant times and how it would be unusual for a restaurant operating within core hours to have SIAs. He emphasised that the restaurant would be a grown-up sophisticated restaurant which indeed parents might be interested in. He confirmed that the restaurants would be at the right price point for local residents and that they would not just be geared towards international or famous patrons.

Mr Spiegler referred to the Dispersal policy which outlined how patrons would be dispersed quietly from the Premises. He highlighted that patrons were unlikely to be intoxicated as they would have been sitting down under restaurant conditions having a substantial meal which was ancillary to alcohol. He outlined that there would be around twenty members of staff working in each Premises as well as the supervisory element of the building staff and concierge. He added it was in the Applicant's interest to ensure that patrons left the Premises quietly so as not to disturb their own

residents. He confirmed that the Council's model condition regarding providing a telephone number to all residents would be attached to the Premises Licence.

Mr Anil Drayan (representing the Environmental Health Service, EHS) advised that EHS's concerns had now been alleviated with the amendments to the three applications which included operating within the Council's Core Hours Policy and having the model restaurant condition MC66 attached to each Premises licence. He outlined that MC66 ensured that all alcohol had to be served with a substantial meal by waiter/waitress service and most importantly it did not permit takeaway service of food or drink for immediate consumption. He highlighted that this meant that a high street brand such as McDonalds would be unable to operate from these Premises. He confirmed that the EHS were now satisfied with the applications and was in attendance to provide technical information/support to the Committee. He did add that EHS would prefer the works condition to specify a maximum capacity following clearance of the condition to provide more certainty.

In response to questions from the Committee, Mr Drayan advised that the capacities for each of the units could be determined on the clearance of the works conditions that would be attached to each of the Premises Licences. He suggested that the Committee could agree to add wording to this condition regarding the capacities such as 'it shall not be more than (a certain number) capacity'. He explained that the capacity would be determined by a number of factors such as the number of customer toilets and the actual final layout of the Premises.

Mr Spiegler confirmed that the Applicant was content to agree to the lower limits' capacity figures outlined by the District Surveyor for all three units.

Mrs E.Q (local resident) advised that she was the owner/occupier of a house located remarkably close to the three units where she had lived since 1963. She referred to the initial documents regarding the development in Marylebone and advised that it had been a truly encouraging document as its primary aim set out to protect the residential environment with an emphasis on housing, community and educational use with small scale retail units on the ground floors only which will complement Marylebone High Street. She emphasised that the original document in 2000 ensured the adjacent residential amenity would be protected from adverse impact and highlighted how the neighbourhood was now even more densely populated.

Mrs E.Q advised that the amendments to the applications were no more than what was expected and that no real concessions had been made by the Applicant. She outlined that the capacity for each Unit remained vague as well as the functionality of the retracting doors. She emphasised that it was unacceptable for so many people to come into the area and that the vast number of people would create a CIA all on of its own. She considered that these Premises Licences could not be granted without contravening Westminster's public nuisance policy because of the loss of privacy, the detritus of litter and anti-social behaviour. She outlined the anti-social behaviour from smokers smoking outside resident's windows and the noise nuisance from people leaving the Premises talking to each other and/or on their mobile phones. She advised of the difficulties of not knowing who will be occupying these Premises and the possible crime and disorder the opening of these three Premises would bring to the neighbourhood. She highlighted how Marylebone was once one of the safest places to live but now she knew people who would not go out at night.

Ms E.Q advised that the Premises were being placed in the wrong location and that they should be located in Paddington Street and/or Devonshire Street. She described her street in that it had a few retail shops but that it was mostly residential mansion blocks or houses. She highlighted that it was very busy during the day but at night it turned peaceful and quiet. She added that these units were inappropriate as they consisted of ground floor and lower ground floor space which was inappropriate for the character and function of the area. She advised that what was needed in the area was another supermarket and a post office.

Ms E.Q outlined how Westminster had a substantial residential population and the Council had a duty to protect residents from developers. She requested that the Committee postpone any decision until the tenants were known and/or the developers be asked to reconsider the use and instead offer them as retail units.

In response to questions from the Committee, Mrs E.Q advised she wanted the units to become retail shops and/or boutiques. She outlined how the development was very overwhelming and that the Applicant would have no control over the patrons once they left the Premises. She confirmed that she had not experienced any anti-social behaviour in the past 5 years as the area was peaceful. She acknowledged that the Planning Authority had given permission to the Applicant for these units to be operated as restaurants but requested that they be operated without a Premises Licence so no alcohol could be served on the Premises. She outlined that her concerns were that the same crowd that went to a popular venue nearby would frequent these Premises. She highlighted that the rent on these Premises would be so high that the tenants would need to bring in/encourage an ever-increasing number of patrons to make a profit hence encouraging more and more people to the area.

Mr J.S (local resident) advised that the Applicant had not engaged personally with him. He outlined how expensive the residential accommodation was to purchase (£1.5 million for a one bedroom flat to £3.5 million for a two/three bedroom flat) and wondered if these apartments were really for local residents or just being sold to foreign investors. He advised that the development had been dumped into the middle of a really sensitive area predominantly with Victorian buildings. He explained that the size of the units was unacceptable as they had a lower ground floor and a ground floor and that they were being advertised as 'flagship restaurants' which would attract celebrities (and encourage more people wanting to see celebrities) to the area. He considered that the Applicant was only interested in profit and not the local community. He mentioned the need for checks to be done around counterterrorism especially if celebrities did frequent the Premises because of the various conflicts occurring around the world.

Mr J.S advised that he worked from home so he would be disturbed by music playing and people coming and going continuously especially in the spring and summer when windows were open. He emphasised that the area was very residential. He echoed what Mrs E Q said about the profit needed to make these Premises viable businesses. He highlighted the issues that additional traffic would bring due to the very narrow street. He mentioned that there could be an issue regarding the Prevention of Harm to Children as there were two schools (a primary school and a girl's school) in close proximity to these Premises. He outlined how certain other

Premises within the area changed during the weekends to become mini nightclubs and he did not want this in his street. He added that by granting these Premises the Committee were effectively granting a licence for outdoor dining because the regulations brought in during COVID were still in operation.

Mr J.S advised that currently the area was quiet and peaceful and that granting the Premises Licences would transform this. He considered that the identity of the restaurant was important and the Committee should not be able to licence something without more details. He considered that the Premises would bring at least 500-600 extra people to the area each evening which would change the characteristic of the street because of the congregation and noise nuisance from people which would echo up and down the narrow street.

In response to questions from the Committee, Mr J.S considered that there were no conditions that could be added to the Premises Licence that would mitigate his concerns regarding the operation of these three Premises. He advised that the whole area would become a place for late night partying which would be detrimental for the local community.

Mr Richard Brown (Licensing Advice Project on behalf of the Marylebone Association) advised that it was an inappropriate place to open these three Premises because of the long-standing residential communities in Marylebone. He advised that these units could be a game changer for the area if the operation of the Premises were not restricted and managed appropriately. He strongly emphasised the difficulties with not knowing the operators which compounds the issues that the residents had already raised with the Committee.

Mr Brown advised that the Marylebone Association had felt relief regarding the amendments in hours and the removal of the bar use and outside tables and chairs. He suggested that the Committee consider carefully whether tables and chairs were appropriate at all and that the Marylebone Association considered that the cut off point for any table and chair use should be 19:00, which would still allow for lunchtime trade. He advised that if the Applicant was only applying for one Premises Licence operating within Core Hours with MC66 attached to its Premises Licence then the Marylebone Association would probably not have objected, however, three Premises in such a residential area was a concern and the Committee must be confident that the operating of these three Premises would not cause a Public Nuisance in the area.

Mr Brown advised that Mr Spiegler was correct in that applications for Premises operating within Core Hours and with model condition MC66 attached to their Premises Licence were generally granted. He highlighted therefore that the Committee needed to focus on the word 'generally' because it did not say these types of Premises always had to be given a Premises Licence. He suggested that the Committee could grant part of the application (by for example granting hours less than those applied for) or refuse the application.

Mr Brown advised that the residents did recognise the efforts made by the Applicant to engage with the community, however, it was a difficult balance as these applications could change the community and area that they live in permanently. He outlined that what the Applicant was offering today was much better than what

they were initially seeking and that it was for the Committee to determine whether the offer was sufficient to promote the licensing objectives in terms of hours and capacities, especially in the absence of names operators.

Mr G.A (representing the Marylebone Association) advised that the dispersal plan did not mention that the closest tube station was Baker Street which was an issue in that everybody from these three restaurants would leave and walk up Aybrook Place instead of Marylebone High Street, He concluded by emphasising the huge amount of traffic that would be heading towards Baker Street which was already a busy area.

Mr Brown then made representations on behalf of St Vincent Catholic Primary School in relation to Unit 9. He advised that the school had been established in the 1930s and currently 236 pupils attended the school which was rated outstanding in all areas. He outlined that the school was located in very close proximity to Unit 9, that the street was very narrow and there was contention regarding the amount of traffic (both cars and people) that the Premises would bring to the area which would cause congestion, noise pollution, anti-social behaviour which would all block movement in the narrow street. He explained that this would be very detrimental as it could prevent emergency vehicles accessing the school if there were an emergency. There was an exit during the day and also an emergency exit near the Unit 9 on St Vincent Street. Given the location of Unit 9 in relation to the School, it was the wrong place for a licensed restaurant given the impact on the safety and well-being of 236 children.

Mr Brown advised that the Committee needed to consider this application under the Licensing Objective 'Prevention of Harm to Children', given the potential for outside activity at the venues and an adverse impact on the safety of the children from the school. He outlined that the school day begins with the breakfast club at 08:00 hours and finishes with the Activities Club at 17:15 hours and that during the school day people/children were coming and going to church, swimming club and nursery. He strongly emphasised that big developers could not point to a proven history of operating Premises Licence in sensitive areas like specific operators as they did not operate the Premises Licences.

Ms M.C (headteacher) advised that the school was an innovative building built in the 1930 with the playground located on the roof of the building. She outlined the difficulties of evaluating the whole school during an emergency and having to count all the children, the youngest being three years, and how she could never guarantee which direction was safe/unsafe depending on what the school was evacuating from. She described her biggest concern was people queuing, talking, smoking and blocking the street and making it unsafe for children to gather in the street during these emergency evacuations and during pick up/drop off times.

Ms M.C advised that she had objected strongly to the planning document and had been aware that there would be some restaurants and retail but not so close to the school. She considered that the sale of alcohol so close to a school was wrong in principle. She outlined how she regularly meets with the developers because of the tight location. She felt strongly that tables and chairs located outside would add another barrier to the evacuation of the school. She considered that the busiest time for Premises was during lunch time and not dinner because eating out for lunch was

the culture of the area. She advised how the school had been vandalised and broken into and there was already anti-social behaviour occurring in the area.

Mr L.C (Chair of Governors) echoed the submissions made by Mr Brown and Ms M.C (headteacher). He advised how parents did not want alcohol to be sold so near to the school and how every child needed to be handed over to an adult during school pick-up/drop off in the narrow street. He confirmed that the narrow street became very congested during these times and the safety of the children was paramount to the school.

Mr M.L (local resident) advised how he was parent to two children who went to two different schools in the area. He considered that all three Premises were inappropriate for the area but especially Unit 9 because the primary school looked directly into the Unit. He advised of his family history. He strongly emphasised that he was against the restaurants opening up in the area for all the reasons outlined by the other objectors. He considered that a retail shop or a similar retail outlet would be more appropriate in these narrow streets.

Ms M.C. concluded by outlining that the school considered that it was the wrong location for a Premises because of its proximity to the school and the narrow street. He emphasised that as the Applicant had developed right up close to the school people sitting eating and drinking inside the Premises could literally see inside the school which caused all sorts of safeguarding concerns; especially when adding alcohol to the mix which made her incredulous that this application was even being discussed for determination at this hearing.

Mr Michael Feeney, Legal Advisor to the Committee, discussed with all parties the addition of Model condition MC67 regarding queuing which was agreed by the Applicant. Mr Spiegler further agreed to designated smoking areas for all three units. He agreed that it would be on Aybrook Street for Unit 9 but asked that the operators for Unit 2 and 3 agree the location when signing the tenancy agreement.

During summing up, Mr Brown highlighted the passionate views of the residents and how the impact of the three Premises Licence would impact the community. He strongly advised that Ms M.C would like the Committee to reject the application for Unit 9.

During their summing up, the local residents repeated their concerns due to the area being highly residential. They strongly emphasised their concerns regarding the capacity of all three units and that the granting of these three Premises Licence would have a detrimental effect on the area. They urged the developers to reduce the size of the units because of the potential noise nuisance and set out how the Council would be receiving many complaints when the restaurants were up and running in the community. They requested that the Committee postpone or reject the applications.

During his summing up, Mr Drayan advised that the EHS was satisfied with the applications as model condition MC66 as well as other relevant conditions had been agreed with the Applicant and would be attached to the Premises Licences.

During his summing up, Mr Spiegler advised that he was unsure what harm to children would occur if the application for Unit 9 were granted as the school hours did not clash with the busy restaurant hours. He advised that after listening to the feedback from the residents today he was willing to agree conditions preventing any food delivery service operating from Unit 9 or any external seating on St Vincent Street.

Mr Spiegler confirmed that the Applicant would continue to engage with the local residents and wanted to reassure the residents that all model conditions were enforceable and are taken seriously by the Applicant. He emphasised that the Planning Authority had already scrutinised the developer and had agreed that these units could be operated as restaurants and not supermarkets or retail outlets. He requested that the capacity of the units was not reduced any further than the lowest limits set by the District Surveyor and that the operating hours were also not reduced any further than core hours.

Mr Spiegler outlined out how a good restaurant would encourage boutiques and shop operators into the area and therefore requested that the Committee grant the application as amended which was significantly less than what was authorised during the planning process.

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DECISION

1. The Committee has determined an application for a new Premises Licence under the Licensing Act 2003. The Committee is aware that it has a duty to consider each application on its individual merits and determined the application on this basis.
2. The Committee decided to grant the application. Policies HRS1 and RNT1 provide that applications outside the West End CIZ for restaurants within core hours will generally be granted, subject to not being contrary to other policies in the Statement of Licensing Policy ('SLP').
3. The Committee considered that the robust conditions proposed as part of the application would ensure that the Premises operated in accordance with the SLP and that the licensing objectives were upheld. The Applicant had engaged in a dialogue with local residents, and by significantly amending the application the Applicant had demonstrated a willingness to work with the local community. If a subsequent operator acted in breach of the licence conditions, then local residents would be able to inform the operator and the Council. Local residents could potentially bring a review of the Premises Licence if there was persistent non-compliance. In reaching its conclusion, the Committee placed great weight on the fact that the concerns of all Responsible Authorities had been addressed, with EHS confirming at the hearing that they were satisfied with the application.
4. The Committee did not consider it appropriate or proportionate to reduce the hours for licensable activities or the opening hours given that the Application was already within core hours. The Committee likewise did not consider it appropriate or proportionate to limit the use of outside tables and chairs to 19:00 hours. The proposed condition (limiting use to 21:00 hours) would

protect residential amenity and ensure that residents were not disturbed by noise from outside diners late at night.

5. In addition to the conditions proposed as part of the application, given the concerns raised as to public nuisance by local residents the Committee considered it appropriate and proportionate to add a condition controlling queuing, as agreed by the Applicant. The Committee also agreed with EHS that the capacity condition should specify a maximum capacity; in setting the maximum capacity as the lower of the two figures provided by the District Surveyor (as requested by the Applicant) the Committee noted that this figure was an absolute maximum. The final figure would be set by EHS on clearance of the works condition and would likely be lower.
6. Finally, the Committee noted the Applicant's willingness to agree to a condition specifying a designated smoking area, but the Committee did not consider this to be necessary as no specific concerns had been raised about smoking in a particular area (as was the case for Unit 9). Rather, the Committee considered that the most appropriate way to prevent public nuisance was to amend one of the proposed conditions so that the 6-person limit on people leaving the premises temporarily (eg to smoke) applied at all times, rather than just after 23:00 hours.

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

1. To grant permission for **Late Night Refreshment** Monday to Thursday 23:00 to 23:30, Friday to Saturday 23:00 to 00:00 and Sunday N/A. Seasonal variations: From the end of permitted hours on New Years' Eve to the start of permitted hours on New Years' Day. 23:00 to 00:00 on Sundays immediately before Bank Holiday Mondays.
2. To grant permission for **Sale by Retail of Alcohol (On and Off Sales)**. Monday to Thursday 09:00 to 23:30, Friday to Saturday 09:00 to 00:00 and Sunday 09:00 to 22:30. Seasonal variations: From the end of permitted hours on New Years' Eve to the start of permitted hours on New Years' Day. 09:00 to 00:00 on Sundays immediately before Bank Holiday Mondays.
3. To grant permission for **the Opening Hours of the Premises** Monday to Thursday 09:00 to 23:30, Friday to Saturday 09:00 to 00:00 and Sunday 09:00 to 22:30. Seasonal variations: From the end of permitted hours on New Years' Eve to the start of permitted hours on New Years' Day. 09:00 to 00:00 on Sundays immediately before Bank Holiday Mondays.
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.

6. The premises shall only operate as a restaurant
 - (a) in which customers are shown to their table or the customer will select a table themselves,
 - (b) where the supply of alcohol is by waiter or waitress service only,
 - (c) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table,
 - (d) which do not provide any takeaway service of food or drink for immediate consumption off the premises,
 - (e) 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.

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

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

7. Substantial 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.
8. 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
9. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises 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.
10. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.

11. A 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 authorised officer of the Council as soon as practicable on request.
12. 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
13. 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.
14. 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.
15. All windows and external doors shall be kept closed after 21:00 hours, except for the immediate access and egress of persons.
16. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and use the area quietly.
17. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke or make a phone call, shall be limited to 6 persons at any one time.
18. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke or make a phone call, shall not be permitted to take drinks or glass containers with them.
19. 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.
20. A copy of the premises' dispersal policy shall be made readily available at the premises for inspection for a police officer and/or an authorised officer of Westminster City Council.
21. No deliveries to the premises shall take place between 23.00 hours and 08.00 hours on the following day.

22. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
23. 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 unless collections are arranged during the times for the Council's own commercial waste collection service for the street.
24. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 08.00 hours on the following day unless collections are arranged during the times for the Council's own commercial waste collection service for the street.
25. Delivery drivers shall be given clear, written instructions to use their vehicles in a responsible manner so as not to cause a nuisance to any residents or generally outside the premises; not to leave engines running when the vehicles are parked; and not to obstruct the highway.
26. 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.
27. All fabrics, curtains, drapes and similar features including materials used in finishing and furnishing shall be either non-combustible or be durably or inherently flame-retarded fabric. Any fabrics used in escape routes (other than foyers), entertainment areas or function rooms, shall be non-combustible.
28. 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.
29. Except for any authorised external seating areas, all sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
30. There shall be no sales of alcohol for consumption off the premises after 23.00 hours.
31. The number of persons accommodated at the premises as a whole at any one time excluding staff shall not exceed (x) persons- to be determined on clearance of works condition. The figure (x) shall not exceed 120.
32. No licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition will be removed from the Licence by the Licensing Authority. If there are minor changes during the course of

construction new plans shall be submitted with the application to remove this condition.

33. The licence holder shall ensure that any queue to enter the premises which forms outside the premises is orderly and supervised by door staff so as to ensure that there is no public nuisance or obstruction to the public highway.

34. All outside tables and chairs shall be rendered unusable by 21:00 hours each day.

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

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

2. UNIT 3, 11 CRAMER STREET, W1U 4EA

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

Thursday 22 February 2024

Membership: Councillor Maggie Carman (Chair)
Councillor Md Shamsed Chowdhury
Councillor Tim Mitchell

Officer Support Legal Advisor: Michael Feeney
Policy Officer: Daisy Gadd
Committee Officer: Sarah Craddock
Presenting Officer: Jessica Donovan

Others present: Mr Jack Spiegler (Solicitor, Thomas and Thomas on behalf of
the Applicant) and Mr Gavin de Klerk (Applicant)

Mr Anil Drayan (Environmental Health Service)
Mr Richard Brown - Licensing Advice Project (on behalf of the
Marylebone Association)
Mr G.A (Marylebone Association)
Ms E. Q, Mr J.S and Mr ML (Local residents)
Mr Richard Brown - Licensing Advice Project (on behalf of St
Vincent Catholic Primary School)
Ms M.C (Headteacher of St Vincent Catholic Primary School)
Mr L.C (Chair of Governors at St Vincent Catholic Primary
School)

**Application for a New Premises Licence in respect of Unit 3, 11 Cramer Street,
W1U 4EA- 23/08472/LIPN**

FULL DECISION

Premises

Unit 3
11 Cramer Street
W1U 4EA

Applicant

Moxon Street Residential (Luxembourg) S.a R.I.

Ward

Marylebone

Cumulative Impact

None

Special Consideration Zone

None

There is a resident count of 228.

Summary of Application

This is an application for a new Premises Licence under the Licensing Act 2003 ("The Act"). The Premises intend to operate as a restaurant unit within the Marylebone Square development. This is a new Premises Licence application and therefore no Premises history exists.

Representations Received

- Environmental Health Services (EHS)
- Metropolitan Police Services (MPS) (**Withdrawn**)
- Marylebone Association
- Councillor Karen Scarborough (Marylebone Ward Councillor)
- Resident x 4

Issues raised by Objectors.

The EHS states that the proposal may undermine the licensing objectives of Prevention of Public Nuisance, Public Safety and Prevention of Harm to Children. The Applicant has offered an extensive list of conditions but these may not be sufficient to allay Environmental Health concerns, in particular further information is requested on capacity, prevention of internal noise transfer, prevention of odour and dispersal at closing time.

The residents' main concerns were:

- the new restaurants in Marylebone Square would create noise and be disruptive in a highly residential area.
- the Applicant was seeking to operate beyond the Council's Core Hours Policy which would disrupt the quiet neighbourhood at night.
- the dispersal of patrons.
- the close proximity of the proposed venue to a primary school is not conducive with having a safe environment for children.
- antisocial behaviour increasing in the area due to the presence of the venue.
- noise pollution in the area.
- the litter impact on the neighbourhood from increased traffic - waste, cigarette butts, glasses etc.
- school children having to walk past the effects of antisocial behaviour and litter on the way to school.
- research shows the presence of these venues near schools poses a long term risk to children in terms of increased use of alcohol, as they go through the stages of child development.
- Moxon St and Aybrook St were very busy thoroughfares during the day.
- Tables and chairs outside the Premises.
- Delivery and waste collections in the area.

Policy Considerations

Policy HRS 1 states:

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.

C. For the purpose of Clauses A and B above, the Core Hours for **Restaurants:**

Monday to Thursday: 9 am to 11.30pm.

Friday and Saturday: 9 am to 12am.

Sunday: 9am to 10.30pm.

Sundays immediately prior to a bank holiday: 9 am to 12am.

Policy RNT1 states:

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 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 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.

SUBMISSIONS

The applications for Unit 2, 26 Aybrook Street, W1U 4AN, Unit 3, 11 Cramer Street, W1U 4EA and Unit 9, 7 St Vincent Street, W1U 4DA were considered together. The submissions summarised below therefore relate to all three applications. The submissions made by Mr Richard Brown on behalf of the St Vincent Catholic Primary School, by Ms M.C (Headteacher of St Vincent Catholic Primary School) and Mr L.C (Chair of Governors at St Vincent Catholic Primary School) related only to the application for a new Premises Licence at Unit 9, 7 St Vincent Street, London, W1U 4DA.

The Presenting Officer, Jessica Donovan, introduced the applications to the Committee.

Mr Jack Spiegler (Solicitor, Thomas and Thomas on behalf of the Applicant) outlined the applications along with Mr Gavin de Klerk (on behalf of the Applicant Company).

Mr Spiegler informed the Committee that the Applicant was the developer of the recently completed Marylebone Square building in the former Moxon Street carpark bounded by Aybrook Street, Moxon Street, Cramer Street and St Vincent Street. He outlined how the development comprises fifty-four residential homes, boutique shops, a community hall and three proposed restaurants subject to the current Premises Licence applications. He explained that the Applicant had sold longer leasehold interests in the residential homes situated on the upper floors of the building and that the commercial uses on the ground and basement floor were not yet occupied but still an important part of the redevelopment of the area.

Mr Spiegler advised how the Applicant would remain the freeholder and assume responsibility for the general management of the building block, so it was very much in the Applicant's interest's own interest to ensure that all residential, commercial and community tenants coexists harmoniously. He emphasised that the three proposed licensed restaurants would be self-policed by the Applicant.

Mr Spiegler described how the Applicant had been proactive in seeking pre-application advice and was now being responsible by submitting the three Premises Licence applications at the pre-letting stage which would ensure:

- Uniformed and comprehensively conditioned licences with appropriate hours, avoiding the possibility of individual tenants applying for Premises Licences on unreasonable and inconsistent terms and;
- Approved Premises Licences at a pre-letting stage assists the Applicant in attracting the highest calibre restaurant tenants to the Development.

Mr Spiegler outlined how the Applicant would then market the Premises to the highest calibre of restaurant tenants and how all potential tenants would be subject to robust lease controls which would safeguard the professional and responsible operation of the restaurants alongside existing and new local residents in Marylebone. He explained how the Applicant was proposing a much more restricted operation than authorised by the Planning Authority because they cared about the local community and wanted to ensure that the residents moving into the homes on the upper floors were not disturbed by the commercial occupiers on the lower floors.

Mr Gavin de Klerk (on behalf of the Applicant Company) advised that it was a mixed-use development which included twenty-five affordable apartments and a community space ultimately gifted to Westminster for their use as a community hall. He outlined how the residential part of the development was important but also set out how the commercial element on the ground floor sets the tone and feel of the area. He advised how the three Premises would bring the opportunity of new employment for local people. He explained how the Applicant had been operating within the area for three decades and therefore wanted to be an active and positive member of the community. He emphasised how the Applicant had actively engaged with the community leading up to and throughout the construction and that following careful consideration of the objections to the applications had reduced the scope of the application by making substantial amendments to all three applications. He highlighted how the Applicant would remain as owners of the building and that there would be active management through concierges, general managers and

maintenance teams. He confirmed that the tenants would complement the Marylebone area and would not be well-known high street brands/chains but would be original bespoke high-class establishments.

Mr Spiegler summarised the Applicant's engagement with the Marylebone Association and Ward Councillors which had resulted in the following amendments to the applications:

- the closing times were to be in line with the Council's Core Hours Policy.
- removal of any bar use within the restaurant units by volunteering Model Condition MC66 to apply throughout the entirety of each Premises.
- removal of the external areas from the on-licence demise and that any external seating would need to be scrutinised under the pavement licence application process which were only granted on a temporary basis allowing a robust monitoring process by the Responsible Authorities.
- a change of layout of Unit 9 introducing a secondary means of escapes following feedback from the District Surveyor.

Mr Spiegler outlined that the Applicant had prepared a comprehensive servicing and management plan with independent consultants which had been approved by the Planning Authority. He highlighted how waste would be taken directly to internal subterranean waste refuse areas before being taken up to ground floor at scheduled collection times and deliveries would be made via an internal loading bay before being distributed internally via servicing corridors. He emphasised that this would reduce the traffic and activity at street level from it previously being a carpark.

Mr Spiegler advised that there would be no regulated entertainment and that appropriate noise conditions had been agreed during the planning process. He highlighted that the Applicant would not want any of the restaurants to create noise because it would disturb their own residents living above the three Premises. He advised that the Applicant had submitted a Dispersal Plan which would be enforced by Model Condition MC99 attached to the Premises Licences.

Mr Spiegler advised that Unit 9 had been built in accordance with Planning Permission and that model conditions regarding the Prevention of Harm to Children had been proposed. He highlighted that the busier restaurant trading periods were unlikely to clash with school pick up/drop off times and that the Applicant would ensure that any restaurant tenant would be carefully vetted for all the Units but especially for Unit 9. He confirmed that it would not become a McDonalds or any high street chain brand but that it would be a sophisticated restaurant.

Mr Spiegler outlined that all Premises would operate as restaurants in accordance with the Council's Model restaurant Condition 66. He referred to Policy RNT1 which states, 'Applications outside the West End cumulative impact zone will generally be granted' and the proposed hours for licensable activities and Premises opening are within Core Hours. He further referred to the Core Hours Policy HRS1 which states '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. He highlighted, therefore, that the proposed hours, as amended, were now less than the hours anticipated and permitted in the planning permission.

Mr Spiegler advised that the Premises were not located within a Cumulative Impact Area (CIA) or a Special Consideration Zone (SCZ) and would be operated within the Council's Core Hours Policy with the model restaurant conditions MC66 being attached to the Premises Licence. He emphasised such applications would generally be granted and he requested that the Committee grant the amended application accordingly.

In response to questions from the Committee, Mr Spiegler outlined the District Surveyors estimated capacity for each unit as follows:

- Unit 2 – between 120 to 160 patrons
- Unit 3 – between 160 to 180 patrons
- Unit 9 - between 120 to 130 patrons.

Mr Spiegler emphasised that these figures were assessed on fire escape only and that once the kitchen and fixtures and fittings had been installed the Applicant was expecting the final capacity of each unit to be lower than the District Surveyors estimations. He outlined that Unit 2 and Unit 3 were of a similar arrangement, but that Unit 9 was slightly different. He advised that the Applicant was happy to leave the Environmental Health Service to determine the final capacities once all the works had been carried out and confirmed that the works model condition would be attached to each Premises Licence.

Mr Spiegler again confirmed that the high street brands such as McDonalds and Burger King would not be considered for any of the units. He outlined that conversations were being had with a well-known chef who was internationally known and who had operated within Westminster for about 15 years, but no further details could be given due to the confidentiality of the business deal. He added, however, that the offer would be individualistic and bespoke and would blend in with the businesses already operating in the area.

Mr Spiegler confirmed that the Applicant would encourage the operators to offer apprenticeships to local people as a way into the hospitality industry and to pay the London Living Wage to their staff. He advised that to apply for a Shadow Licence there first needed to be a primary Premises Licence which was why the Applicant was proactively seeking to apply for the three Premises Licence themselves to ensure they had control over them, everything was uniform and in order to attract the highest calibre of tenants.

Mr Gavin de Klerk referred to Google Maps and the plans of the three units and indicated to the Committee where the three units were situated in Marylebone Square and the whereabouts of the exit/entrances for each of the units. He advised that for Unit 9 the entry/exit point was onto Aybrook Street and for Unit 2 and 3 the entry/exit point was onto Moxon Street. Mr Spiegler advised that a variation would be needed to change any of the entry/exit points as they had all be agreed during the planning process.

Mr Spiegler confirmed how unit 9 had been determined appropriate for restaurant use by the Planning Authority and that the exit/entry to these Premises was around the corner and further down from the entrance of the school. He outlined that the

Applicant had anticipated that school drop off/pick up times would not clash with busy restaurant times and how it would be unusual for a restaurant operating within core hours to have SIAs. He emphasised that the restaurant would be a grown-up sophisticated restaurant which indeed parents might be interested in. He confirmed that the restaurants would be at the right price point for local residents and that they would not just be geared towards international or famous patrons.

Mr Spiegler referred to the Dispersal policy which outlined how patrons would be dispersed quietly from the Premises. He highlighted that patrons were unlikely to be intoxicated as they would have been sitting down under restaurant conditions having a substantial meal which was ancillary to alcohol. He outlined that there would be around twenty members of staff working in each Premises as well as the supervisory element of the building staff and concierge. He added it was in the Applicant's interest to ensure that patrons left the Premises quietly so as not to disturb their own residents. He confirmed that the Council's model condition regarding providing a telephone number to all residents would be attached to the Premises Licence.

Mr Anil Drayan (representing the Environmental Health Service, EHS) advised that EHS's concerns had now been alleviated with the amendments to the three applications which included operating within the Council's Core Hours Policy and having the model restaurant condition MC66 attached to each Premises licence. He outlined that MC66 ensured that all alcohol had to be served with a substantial meal by waiter/waitress service and most importantly it did not permit takeaway service of food or drink for immediate consumption. He highlighted that this meant that a high street brand such as McDonalds would be unable to operate from these Premises. He confirmed that the EHS were now satisfied with the applications and was in attendance to provide technical information/support to the Committee. He did add that EHS would prefer the works condition to specify a maximum capacity following clearance of the condition to provide more certainty.

In response to questions from the Committee, Mr Drayan advised that the capacities for each of the units could be determined on the clearance of the works conditions that would be attached to each of the Premises Licences. He suggested that the Committee could agree to add wording to this condition regarding the capacities such as 'it shall not be more than (a certain number) capacity'. He explained that the capacity would be determined by a number of factors such as the number of customer toilets and the actual final layout of the Premises.

Mr Spiegler confirmed that the Applicant was content to agree to the lower limits' capacity figures outlined by the District Surveyor for all three units.

Mrs E.Q (local resident) advised that she was the owner/occupier of a house located remarkably close to the three units where she had lived since 1963. She referred to the initial documents regarding the development in Marylebone and advised that it had been a truly encouraging document as its primary aim set out to protect the residential environment with an emphasis on housing, community and educational use with small scale retail units on the ground floors only which will complement Marylebone High Street. She emphasised that the original document in 2000 ensured the adjacent residential amenity would be protected from adverse impact and highlighted how the neighbourhood was now even more densely populated.

Mrs E.Q advised that the amendments to the applications were no more than what was expected and that no real concessions had been made by the Applicant. She outlined that the capacity for each Unit remained vague as well as the functionality of the retracting doors. She emphasised that it was unacceptable for so many people to come into the area and that the vast number of people would create a CIA all on of its own. She considered that these Premises Licences could not be granted without contravening Westminster's public nuisance policy because of the loss of privacy, the detritus of litter and anti-social behaviour. She outlined the anti-social behaviour from smokers smoking outside resident's windows and the noise nuisance from people leaving the Premises talking to each other and/or on their mobile phones. She advised of the difficulties of not knowing who will be occupying these Premises and the possible crime and disorder the opening of these three Premises would bring to the neighbourhood. She highlighted how Marylebone was once one of the safest places to live but now she knew people who would not go out at night.

Ms E.Q advised that the Premises were being placed in the wrong location and that they should be located in Paddington Street and/or Devonshire Street. She described her street in that it had a few retail shops but that it was mostly residential mansion blocks or houses. She highlighted that it was very busy during the day but at night it turned peaceful and quiet. She added that these units were inappropriate as they consisted of ground floor and lower ground floor space which was inappropriate for the character and function of the area. She advised that what was needed in the area was another supermarket and a post office.

Ms E.Q outlined how Westminster had a substantial residential population and the Council had a duty to protect residents from developers. She requested that the Committee postpone any decision until the tenants were known and/or the developers be asked to reconsider the use and instead offer them as retail units.

In response to questions from the Committee, Mrs E.Q advised she wanted the units to become retail shops and/or boutiques. She outlined how the development was very overwhelming and that the Applicant would have no control over the patrons once they left the Premises. She confirmed that she had not experienced any anti-social behaviour in the past 5 years as the area was peaceful. She acknowledged that the Planning Authority had given permission to the Applicant for these units to be operated as restaurants but requested that they be operated without a Premises Licence so no alcohol could be served on the Premises. She outlined that her concerns were that the same crowd that went to a popular venue nearby would frequent these Premises. She highlighted that the rent on these Premises would be so high that the tenants would need to bring in/encourage an ever-increasing number of patrons to make a profit hence encouraging more and more people to the area.

Mr J.S (local resident) advised that the Applicant had not engaged personally with him. He outlined how expensive the residential accommodation was to purchase (£1.5 million for a one bedroom flat to £3.5 million for a two/three bedroom flat) and wondered if these apartments were really for local residents or just being sold to foreign investors. He advised that the development had been dumped into the middle of a really sensitive area predominantly with Victorian buildings. He explained that the size of the units was unacceptable as they had a lower ground floor and a ground floor and that they were being advertised as 'flagship restaurants'

which would attract celebrities (and encourage more people wanting to see celebrities) to the area. He considered that the Applicant was only interested in profit and not the local community. He mentioned the need for checks to be done around counterterrorism especially if celebrities did frequent the Premises because of the various conflicts occurring around the world.

Mr J.S advised that he worked from home so he would be disturbed by music playing and people coming and going continuously especially in the spring and summer when windows were open. He emphasised that the area was very residential. He echoed what Mrs E Q said about the profit needed to make these Premises viable businesses. He highlighted the issues that additional traffic would bring due to the very narrow street. He mentioned that there could be an issue regarding the Prevention of Harm to Children as there were two schools (a primary school and a girl's school) in close proximity to these Premises. He outlined how certain other Premises within the area changed during the weekends to become mini nightclubs and he did not want this in his street. He added that by granting these Premises the Committee were effectively granting a licence for outdoor dining because the regulations brought in during COVID were still in operation.

Mr J.S advised that currently the area was quiet and peaceful and that granting the Premises Licences would transform this. He considered that the identity of the restaurant was important and the Committee should not be able to licence something without more details. He considered that the Premises would bring at least 500-600 extra people to the area each evening which would change the characteristic of the street because of the congregation and noise nuisance from people which would echo up and down the narrow street.

In response to questions from the Committee, Mr J.S considered that there were no conditions that could be added to the Premises Licence that would mitigate his concerns regarding the operation of these three Premises. He advised that the whole area would become a place for late night partying which would be detrimental for the local community.

Mr Richard Brown (Licensing Advice Project on behalf of the Marylebone Association) advised that it was an inappropriate place to open these three Premises because of the long-standing residential communities in Marylebone. He advised that these units could be a game changer for the area if the operation of the Premises were not restricted and managed appropriately. He strongly emphasised the difficulties with not knowing the operators which compounds the issues that the residents had already raised with the Committee.

Mr Brown advised that the Marylebone Association had felt relief regarding the amendments in hours and the removal of the bar use and outside tables and chairs. He suggested that the Committee consider carefully whether tables and chairs were appropriate at all and that the Marylebone Association considered that the cut off point for any table and chair use should be 19:00, which would still allow for lunchtime trade. He advised that if the Applicant was only applying for one Premises Licence operating within Core Hours with MC66 attached to its Premises Licence then the Marylebone Association would probably not have objected, however, three Premises in such a residential area was a concern and the Committee must be

confident that the operating of these three Premises would not cause a Public Nuisance in the area.

Mr Brown advised that Mr Spiegler was correct in that applications for Premises operating within Core Hours and with model condition MC66 attached to their Premises Licence were generally granted. He highlighted therefore that the Committee needed to focus on the word 'generally' because it did not say these types of Premises always had to be given a Premises Licence. He suggested that the Committee could grant part of the application (by for example granting hours less than those applied for) or refuse the application.

Mr Brown advised that the residents did recognise the efforts made by the Applicant to engage with the community, however, it was a difficult balance as these applications could change the community and area that they live in permanently. He outlined that what the Applicant was offering today was much better than what they were initially seeking and that it was for the Committee to determine whether the offer was sufficient to promote the licensing objectives in terms of hours and capacities, especially in the absence of names operators.

Mr G.A (representing the Marylebone Association) advised that the dispersal plan did not mention that the closest tube station was Baker Street which was an issue in that everybody from these three restaurants would leave and walk up Aybrook Place instead of Marylebone High Street, He concluded by emphasising the huge amount of traffic that would be heading towards Baker Street which was already a busy area.

Mr Brown then made representations on behalf of St Vincent Catholic Primary School in relation to Unit 9. He advised that the school had been established in the 1930s and currently 236 pupils attended the school which was rated outstanding in all areas. He outlined that the school was located in very close proximity to Unit 9, that the street was very narrow and there was contention regarding the amount of traffic (both cars and people) that the Premises would bring to the area which would cause congestion, noise pollution, anti-social behaviour which would all block movement in the narrow street. He explained that this would be very detrimental as it could prevent emergency vehicles accessing the school if there were an emergency. There was an exit during the day and also an emergency exit near the Unit 9 on St Vincent Street. Given the location of Unit 9 in relation to the School, it was the wrong place for a licensed restaurant given the impact on the safety and well-being of 236 children.

Mr Brown advised that the Committee needed to consider this application under the Licensing Objective 'Prevention of Harm to Children', given the potential for outside activity at the venues and an adverse impact on the safety of the children from the school. He outlined that the school day begins with the breakfast club at 08:00 hours and finishes with the Activities Club at 17:15 hours and that during the school day people/children were coming and going to church, swimming club and nursery. He strongly emphasised that big developers could not point to a proven history of operating Premises Licence in sensitive areas like specific operators as they did not operate the Premises Licences.

Ms M.C (headteacher) advised that the school was an innovative building built in the 1930 with the playground located on the roof of the building. She outlined the difficulties of evaluating the whole school during an emergency and having to count all the children, the youngest being three years, and how she could never guarantee which direction was safe/unsafe depending on what the school was evacuating from. She described her biggest concern was people queuing, talking, smoking and blocking the street and making it unsafe for children to gather in the street during these emergency evacuations and during pick up/drop off times.

Ms M.C advised that she had objected strongly to the planning document and had been aware that there would be some restaurants and retail but not so close to the school. She considered that the sale of alcohol so close to a school was wrong in principle. She outlined how she regularly meets with the developers because of the tight location. She felt strongly that tables and chairs located outside would add another barrier to the evacuation of the school. She considered that the busiest time for Premises was during lunch time and not dinner because eating out for lunch was the culture of the area. She advised how the school had been vandalised and broken into and there was already anti-social behaviour occurring in the area.

Mr L.C (Chair of Governors) echoed the submissions made by Mr Brown and Ms M.C (headteacher). He advised how parents did not want alcohol to be sold so near to the school and how every child needed to be handed over to an adult during school pick-up/drop off in the narrow street. He confirmed that the narrow street became very congested during these times and the safety of the children was paramount to the school.

Mr M.L (local resident) advised how he was parent to two children who went to two different schools in the area. He considered that all three Premises were inappropriate for the area but especially Unit 9 because the primary school looked directly into the Unit. He advised of his family history. He strongly emphasised that he was against the restaurants opening up in the area for all the reasons outlined by the other objectors. He considered that a retail shop or a similar retail outlet would be more appropriate in these narrow streets.

Ms M.C. concluded by outlining that the school considered that it was the wrong location for a Premises because of its proximity to the school and the narrow street. He emphasised that as the Applicant had developed right up close to the school people sitting eating and drinking inside the Premises could literally see inside the school which caused all sorts of safeguarding concerns; especially when adding alcohol to the mix which made her incredulous that this application was even being discussed for determination at this hearing.

Mr Michael Feeney, Legal Advisor to the Committee, discussed with all parties the addition of Model condition MC67 regarding queuing which was agreed by the Applicant. Mr Spiegler further agreed to designated smoking areas for all three units. He agreed that it would be on Aybrook Street for Unit 9 but asked that the operators for Unit 2 and 3 agree the location when signing the tenancy agreement.

During summing up, Mr Brown highlighted the passionate views of the residents and how the impact of the three Premises Licence would impact the community. He strongly advised that Ms M.C would like the Committee to reject the application for Unit 9.

During their summing up, the local residents repeated their concerns due to the area being highly residential. They strongly emphasised their concerns regarding the capacity of all three units and that the granting of these three Premises Licence would have a detrimental effect on the area. They urged the developers to reduce the size of the units because of the potential noise nuisance and set out how the Council would be receiving many complaints when the restaurants were up and running in the community. They requested that the Committee postpone or reject the applications.

During his summing up, Mr Drayan advised that the EHS was satisfied with the applications as model condition MC66 as well as other relevant conditions had been agreed with the Applicant and would be attached to the Premises Licences.

During his summing up, Mr Spiegler advised that he was unsure what harm to children would occur if the application for Unit 9 were granted as the school hours did not clash with the busy restaurant hours. He advised that after listening to the feedback from the residents today he was willing to agree conditions preventing any food delivery service operating from Unit 9 or any external seating on St Vincent Street.

Mr Spiegler confirmed that the Applicant would continue to engage with the local residents and wanted to reassure the residents that all model conditions were enforceable and are taken seriously by the Applicant. He emphasised that the Planning Authority had already scrutinised the developer and had agreed that these units could be operated as restaurants and not supermarkets or retail outlets. He requested that the capacity of the units was not reduced any further than the lowest limits set by the District Surveyor and that the operating hours were also not reduced any further than core hours.

Mr Spiegler outlined out how a good restaurant would encourage boutiques and shop operators into the area and therefore requested that the Committee grant the application as amended which was significantly less than what was authorised during the planning process.

DECISION

1. The Committee has determined an application for a new Premises Licence under the Licensing Act 2003. The Committee is aware that it has a duty to consider each application on its individual merits and determined the application on this basis.
2. The Committee decided to grant the application. Policies HRS1 and RNT1 provide that applications outside the West End CIZ for restaurants within core hours will generally be granted, subject to not being contrary to other policies in the Statement of Licensing Policy ('SLP').

3. The Committee considered that the robust conditions proposed as part of the application would ensure that the Premises operated in accordance with the SLP and that the licensing objectives were upheld. The Applicant had engaged in a dialogue with local residents, and by significantly amending the application the Applicant had demonstrated a willingness to work with the local community. If a subsequent operator acted in breach of the licence conditions, then local residents would be able to inform the operator and the Council. Local residents could potentially bring a review of the Premises Licence if there was persistent non-compliance. In reaching its conclusion, the Committee placed great weight on the fact that the concerns of all Responsible Authorities had been addressed, with EHS confirming at the hearing that they were satisfied with the application.
4. The Committee did not consider it appropriate or proportionate to reduce the hours for licensable activities or the opening hours given that the Application was already within core hours. The Committee likewise did not consider it appropriate or proportionate to limit the use of outside tables and chairs to 19:00 hours. The proposed condition (limiting use to 21:00 hours) would protect residential amenity and ensure that residents were not disturbed by noise from outside diners late at night.
5. In addition to the conditions proposed as part of the application, given the concerns raised as to public nuisance by local residents the Committee considered it appropriate and proportionate to add a condition controlling queuing, as agreed by the Applicant. The Committee also agreed with EHS that the capacity condition should specify a maximum capacity; in setting the maximum capacity as the lower of the two figures provided by the District Surveyor (as requested by the Applicant) the Committee noted that this figure was an absolute maximum. The final figure would be set by EHS on clearance of the works condition and would likely be lower.
6. Finally, the Committee noted the Applicant's willingness to agree to a condition specifying a designated smoking area, but the Committee did not consider this to be necessary as no specific concerns had been raised about smoking in a particular area (as was the case for Unit 9). Rather, the Committee considered that the most appropriate way to prevent public nuisance was to amend one of the proposed conditions so that the 6-person limit on people leaving the premises temporarily (eg to smoke) applied at all times, rather than just after 23:00 hours.

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

1. To grant permission for **Late Night Refreshment** Monday to Thursday 23:00 to 23:30, Friday to Saturday 23:00 to 00:00 and Sunday N/A. Seasonal variations: From the end of permitted hours on New Years' Eve to the start of

permitted hours on New Years' Day. 23:00 to 00:00 on Sundays immediately before Bank Holiday Mondays.

2. To grant permission for **Sale by Retail of Alcohol (On and Off Sales)**. Monday to Thursday 09:00 to 23:30, Friday to Saturday 09:00 to 00:00 and Sunday 09:00 to 22:30. Seasonal variations: From the end of permitted hours on New Years' Eve to the start of permitted hours on New Years' Day. 09:00 to 00:00 on Sundays immediately before Bank Holiday Mondays.
3. To grant permission for **the Opening Hours of the Premises** Monday to Thursday 09:00 to 23:30, Friday to Saturday 09:00 to 00:00 and Sunday 09:00 to 22:30. Seasonal variations: From the end of permitted hours on New Years' Eve to the start of permitted hours on New Years' Day. 09:00 to 00:00 on Sundays immediately before Bank Holiday Mondays.
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.
6. The premises shall only operate as a restaurant
 - (a) in which customers are shown to their table or the customer will select a table themselves,
 - (b) where the supply of alcohol is by waiter or waitress service only,
 - (c) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table,
 - (d) which do not provide any takeaway service of food or drink for immediate consumption off the premises,
 - (e) 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.

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

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

7. Substantial 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.
8. 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

9. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises 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.
10. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
11. A 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 authorised officer of the Council as soon as practicable on request.
12. 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
13. 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.
14. 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.
15. All windows and external doors shall be kept closed after 21:00 hours, except for the immediate access and egress of persons.

16. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and use the area quietly.
17. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke or make a phone call, shall be limited to 6 persons at any one time.
18. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke or make a phone call, shall not be permitted to take drinks or glass containers with them.
19. 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.
20. A copy of the premises' dispersal policy shall be made readily available at the premises for inspection for a police officer and/or an authorised officer of Westminster City Council.
21. No deliveries to the premises shall take place between 23.00 hours and 08.00 hours on the following day.
22. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
23. 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 unless collections are arranged during the times for the Council's own commercial waste collection service for the street.
24. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 08.00 hours on the following day unless collections are arranged during the times for the Council's own commercial waste collection service for the street.
25. Delivery drivers shall be given clear, written instructions to use their vehicles in a responsible manner so as not to cause a nuisance to any residents or generally outside the premises; not to leave engines running when the vehicles are parked; and not to obstruct the highway.
26. 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.
27. All fabrics, curtains, drapes and similar features including materials used in finishing and furnishing shall be either non-combustible or be durably or inherently flame-retarded fabric. Any fabrics used in escape routes (other than foyers), entertainment areas or function rooms, shall be non-combustible.

28. 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.
29. Except for any authorised external seating areas, all sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
30. There shall be no sales of alcohol for consumption off the premises after 23.00 hours.
31. The number of persons accommodated at the premises as a whole at any one time excluding staff shall not exceed (x) persons- to be determined on clearance of works condition. The figure (x) shall not exceed 160.
32. No licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition will be removed from the Licence by the Licensing Authority. If there are minor changes during the course of construction new plans shall be submitted with the application to remove this condition.
33. The licence holder shall ensure that any queue to enter the premises which forms outside the premises is orderly and supervised by door staff so as to ensure that there is no public nuisance or obstruction to the public highway.
34. All outside tables and chairs shall be rendered unusable by 21:00 hours each day.

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

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

3. UNIT 9, 7 ST VINCENT STREET, W1U 4DA

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

Thursday 22 February 2024

Membership: Councillor Maggie Carman (Chair)
Councillor Md Shamsed Chowdhury
Councillor Tim Mitchell

Officer Support Legal Advisor: Michael Feeney
Policy Officer: Daisy Gadd
Committee Officer: Sarah Craddock
Presenting Officer: Jessica Donovan

Others present: Mr Jack Spiegler (Solicitor, Thomas and Thomas on behalf of the Applicant) and Mr Gavin de Klerk (Applicant)

Mr Anil Drayan (Environmental Health Service)
Mr Richard Brown - Licensing Advice Project (on behalf of the Marylebone Association)
Mr G.A (Marylebone Association)
Ms E. Q, Mr J.S and Mr ML (Local residents)
Mr Richard Brown - Licensing Advice Project (on behalf of St Vincent Catholic Primary School)
Ms M.C (Headteacher of St Vincent Catholic Primary School)
Mr L.C (Chair of Governors at St Vincent Catholic Primary School)

Application for a New Premises Licence in respect of Unit 9, 7 St Vincent Street, London, W1U 4DA - 23/08471/LIPN

FULL DECISION

Premises

Unit 9
7 St Vincent Street
W1U 4DA

Applicant

Moxon Street Residential (Luxembourg) S.a R.l.

Ward

Marylebone

Cumulative Impact

None

Special Consideration Zone

None

There is a resident count of 300.

Summary of Application

This is an application for a new Premises Licence under the Licensing Act 2003 ("The Act"). The Premises intend to operate as a restaurant unit within the Marylebone Square development. This is a new Premises Licence application and therefore no Premises history exists.

Representations Received

- Environmental Health Services (EHS)
- Metropolitan Police Services (MPS) (**Withdrawn**)
- St Vincent Catholic Primary School
- Councillor Karen Scarborough (Marylebone Ward Councillor)
- Marylebone Association
- Resident x 51

Issues raised by Objectors.

The EHS states the proposal may undermine the licensing objectives of Prevention of Public Nuisance, Public Safety and Prevention of Harm to Children. The Applicant has offered an extensive list of conditions but these may not be sufficient to allay Environmental Health concerns, in particular further information is requested on capacity, prevention of internal noise transfer, prevention of odour and dispersal at closing time.

The main concerns expressed by St Vincent Catholic Primary School, the Marylebone Association and the residents were:

- the close proximity of the proposed premises to a primary school is not conducive with having a safe environment for children. The presence of the Premises would affect collection, pick-up and evacuation procedures.
- the Applicant was seeking to operate beyond the Council's Core Hours Policy which would disrupt the quiet neighbourhood at night.
- the dispersal of patrons.
- antisocial behaviour increasing in the area due to the presence of the venue.
- noise pollution in the area.
- the litter impact on the neighbourhood from increased traffic - waste, cigarette butts, glasses etc
- school children having to walk past the effects of antisocial behaviour and litter on the way to school.
- research shows the presence of these venues near schools poses a long-term risk to children in terms of increased use of alcohol, as they go through the stages of child development.
- Tables and chairs outside the Premises.
- Delivery and waste collections in the area.

Policy Considerations

Policy HRS 1 states:

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.

C. For the purpose of Clauses A and B above, the Core Hours for **Restaurants**:

Monday to Thursday: 9 am to 11.30pm.

Friday and Saturday: 9 am to 12am.

Sunday: 9am to 10.30pm.

Sundays immediately prior to a bank holiday: 9 am to 12am.

Policy RNT1 states:

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 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 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.

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SUBMISSIONS

The applications for Unit 2, 26 Aybrook Street, W1U 4AN, Unit 3, 11 Cramer Street, W1U 4EA and Unit 9, 7 St Vincent Street, W1U 4DA were considered together. The submissions summarised below therefore relate to all three applications. The submissions made by Mr Richard Brown on behalf of the St Vincent Catholic Primary School, by Ms M.C (Headteacher of St Vincent Catholic Primary School) and Mr L.C (Chair of Governors at St Vincent Catholic Primary School) related only to the application for a new Premises Licence at Unit 9, 7 St Vincent Street, London, W1U 4DA.

The Presenting Officer, Jessica Donovan, introduced the applications to the Committee.

Mr Jack Spiegler (Solicitor, Thomas and Thomas on behalf of the Applicant) outlined the applications along with Mr Gavin de Klerk (on behalf of the Applicant Company).

Mr Spiegler informed the Committee that the Applicant was the developer of the recently completed Marylebone Square building in the former Moxon Street carpark bounded by Aybrook Street, Moxon Street, Cramer Street and St Vincent Street. He outlined how the development comprises fifty-four residential homes, boutique shops, a community hall and three proposed restaurants subject to the current Premises Licence applications. He explained that the Applicant had sold longer leasehold interests in the residential homes situated on the upper floors of the building and that the commercial uses on the ground and basement floor were not yet occupied but still an important part of the redevelopment of the area.

Mr Spiegler advised how the Applicant would remain the freeholder and assume responsibility for the general management of the building block, so it was very much in the Applicant's interest's own interest to ensure that all residential, commercial and community tenants coexists harmoniously. He emphasised that the three proposed licensed restaurants would be self-policed by the Applicant.

Mr Spiegler described how the Applicant had been proactive in seeking pre-application advice and was now being responsible by submitting the three Premises Licence applications at the pre-letting stage which would ensure:

- Uniformed and comprehensively conditioned licences with appropriate hours, avoiding the possibility of individual tenants applying for Premises Licences on unreasonable and inconsistent terms and;
- Approved Premises Licences at a pre-letting stage assists the Applicant in attracting the highest calibre restaurant tenants to the Development.

Mr Spiegler outlined how the Applicant would then market the Premises to the highest calibre of restaurant tenants and how all potential tenants would be subject to robust lease controls which would safeguard the professional and responsible operation of the restaurants alongside existing and new local residents in Marylebone. He explained how the Applicant was proposing a much more restricted operation than authorised by the Planning Authority because they cared about the local community and wanted to ensure that the residents moving into the homes on the upper floors were not disturbed by the commercial occupiers on the lower floors.

Mr Gavin de Klerk (on behalf of the Applicant Company) advised that it was a mixed-use development which included twenty-five affordable apartments and a community space ultimately gifted to Westminster for their use as a community hall. He outlined how the residential part of the development was important but also set out how the commercial element on the ground floor sets the tone and feel of the area. He advised how the three Premises would bring the opportunity of new employment for local people. He explained how the Applicant had been operating within the area for three decades and therefore wanted to be an active and positive member of the community. He emphasised how the Applicant had actively engaged with the community leading up to and throughout the construction and that following careful consideration of the objections to the applications had reduced the scope of the application by making substantial amendments to all three applications. He highlighted how the Applicant would remain as owners of the building and that there would be active management through concierges, general managers and maintenance teams. He confirmed that the tenants would complement the

Marylebone area and would not be well-known high street brands/chains but would be original bespoke high-class establishments.

Mr Spiegler summarised the Applicant's engagement with the Marylebone Association and Ward Councillors which had resulted in the following amendments to the applications:

- the closing times were to be in line with the Council's Core Hours Policy.
- removal of any bar use within the restaurant units by volunteering Model Condition MC66 to apply throughout the entirety of each Premises.
- removal of the external areas from the on-licence demise and that any external seating would need to be scrutinised under the pavement licence application process which were only granted on a temporary basis allowing a robust monitoring process by the Responsible Authorities.
- a change of layout of Unit 9 introducing a secondary means of escapes following feedback from the District Surveyor.

Mr Spiegler outlined that the Applicant had prepared a comprehensive servicing and management plan with independent consultants which had been approved by the Planning Authority. He highlighted how waste would be taken directly to internal subterranean waste refuse areas before being taken up to ground floor at scheduled collection times and deliveries would be made via an internal loading bay before being distributed internally via servicing corridors. He emphasised that this would reduce the traffic and activity at street level from it previously being a carpark.

Mr Spiegler advised that there would be no regulated entertainment and that appropriate noise conditions had been agreed during the planning process. He highlighted that the Applicant would not want any of the restaurants to create noise because it would disturb their own residents living above the three Premises. He advised that the Applicant had submitted a Dispersal Plan which would be enforced by Model Condition MC99 attached to the Premises Licences.

Mr Spiegler advised that Unit 9 had been built in accordance with Planning Permission and that model conditions regarding the Prevention of Harm to Children had been proposed. He highlighted that the busier restaurant trading periods were unlikely to clash with school pick up/drop off times and that the Applicant would ensure that any restaurant tenant would be carefully vetted for all the Units but especially for Unit 9. He confirmed that it would not become a McDonalds or any high street chain brand but that it would be a sophisticated restaurant.

Mr Spiegler outlined that all Premises would operate as restaurants in accordance with the Council's Model restaurant Condition 66. He referred to Policy RNT1 which states, 'Applications outside the West End cumulative impact zone will generally be granted' and the proposed hours for licensable activities and Premises opening are within Core Hours. He further referred to the Core Hours Policy HRS1 which states '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. He highlighted, therefore, that the proposed hours, as amended, were now less than the hours anticipated and permitted in the planning permission.

Mr Spiegler advised that the Premises were not located within a Cumulative Impact Area (CIA) or a Special Consideration Zone (SCZ) and would be operated within the Council's Core Hours Policy with the model restaurant conditions MC66 being attached to the Premises Licence. He emphasised such applications would generally be granted and he requested that the Committee grant the amended application accordingly.

In response to questions from the Committee, Mr Spiegler outlined the District Surveyors estimated capacity for each unit as follows:

- Unit 2 – between 120 to 160 patrons
- Unit 3 – between 160 to 180 patrons
- Unit 9 - between 120 to 130 patrons.

Mr Spiegler emphasised that these figures were assessed on fire escape only and that once the kitchen and fixtures and fittings had been installed the Applicant was expecting the final capacity of each unit to be lower than the District Surveyors estimations. He outlined that Unit 2 and Unit 3 were of a similar arrangement, but that Unit 9 was slightly different. He advised that the Applicant was happy to leave the Environmental Health Service to determine the final capacities once all the works had been carried out and confirmed that the works model condition would be attached to each Premises Licence.

Mr Spiegler again confirmed that the high street brands such as McDonalds and Burger King would not be considered for any of the units. He outlined that conversations were being had with a well-known chef who was internationally known and who had operated within Westminster for about 15 years, but no further details could be given due to the confidentiality of the business deal. He added, however, that the offer would be individualistic and bespoke and would blend in with the businesses already operating in the area.

Mr Spiegler confirmed that the Applicant would encourage the operators to offer apprenticeships to local people as a way into the hospitality industry and to pay the London Living Wage to their staff. He advised that to apply for a Shadow Licence there first needed to be a primary Premises Licence which was why the Applicant was proactively seeking to apply for the three Premises Licence themselves to ensure they had control over them, everything was uniform and in order to attract the highest calibre of tenants.

Mr Gavin de Klerk referred to Google Maps and the plans of the three units and indicated to the Committee where the three units were situated in Marylebone Square and the whereabouts of the exit/entrances for each of the units. He advised that for Unit 9 the entry/exit point was onto Aybrook Street and for Unit 2 and 3 the entry/exit point was onto Moxon Street. Mr Spiegler advised that a variation would be needed to change any of the entry/exit points as they had all be agreed during the planning process.

Mr Spiegler confirmed how unit 9 had been determined appropriate for restaurant use by the Planning Authority and that the exit/entry to these Premises was around the corner and further down from the entrance of the school. He outlined that the Applicant had anticipated that school drop off/pick up times would not clash with

busy restaurant times and how it would be unusual for a restaurant operating within core hours to have SIAs. He emphasised that the restaurant would be a grown-up sophisticated restaurant which indeed parents might be interested in. He confirmed that the restaurants would be at the right price point for local residents and that they would not just be geared towards international or famous patrons.

Mr Spiegler referred to the Dispersal policy which outlined how patrons would be dispersed quietly from the Premises. He highlighted that patrons were unlikely to be intoxicated as they would have been sitting down under restaurant conditions having a substantial meal which was ancillary to alcohol. He outlined that there would be around twenty members of staff working in each Premises as well as the supervisory element of the building staff and concierge. He added it was in the Applicant's interest to ensure that patrons left the Premises quietly so as not to disturb their own residents. He confirmed that the Council's model condition regarding providing a telephone number to all residents would be attached to the Premises Licence.

Mr Anil Drayan (representing the Environmental Health Service, EHS) advised that EHS's concerns had now been alleviated with the amendments to the three applications which included operating within the Council's Core Hours Policy and having the model restaurant condition MC66 attached to each Premises licence. He outlined that MC66 ensured that all alcohol had to be served with a substantial meal by waiter/waitress service and most importantly it did not permit takeaway service of food or drink for immediate consumption. He highlighted that this meant that a high street brand such as McDonalds would be unable to operate from these Premises. He confirmed that the EHS were now satisfied with the applications and was in attendance to provide technical information/support to the Committee. He did add that EHS would prefer the works condition to specify a maximum capacity following clearance of the condition to provide more certainty.

In response to questions from the Committee, Mr Drayan advised that the capacities for each of the units could be determined on the clearance of the works conditions that would be attached to each of the Premises Licences. He suggested that the Committee could agree to add wording to this condition regarding the capacities such as 'it shall not be more than (a certain number) capacity'. He explained that the capacity would be determined by a number of factors such as the number of customer toilets and the actual final layout of the Premises.

Mr Spiegler confirmed that the Applicant was content to agree to the lower limits' capacity figures outlined by the District Surveyor for all three units.

Mrs E.Q (local resident) advised that she was the owner/occupier of a house located remarkably close to the three units where she had lived since 1963. She referred to the initial documents regarding the development in Marylebone and advised that it had been a truly encouraging document as its primary aim set out to protect the residential environment with an emphasis on housing, community and educational use with small scale retail units on the ground floors only which will complement Marylebone High Street. She emphasised that the original document in 2000 ensured the adjacent residential amenity would be protected from adverse impact and highlighted how the neighbourhood was now even more densely populated.

Mrs E.Q advised that the amendments to the applications were no more than what was expected and that no real concessions had been made by the Applicant. She outlined that the capacity for each Unit remained vague as well as the functionality of the retracting doors. She emphasised that it was unacceptable for so many people to come into the area and that the vast number of people would create a CIA all on of its own. She considered that these Premises Licences could not be granted without contravening Westminster's public nuisance policy because of the loss of privacy, the detritus of litter and anti-social behaviour. She outlined the anti-social behaviour from smokers smoking outside resident's windows and the noise nuisance from people leaving the Premises talking to each other and/or on their mobile phones. She advised of the difficulties of not knowing who will be occupying these Premises and the possible crime and disorder the opening of these three Premises would bring to the neighbourhood. She highlighted how Marylebone was once one of the safest places to live but now she knew people who would not go out at night.

Ms E.Q advised that the Premises were being placed in the wrong location and that they should be located in Paddington Street and/or Devonshire Street. She described her street in that it had a few retail shops but that it was mostly residential mansion blocks or houses. She highlighted that it was very busy during the day but at night it turned peaceful and quiet. She added that these units were inappropriate as they consisted of ground floor and lower ground floor space which was inappropriate for the character and function of the area. She advised that what was needed in the area was another supermarket and a post office.

Ms E.Q outlined how Westminster had a substantial residential population and the Council had a duty to protect residents from developers. She requested that the Committee postpone any decision until the tenants were known and/or the developers be asked to reconsider the use and instead offer them as retail units.

In response to questions from the Committee, Mrs E.Q advised she wanted the units to become retail shops and/or boutiques. She outlined how the development was very overwhelming and that the Applicant would have no control over the patrons once they left the Premises. She confirmed that she had not experienced any anti-social behaviour in the past 5 years as the area was peaceful. She acknowledged that the Planning Authority had given permission to the Applicant for these units to be operated as restaurants but requested that they be operated without a Premises Licence so no alcohol could be served on the Premises. She outlined that her concerns were that the same crowd that went to a popular venue nearby would frequent these Premises. She highlighted that the rent on these Premises would be so high that the tenants would need to bring in/encourage an ever-increasing number of patrons to make a profit hence encouraging more and more people to the area.

Mr J.S (local resident) advised that the Applicant had not engaged personally with him. He outlined how expensive the residential accommodation was to purchase (£1.5 million for a one bedroom flat to £3.5 million for a two/three bedroom flat) and wondered if these apartments were really for local residents or just being sold to foreign investors. He advised that the development had been dumped into the middle of a really sensitive area predominantly with Victorian buildings. He explained that the size of the units was unacceptable as they had a lower ground floor and a ground floor and that they were being advertised as 'flagship restaurants'

which would attract celebrities (and encourage more people wanting to see celebrities) to the area. He considered that the Applicant was only interested in profit and not the local community. He mentioned the need for checks to be done around counterterrorism especially if celebrities did frequent the Premises because of the various conflicts occurring around the world.

Mr J.S advised that he worked from home so he would be disturbed by music playing and people coming and going continuously especially in the spring and summer when windows were open. He emphasised that the area was very residential. He echoed what Mrs E Q said about the profit needed to make these Premises viable businesses. He highlighted the issues that additional traffic would bring due to the very narrow street. He mentioned that there could be an issue regarding the Prevention of Harm to Children as there were two schools (a primary school and a girl's school) in close proximity to these Premises. He outlined how certain other Premises within the area changed during the weekends to become mini nightclubs and he did not want this in his street. He added that by granting these Premises the Committee were effectively granting a licence for outdoor dining because the regulations brought in during COVID were still in operation.

Mr J.S advised that currently the area was quiet and peaceful and that granting the Premises Licences would transform this. He considered that the identity of the restaurant was important and the Committee should not be able to licence something without more details. He considered that the Premises would bring at least 500-600 extra people to the area each evening which would change the characteristic of the street because of the congregation and noise nuisance from people which would echo up and down the narrow street.

In response to questions from the Committee, Mr J.S considered that there were no conditions that could be added to the Premises Licence that would mitigate his concerns regarding the operation of these three Premises. He advised that the whole area would become a place for late night partying which would be detrimental for the local community.

Mr Richard Brown (Licensing Advice Project on behalf of the Marylebone Association) advised that it was an inappropriate place to open these three Premises because of the long-standing residential communities in Marylebone. He advised that these units could be a game changer for the area if the operation of the Premises were not restricted and managed appropriately. He strongly emphasised the difficulties with not knowing the operators which compounds the issues that the residents had already raised with the Committee.

Mr Brown advised that the Marylebone Association had felt relief regarding the amendments in hours and the removal of the bar use and outside tables and chairs. He suggested that the Committee consider carefully whether tables and chairs were appropriate at all and that the Marylebone Association considered that the cut off point for any table and chair use should be 19:00, which would still allow for lunchtime trade. He advised that if the Applicant was only applying for one Premises Licence operating within Core Hours with MC66 attached to its Premises Licence then the Marylebone Association would probably not have objected, however, three Premises in such a residential area was a concern and the Committee must be

confident that the operating of these three Premises would not cause a Public Nuisance in the area.

Mr Brown advised that Mr Spiegler was correct in that applications for Premises operating within Core Hours and with model condition MC66 attached to their Premises Licence were generally granted. He highlighted therefore that the Committee needed to focus on the word 'generally' because it did not say these types of Premises always had to be given a Premises Licence. He suggested that the Committee could grant part of the application (by for example granting hours less than those applied for) or refuse the application.

Mr Brown advised that the residents did recognise the efforts made by the Applicant to engage with the community, however, it was a difficult balance as these applications could change the community and area that they live in permanently. He outlined that what the Applicant was offering today was much better than what they were initially seeking and that it was for the Committee to determine whether the offer was sufficient to promote the licensing objectives in terms of hours and capacities, especially in the absence of names operators.

Mr G.A (representing the Marylebone Association) advised that the dispersal plan did not mention that the closest tube station was Baker Street which was an issue in that everybody from these three restaurants would leave and walk up Aybrook Place instead of Marylebone High Street, He concluded by emphasising the huge amount of traffic that would be heading towards Baker Street which was already a busy area. Mr Brown then made representations on behalf of St Vincent Catholic Primary School in relation to Unit 9. He advised that the school had been established in the 1930s and currently 236 pupils attended the school which was rated outstanding in all areas. He outlined that the school was located in very close proximity to Unit 9, that the street was very narrow and there was contention regarding the amount of traffic (both cars and people) that the Premises would bring to the area which would cause congestion, noise pollution, anti-social behaviour which would all block movement in the narrow street. He explained that this would be very detrimental as it could prevent emergency vehicles accessing the school if there were an emergency. There was an exit during the day and also an emergency exit near the Unit 9 on St Vincent Street. Given the location of Unit 9 in relation to the School, it was the wrong place for a licensed restaurant given the impact on the safety and well-being of 236 children.

Mr Brown advised that the Committee needed to consider this application under the Licensing Objective 'Prevention of Harm to Children', given the potential for outside activity at the venues and an adverse impact on the safety of the children from the school. He outlined that the school day begins with the breakfast club at 08:00 hours and finishes with the Activities Club at 17:15 hours and that during the school day people/children were coming and going to church, swimming club and nursery. He strongly emphasised that big developers could not point to a proven history of operating Premises Licence in sensitive areas like specific operators as they did not operate the Premises Licences.

Ms M.C (headteacher) advised that the school was an innovative building built in the 1930 with the playground located on the roof of the building. She outlined the difficulties of evaluating the whole school during an emergency and having to count

all the children, the youngest being three years, and how she could never guarantee which direction was safe/unsafe depending on what the school was evacuating from. She described her biggest concern was people queuing, talking, smoking and blocking the street and making it unsafe for children to gather in the street during these emergency evacuations and during pick up/drop off times.

Ms M.C advised that she had objected strongly to the planning document and had been aware that there would be some restaurants and retail but not so close to the school. She considered that the sale of alcohol so close to a school was wrong in principle. She outlined how she regularly meets with the developers because of the tight location. She felt strongly that tables and chairs located outside would add another barrier to the evacuation of the school. She considered that the busiest time for Premises was during lunch time and not dinner because eating out for lunch was the culture of the area. She advised how the school had been vandalised and broken into and there was already anti-social behaviour occurring in the area.

Mr L.C (Chair of Governors) echoed the submissions made by Mr Brown and Ms M.C (headteacher). He advised how parents did not want alcohol to be sold so near to the school and how every child needed to be handed over to an adult during school pick-up/drop off in the narrow street. He confirmed that the narrow street became very congested during these times and the safety of the children was paramount to the school.

Mr M.L (local resident) advised how he was parent to two children who went to two different schools in the area. He considered that all three Premises were inappropriate for the area but especially Unit 9 because the primary school looked directly into the Unit. He advised of his family history. He strongly emphasised that he was against the restaurants opening up in the area for all the reasons outlined by the other objectors. He considered that a retail shop or a similar retail outlet would be more appropriate in these narrow streets.

Ms M.C. concluded by outlining that the school considered that it was the wrong location for a Premises because of its proximity to the school and the narrow street. He emphasised that as the Applicant had developed right up close to the school people sitting eating and drinking inside the Premises could literally see inside the school which caused all sorts of safeguarding concerns; especially when adding alcohol to the mix which made her incredulous that this application was even being discussed for determination at this hearing.

Mr Michael Feeney, Legal Advisor to the Committee, discussed with all parties the addition of Model condition MC67 regarding queuing which was agreed by the Applicant. Mr Spiegler further agreed to designated smoking areas for all three units. He agreed that it would be on Aybrook Street for Unit 9 but asked that the operators for Unit 2 and 3 agree the location when signing the tenancy agreement.

During summing up, Mr Brown highlighted the passionate views of the residents and how the impact of the three Premises Licence would impact the community. He strongly advised that Ms M.C would like the Committee to reject the application for Unit 9.

During their summing up, the local residents repeated their concerns due to the area being highly residential. They strongly emphasised their concerns regarding the capacity of all three units and that the granting of these three Premises Licence would have a detrimental effect on the area. They urged the developers to reduce the size of the units because of the potential noise nuisance and set out how the Council would be receiving many complaints when the restaurants were up and running in the community. They requested that the Committee postpone or reject the applications.

During his summing up, Mr Drayan advised that the EHS was satisfied with the applications as model condition MC66 as well as other relevant conditions had been agreed with the Applicant and would be attached to the Premises Licences.

During his summing up, Mr Spiegler advised that he was unsure what harm to children would occur if the application for Unit 9 were granted as the school hours did not clash with the busy restaurant hours. He advised that after listening to the feedback from the residents today he was willing to agree conditions preventing any food delivery service operating from Unit 9 or any external seating on St Vincent Street.

Mr Spiegler confirmed that the Applicant would continue to engage with the local residents and wanted to reassure the residents that all model conditions were enforceable and are taken seriously by the Applicant. He emphasised that the Planning Authority had already scrutinised the developer and had agreed that these units could be operated as restaurants and not supermarkets or retail outlets. He requested that the capacity of the units was not reduced any further than the lowest limits set by the District Surveyor and that the operating hours were also not reduced any further than core hours.

Mr Spiegler outlined out how a good restaurant would encourage boutiques and shop operators into the area and therefore requested that the Committee grant the application as amended which was significantly less than what was authorised during the planning process.

DECISION

1. The Committee has determined an application for a new Premises Licence under the Licensing Act 2003. The Committee is aware that it has a duty to consider each application on its individual merits and determined the application on this basis.
2. The Committee decided to grant the application. As with the applications for Units 2 and 3, policies HRS1 and RNT1 provide that applications outside the West End CIZ for restaurants within core hours will generally be granted, subject to not being contrary to other policies in the Statement of Licensing Policy ('SLP'). The Committee noted the number of representations objecting to the application on the basis that the Premises was situated near a primary school. However, unlike for Sexual Entertainment Venues there was no policy position that it was unsuitable in principle for restaurants to be located near primary schools. The Committee considered that the operation of the restaurant would not clash on a daily basis with the operation of the school, as

activities for school pupils would end at 17:15. There were robust conditions in place to ensure that children would not purchase alcohol from the Premises.

3. The Committee considered that the robust conditions proposed as part of the application would ensure that the Premises operated in accordance with the SLP and that the licensing objectives were upheld. The Applicant had engaged in a dialogue with local residents, and by significantly amending the application the Applicant had demonstrated a willingness to work with the local community. If a subsequent operator acted in breach of the licence conditions, then local residents would be able to inform the operator and the Council. Local residents could potentially bring a review of the Premises Licence if there was persistent non-compliance. In reaching its conclusion, the Committee placed great weight on the fact that the concerns of all Responsible Authorities had been addressed, with EHS confirming at the hearing that they were satisfied with the application.
4. In addition to the conditions proposed as part of the application, given the concerns raised as to public nuisance by local residents the Committee considered it appropriate and proportionate to add a condition controlling queuing, as agreed by the Applicant. The Committee also agreed with EHS that the works condition should specify a maximum capacity; in setting the maximum capacity as the lower of the two figures provided by the District Surveyor (as requested by the Applicant) the Committee noted that this figure was an absolute maximum. The final figure would be set by EHS on clearance of the works condition and would likely be lower.
5. In recognition of the Premises' proximity to St Vincent's Catholic Primary School, the Committee also considered it appropriate and proportionate to impose the conditions suggested by the Applicant in order to ensure that the licensing objective of the Protection of Children from Harm was upheld. In particular, a condition preventing the use of external table and chairs on St Vincent Street would ensure that the street was kept clear for use by the school. Similarly, it was appropriate to specify that a designated smoking area must be located on Aybrook Street so that smokers did not take up space on St Vincent Street. The Committee also decided to limit the number of smokers to 6 at all times, to ensure consistency with the Premises Licences at Units 2 and 3.
6. The Committee also added a condition preventing the operation of any food delivery takeaway service from the Premises. This would help prevent couriers from companies such as Uber Eats or Deliveroo from driving down St Vincent Street. The Committee considered that the conditions proposed by the Applicant and the concessions made by the Applicant as part of the application would ensure that the licensing objectives were upheld.
7. Finally, the Committee did not consider it appropriate or proportionate to reduce the hours for licensable activities or the opening hours given that the Application was already within core hours. The Committee likewise did not consider it appropriate or proportionate to limit the use of outside tables and chairs to 19:00 hours. The proposed condition (limiting use to 21:00 hours) would protect residential amenity and ensure that residents were not

disturbed by noise from outside diners late at night. Restricting the use of any tables and chairs to 19:00 hours on Aybrook Street would not make a material difference to St Vincent Primary School, as pupils would finish their days at 17:15.

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

1. To grant permission for **Late Night Refreshment** Monday to Thursday 23:00 to 23:30, Friday to Saturday 23:00 to 00:00 and Sunday N/A. Seasonal variations: From the end of permitted hours on New Years' Eve to the start of permitted hours on New Years' Day. 23:00 to 00:00 on Sundays immediately before Bank Holiday Mondays.
2. To grant permission for **Sale by Retail of Alcohol (On and Off Sales)**. Monday to Thursday 09:00 to 23:30, Friday to Saturday 09:00 to 00:00 and Sunday 09:00 to 22:30. Seasonal variations: From the end of permitted hours on New Years' Eve to the start of permitted hours on New Years' Day. 09:00 to 00:00 on Sundays immediately before Bank Holiday Mondays.
3. To grant permission for **the Opening Hours of the Premises** Monday to Thursday 09:00 to 23:30, Friday to Saturday 09:00 to 00:00 and Sunday 09:00 to 22:30. Seasonal variations: From the end of permitted hours on New Years' Eve to the start of permitted hours on New Years' Day. 09:00 to 00:00 on Sundays immediately before Bank Holiday Mondays.
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.
6. The premises shall only operate as a restaurant
 - (a) in which customers are shown to their table or the customer will select a table themselves,
 - (b) where the supply of alcohol is by waiter or waitress service only,
 - (c) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table,
 - (d) which do not provide any takeaway service of food or drink for immediate consumption off the premises,
 - (e) 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.

For the purposes of this condition 'Substantial Table Meal' means- a meal such as might be expected to be served as the main midday or main evening meal, or as a main course at either such meal and is eaten by a person seated at a table, or at a counter or other structure which serves the purposes

of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure servicing the purposes of a table.

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

7. Substantial 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.
8. 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
9. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises 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.
10. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
11. A 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 authorised officer of the Council as soon as practicable on request.
12. 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

13. 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.
14. 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.
15. All windows and external doors shall be kept closed after 21:00 hours, except for the immediate access and egress of persons.
16. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and use the area quietly.
17. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke or make a phone call, shall be limited to 6 persons at any one time.
18. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke or make a phone call, shall not be permitted to take drinks or glass containers with them.
19. 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.
20. A copy of the premises' dispersal policy shall be made readily available at the premises for inspection for a police officer and/or an authorised officer of Westminster City Council.
21. No deliveries to the premises shall take place between 23.00 hours and 08.00 hours on the following day.
22. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
23. 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 unless collections are arranged during the times for the Council's own commercial waste collection service for the street.
24. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 08.00 hours on the following day unless collections are arranged during the times for the Council's own commercial waste collection service for the street.
25. Delivery drivers shall be given clear, written instructions to use their vehicles in a responsible manner so as not to cause a nuisance to any residents or generally outside the premises; not to leave engines running when the vehicles are parked; and not to obstruct the highway.

26. 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.
27. All fabrics, curtains, drapes and similar features including materials used in finishing and furnishing shall be either non-combustible or be durably or inherently flame-retarded fabric. Any fabrics used in escape routes (other than foyers), entertainment areas or function rooms, shall be non-combustible.
28. 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.
29. Except for any authorised external seating areas, all sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
30. There shall be no sales of alcohol for consumption off the premises after 23.00 hours.
31. The number of persons accommodated at the premises as a whole at any one time excluding staff shall not exceed (x) persons- to be determined on clearance of works condition. The figure (x) shall not exceed 120.
32. No licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition will be removed from the Licence by the Licensing Authority. If there are minor changes during the course of construction new plans shall be submitted with the application to remove this condition.
33. The licence holder shall ensure that any queue to enter the premises which forms outside the premises is orderly and supervised by door staff so as to ensure that there is no public nuisance or obstruction to the public highway.
34. All outside tables and chairs shall be rendered unusable by 21:00 hours each day.
35. No takeaway food delivery service shall operate from the premises.
36. There shall be no external seating on St Vincent Street.
37. Patrons permitted to temporarily leave and then re-enter the premises to smoke shall be restricted to a designated smoking area on Aybrook Street.

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

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

The Meeting ended at 1.15 pm

CHAIRMAN: _____

DATE _____