



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (3)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (3)** held on **Thursday 21st March, 2024**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Robert Eagleton (Chair), Concia Albert and Ed Pitt Ford

1. MEMBERSHIP

1.1 There were no changes to the membership.

2. DECLARATIONS OF INTEREST

2.2 There were no declarations of interest.

1. CHILTERN FIREHOUSE, 1 CHILTERN STREET, W1U 7PA

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

Thursday 21 March 2024

Membership: Councillor Robert Eagleton (Chair),
Councillor Concia Albert and
Councillor Ed Pitt Ford

Officer Support: Legal Adviser: Steve Burnett
Policy Officer: Aaron Hardy
Committee Officer: Jonathan Deacon
Presenting Officer: Kevin Jackaman

Other Parties: Mr P Kolvin KC (Applicant's Counsel)
Marcus Lavel – Keystone Law (Solicitor for the Applicant)
Mr Hamish Thompson (Managing Director for the Applicant)
Mr Richard Vivian (Acoustic Expert for the Applicant)

Anil Drayan (Environmental Health Service - EHO)
Janet Lee, Gloria May, Heather Adlam (Interested Parties)
Camilla Johnson-Hill (Interested Party attending virtually)
Richard Brown (on behalf of the Interested Parties named above
and Jasmin Sohi)

FULL DECISION

Application for a variation of Premises Licence in respect of Chiltern Firehouse, 1 Chiltern Street, London W1U 7PA - 23/08839/LIPV.

Premises

Chiltern Firehouse
1 Chiltern Street
London
W1U 7PA

Applicant

Chiltern Street Hotel Limited

Ward

Marylebone

Cumulative Impact

None

Special Consideration Zone

None

There is a resident count of 186.

Application

This is an application for a variation of a premises licence under the Licensing Act 2003 ("The Act"). The premises currently trades a hotel and has had the benefit of a Premises Licence since 2012.

This application is made in line with the Westminster Council's recent decision to grant a variation of the conditions attached to the Planning Permission for this site, under Planning Application 23/02315/FULL, and is to amend the wording of Condition 46 on the current Premises Licence, to:

46. All tables and chairs shall be removed from the outside area or rendered unusable by 21:00 daily Sunday to Wednesday, and 22:00 daily Thursday, Friday and Saturday.

The current Condition 46 reads:

46. All tables and chairs shall be removed from the outside area or rendered unusable by 21:00 each day save that up until 30 September 2022 the hour shall be extended to 22:00 in respect of the courtyard only after which time the condition shall be reinstated and thereafter remain in full force and effect.

Representations Received

- Anil Drayan – Environmental Health Services (EHS)
- 4 Objections - Resident.
- 6 Support – Resident.

Issues raised by Objectors.

The EHS states the application will lead to an increase in public nuisance.

The objecting resident state a grant of the application will cause an impact until the courtyard is closed. It has an impact on health and sleep. Any grant should again be temporary until a proper assessment has been conducted.

The supporting residents state matters not relating to the Licensing Objectives
Westminster City Council's Licensing Policy Considerations

Policy HRS 1,

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.

Hotel Core Hours:

Monday to Thursday: 9am to 11.30pm.

Friday and Saturday: 9am to Midnight.

Sunday: 9am to 10.30pm.

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

For the sale of alcohol to guests for consumption in

hotel/guest rooms only: Anytime up to 24 hours.

HOT1

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

4. The sale by retail of alcohol, regulated entertainment and late-night refreshment must be an ancillary function to the primary purpose of the venue as a hotel.

6. The application and operation of the venue meeting the definition of a Hotel as per Clause C.

C. For the purposes of this policy a Hotel is defined as a premises that is primarily used as an establishment providing overnight accommodation for customers.

Policy C1 states in order to prevent public nuisance, it will be necessary to consider the extent of eating and drinking that will take place outdoors and the measures that may be appropriate to ensure that nuisance is not created. Outdoor eating and drinking and the congregation of people at night is likely to cause nuisance and conditions are likely to be imposed to limit the hours when this takes place. It also increases the potential for criminal activity. This may require staff to control or prevent people going outdoors with food or drink, either some or all of the time. Where appropriate, conditions will be imposed to manage or, if appropriate, prevent outdoor eating and drinking.

SUBMISSIONS

1. The Presenting Officer, Kevin Jackaman, Senior Licensing Officer, introduced the application to the Committee.
2. Mr Kolvin, representing the Applicant, informed the Committee that the application was for a variation to the premises licence to extend the use of the Hotel courtyard from 21:00 hours to 22:00 hours on Thursdays to Saturdays inclusive. He emphasised that this did not give rise to a general review of the Premises Licence. He commented that this was the sixth time the Sub-Committee had considered the one hour extension for the courtyard area. There had been applications for temporary extensions in 2021 (for 7 nights a week) and 2022 (for 3 nights a week) which had both been granted. Mr Kolvin described the proposed extension as being well tested across 330 nights of trade. He also mentioned the permanent one hour extension for the courtyard on Thursdays to Saturdays granted by the Council's Planning Applications Sub-Committee in November 2023 and that Environmental Health had not objected to that application, or the conditions and noise management plan. He added that the objections at the Planning Applications Committee closely mirrored those at the current hearing.
3. Mr Kolvin explained that the Applicant was not making the case that activity in the courtyard was never audible. However, given the nature, the hours and the days of the use, it fell significantly short of causing a public nuisance.
4. Mr Kolvin referred the Committee to the Applicant's responsibilities regarding the conditions which had previously been attached to the premises licence for the Hotel and the courtyard area. These included an obligation to host residents' meetings if requested by residents, appointing a competent Acoustic Consultant to produce a Noise Mitigation Policy, have a copy of the Noise Mitigation Policy at the Hotel reception, prominently display notices for

the public to leave the premises quietly, no noise being permitted to emanate from the premises, no loud speakers in the external entrance lobby or outside the premises building, no regulated entertainment within the courtyard area except for unamplified live music for events between 10:00 and 21:00, supervision of the courtyard by at least one SIA door supervisor or dedicated/trained duty manager, between 21:00 and 22:00 hours the consumption of alcohol in the courtyard being to seated persons and by waiter/waitress service and a street warden being required to patrol the vicinity of the premises from 17:00 to midnight on Monday to Saturday and 17:00 to 23:00 on Sunday.

5. Mr Kolvin commented further on Environmental Health's position in respect of the applications in 2021 and 2022 for the temporary extension of the terminal hour in the courtyard. He stated that Mr Watson had suggested at the 2021 meeting that Environmental Health was agreeable to a terminal hour of 22:00 and with the proposed conditions being attached to the premises licence. Mr Kolvin stated that it had been noted that in the 2022 Committee meeting, Environmental Health had visited residents' dwellings following complaints of noise nuisance from the premises and found audio in the home was minimal. Mr Nevitt had advised at that meeting there was nothing substantive to indicate that the courtyard would be a source of concern. The Committee had found then that the noise emanating from the courtyard during the operating hours was not so substantial to justify the application being refused.
6. Mr Kolvin drew the Committee's attention to there having been an extensive consultation by his client prior to the current application with 1,392 people having been written to in order to invite them to a community event to discuss the planning and licensing applications. Sixty-one had attended and twenty-six feedback forms had been submitted. Mr Kolvin described these as being overwhelmingly supportive and spoke of the Marylebone Association and two adjoining residents as having been content with the application.
7. The conclusions of Mr Vivian's technical report on behalf of the Applicant was that there had been no substantiated complaint and no detrimental impact from the use of the courtyard.
8. Mr Kolvin commented on 50 video clips recorded on a mobile phone of the Hotel, including the courtyard area, which had been submitted by a local resident objecting to the application. A response had been provided by Mr Vivian explaining that sounds heard on a mobile phone were not a reliable indicator of actual noise and that the recordings had taken place outside the window. Mr Kolvin expressed the view that the recordings of the courtyard area only demonstrated talking and no shouting or music emanating specifically from this area.
9. Mr Kolvin stated that his client sought to be a good neighbour, including having run residents' meetings, logging every communication and complaint and offered discounts off food, drink and hotel bookings which had been taken up multiple times by residents of Chiltern Street during 2023. He remarked that it was clear that the Applicant had not been able to please all of its neighbours all of the time but the fact that there were four objectors after thirteen months of the latter use of the courtyard area appeared to tell its own

story. He concluded with the points that the Hotel courtyard was not in the CIZ, the later hours were within Core Hours, the sound was contained in the courtyard and the area was properly constructed, soft furnished and supervised. Its use had been reviewed by professional officers, including three Environmental Health officers and fell significantly short of being a public nuisance.

10. In response to a question from the Committee, Mr Thompson advised that there was always a SIA door supervisor located at the front gate and up to a maximum of three at any one time. From 17:00 to 01:00 a street warden was employed to patrol the area. There were also two managers dedicated to the courtyard area at all times.
11. Mr Vivian responded to a question from the Committee as to whether he had taken up any offers from residents to do an acoustic assessment from their homes. He stated that the Hotel had been in operation for approximately ten years, and he had visited a number of residents' properties over the course of those years. He had not visited any in recent years. This was primarily because he had not been given access. He said that he had been asked to leave by a local resident when being of the view that the sound levels did not constitute noise nuisance. He added that Council officers were able to visit residents' properties too. There was historic information from approximately five years ago of the noise level in residents' flats until 21:00 hours. Mr Vivian was of the view that there would not be a significant difference in noise levels between 21:00 and 22:00 hours.
12. Mr Vivian was asked by the Committee to provide further detail in relation to a specific aspect on the courtyard in his report. He advised that over the courtyard there were a number of glass canopies and there was a vertical wall at the front of the courtyard. The canopies covered the critical perimeter edges and there was canvas which acted as a form of sound attenuation. He was of the view that there was a small number of residents who had a line of sight to part of the courtyard but not the entirety. Mr Vivian confirmed that he had monitored noise measurements from within the Hotel at the equivalent height of residents' flats. He had found that an individual voice from the courtyard would be no louder than an individual walking down the street and, in many cases, they would be obscured by the brick wall.
13. In response to questions from the Committee, Mr Kolvin replied that in 2023 there had been 11 complaints to the Hotel and 10 had been made by a local resident. In 2022 there had been 23 complaints and 18 had been by the same local resident. In relation to the courtyard, Mr Kolvin believed that there had been three complaints from the local resident. One related to shouting in the courtyard at 21:30 hours in February 2022, another on 2 March 2022 at 19:30 hours when a private event was held and a third on 10 March 2022 that the courtyard had been noisy all day. Mr Kolvin wished to emphasise that the complaints had been raised with the restaurant manager at the time and that there had been no evidence found to date by Council officers of noise nuisance emanating from the courtyard.

14. Mr Kolvin clarified to Members that his client offered meetings when asked by local residents as required in the condition on the premises licence. He stated that these took place up to May 2022 and the owner of the Hotel had attended the most recent meeting. The small number of local residents who had attended had informed his client that they did not want any further meetings. He added that his client would be willing to start the meetings again. The Applicant had also offered a WhatsApp group for the residents in the event of any issues, but residents had expressed concerns about providing their details.
15. Mr Kolvin made the point that the application related purely to the courtyard. However, he acknowledged that there was an area behind the courtyard called the 'Ladder Shed' where music was permitted to be played and there had been complaints that there was noise breakout. He advised that Hotel management were investigating this in conjunction with Environmental Health officers. He stated that if it was found to be necessary, the noise limiter would be reset.
16. Mr Vivian clarified that the nearest noise sensitive premises were the rooms in the Hotel and management therefore had to ensure that the activities did not impact on the hotel residents as well. The calculations that he had previously undertaken were in relation to the local residents' homes opposite. He had assessed the courtyard sound levels from Room 11 of the Hotel.
17. The Committee heard from Mr Drayan on behalf of the Environmental Health Service (EHS). He confirmed that he had responded to the planning application for the additional hour sought in the courtyard in November 2023. He advised that he had been satisfied with the information provided. Mr Drayan clarified that he had not asked the Applicant to conduct an acoustic assessment inside a resident's home in respect of the current licensing application because it would not be known how many people would be in the courtyard in the event this took place. He had therefore requested an assessment on the courtyard being at full capacity and its impact on the flats opposite. He added that based on the information provided it had shown that the courtyard was well managed and was not used for amplified music or entertainment purposes. It had demonstrated that the use of the courtyard would not result in public nuisance.
18. Mr Drayan advised Members that for the additional hour sought on Thursdays to Saturdays residents would hear something from the courtyard but at that time of day anyone living in a mixed use area should expect some level of activity in their area. If similar noise levels took place after 23:00 hours they would probably be deemed to be a public nuisance which was the reason this was a cut off point for tables and chairs licences. After this time, it would potentially impact on residents' ability to sleep.
19. Mr Drayan confirmed that City Inspectors had assessed the level of noise from outside and inside residents' homes and had found that the use of the courtyard did not amount to public nuisance. He commented that he would not normally have maintained his representation, but he was aware of residents' objections and was in attendance to assist the Committee and

answer any questions. He was aware of one noise complaint received by Environmental Health on 13 July 2023 that was reported to have resulted from the use of the courtyard. The City Inspectors had visited later but the courtyard area was not being used at that time.

20. The Committee was addressed by Mr Brown, representing four local residents objecting to the application. He stated that the residents were mystified by the suggestion that residents did not have a line of sight to the courtyard from Wendover Court as there clearly was.
21. Mr Brown mentioned that the residents of Wendover Court were tired of objecting to regular licensing and planning applications and that it was very stressful for residents to appear at the hearings. The four residents had objected to the current application in order to seek a balance between the residents' needs and the business' needs. It was the Wendover Court residents' core submission that an extra hour in the courtyard for a hotel with other entertainment provided including a nightclub could only be a small benefit for the Applicant whereas it was a major disbenefit for the residents living opposite.
22. Mr Brown referred to there being three major differences between the current application and the two applications previously submitted in 2021 and 2022. The first was that the current application was not affected by Covid whereas it was felt that the 2021 and 2022 applications were. Although residents had submitted representations to the previous applications, it was understood that the Council was morally bound to support the applications because of the situation which was in existence at the time where the courtyard could not benefit from the deregulation of off sales as it was an on sale. This was not the case now. Mr Brown stated that secondly, the application was permanent and not temporary as the two previous applications had been and thirdly, there was video evidence produced from a resident's mobile phone.
23. Mr Brown commented that residents of Wendover Court had in some cases lived there for many years prior to the establishment of the Chiltern Firehouse Hotel. He referred to Chiltern Street as not having been particularly affected by mixed use development with the Planning Officer's report for the additional hour in the courtyard application in November 2023 confirming that Chiltern Street was a relatively quiet location. Mr Brown provided a quote from the same report that the extent of the extended use of the courtyard would result in an increase in later noise and activity. He added that there had been fourteen objections to the planning application.
24. Mr Brown expressed the view that there appeared to have been a reliance on the acoustic report in relation to the planning decision and that whilst there had been a site visit, residents' flats had not been visited. He added that there had been a similar reliance on the acoustic report by the Applicant for the current application and there had been no response from the Applicant to two resident objectors to the licensing application offering the opportunity to take sound measurements from their flats. He was not aware of any attempt by the Applicant to contact the objectors in respect of the current application. Mr Brown asked the Sub-Committee to look at the acoustic report in the

context of the video evidence captured by a local resident on a mobile phone which was meant to provide a fuller picture.

25. Mr Brown explained that the application would impact on residents because it was an extra hour when they would not get the peace that they would expect during the later evening. It was not the case that it was a given for outside areas to be granted later hours and these decisions were often taken as a balance between the interests of residents and businesses.
26. The Committee was provided with clips of footage from the local resident's mobile phone. Three of these were shown at the hearing. The first video was taken at 20:47 hours on 17 August 2023. The second was taken at 20:34 hours on 14 March 2024 and the third was taken at 18:42 hours on 16 March 2024. The resident referred in the third video to noise coming mostly from people located at the front in the glass walkway.
27. The local resident described the courtyard as the largest daily outside hospitality place in the Marylebone area with a capacity of up to 120 people. Reference was made to the noise level rising at around 12:30 hours, then rising another level at 17:30 and continuing there until the end of the operation in the courtyard area. It was stated that despite what the acoustic report had set out the noise was sufficiently loud to be an ongoing nuisance to residents opposite. The noise could be heard through open windows, and it was also audible through double glazed, sound insulated, closed windows and at the back of the resident's room. The Committee was advised that the local resident had not been able to record on the mobile phone from the back of the room.
28. The local resident referred to the personal impact of responding to a number of planning and licensing applications and making complaints in response to noise which was having an adverse effect on a daily basis. It was stated to be worst Thursdays to Saturdays, including when the Hotel nightclub (in the Ladder Shed) was in operation and especially during the Summer. The local resident explained that it was felt that promises had not been kept by the Portman Estate when they had asked residents to support the change of use to commercial at the site.
29. Concerns were expressed by the local resident that the additional hour in the courtyard Thursdays to Saturdays would have an adverse impact on a baby and young children residing in flats overlooking the street. It was emphasised that complaints were not received from residents because they were tired of doing so and not all residents knew how to complain. It was also felt that there were improvements on occasion in terms of what residents experienced but that there was 'slippage' and the noise became worse.
30. A second resident objecting to the application addressed the Sub-Committee. Members were advised that the local resident lived directly opposite the courtyard and had never had any communication with anyone at the Hotel, including in relation to the WhatsApp group and any potential discounts for local people. The resident described noise from the courtyard as a constant

anxiety. There was a sight line under the canopy and it could be seen who was making the noise.

31. The Committee sought clarification as to whether the Applicant was aware of an invitation to visit residents' flats in order to make an acoustic assessment. Mr Kolvin replied that his client was not aware of an invitation and there had been a history of being asked to leave residents' flats. However, the Applicant would be prepared to undertake an acoustic assessment from residents' flats. He added that it was highly likely that the assessment would be the same as Mr Vivian and Mr Drayan had indicated and the sound would be a low rumble and not a public nuisance. He believed the resolution was for the Committee to rely on the condition already attached to the premises licence that 'no noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance'.
32. The first resident made the point that whilst there had been an upsetting aspect to communications with Mr Vivian which had meant he had been asked to leave the flat previously, the invite to take measurements from the flat did still stand. It was noted that the second resident had also offered to have an acoustic assessment undertaken.
33. Mr Drayan advised the Committee that he would not class the video footage captured by the local resident's mobile phone as a statutory or public nuisance, taking into account the times of the recordings and that there had not been evidence of a constant noise such as shouting, laughing or singing. He commented that he fully sympathised with the residents of Wendover Court because they had previously lived in an area that had been quieter in nature and which had become increasingly mixed use.
34. In response to a question from the Committee, the first resident stated that children of relatives could no longer stay at the front of the property due to noise from the Hotel and it impacted on having visitors. Another resident had to sleep in the sitting room when events took place in the Hotel. The point was also made that whilst there were definitions of public and statutory nuisance, both children and adults needed winding down time and children might need to go to bed before 22:00 hours.
35. In answer to a question from the Committee's legal adviser regarding the condition 49, that 'There shall be at least 1 SIA door supervisor or a dedicated and trained duty manager in the courtyard to manage the courtyard area whose primary purpose is to ensure that the four licensing objectives are promoted in particular that of prevention of public nuisance', Mr Kolvin agreed for the condition to be amended so that there was a requirement for there to be at least 1 SIA door supervisor and a dedicated trained duty manager to manage the courtyard area in order to provide additional assurance.
36. In his summing up, Mr Brown stated that public nuisance was not defined in the Licensing Act. The Guidance mentioned that it may include the reduction of the living and working amenity and environment of people in the area of the licensed premises. Mr Brown commented that was the experience and

evidence of a number of residents and what was perceived in the videos. Mr Brown re-iterated the differences between the current application and the previous applications in 2021 and 2022 and that a permanent extension of the terminal hour for the courtyard area Thursdays to Saturdays was not appropriate.

37. Mr Brown clarified that the residents were not saying, and the videos were not showing, that there was bad behaviour. This he believed could be addressed by a duty manager or a management plan. He made the point however that the regular noise of 115 people would not be addressed. He therefore recommended that there was a balance between the needs of residents and the business and that granting an additional hour would push the balance too far.
38. In his summing up, Mr Kolvin stated that there had been 330 nights of testing of the extended hour of courtyard use. He referred to the Section 102 Guidance and that the Environmental Health Officers were probably the most experienced in the country at evaluating the balance of residential and commercial needs. The specific officers who had attended the three meetings in 2021, 2022 and 2024 were particularly experienced.
39. Mr Kolvin mentioned the Applicant's technical acoustic memo which had set out that mobile phones were not a reliable recorder of sound level. He commented that Mr Drayan's reaction had been that when the courtyard space was well managed, there was no regulated entertainment or constant shouting, laughing or singing, in a mixed use area it did not amount to a public nuisance.
40. Mr Kolvin disputed previous decisions of the Committee had been based on other considerations such as Covid. He explained that in respect of the 2022 decision, Members of the Committee had set out their approach, being mindful that a balance needed to be struck and had reminded residents there were mechanisms to report noise in the event they were adversely affected by nuisance. However, they had not found that the noise emanating from the courtyard was sufficiently substantial for the application to be refused. Mr Kolvin added that more technical evidence had been provided since then by Mr Vivian.
41. Mr Kolvin also responded to Environmental Health's log of having received a noise complaint on 13 July 2023 that was reported to have resulted from the use of the courtyard. He stated this was a Temporary Event Notice for a stand-up reception and people then proceeded to go inside the Hotel. He did not believe that this was in keeping with the current application where customers would be seated.
42. Mr Kolvin reiterated that there were conditions that his client was required to meet, that the Hotel had offered to provide an additional member of staff in terms of managing the courtyard and that his client was keen to communicate with residents. He recommended that the Committee encourage both parties to re-engage and reiterated that the Applicant was content to undertake

acoustic assessments from residents' flats. Mr Kolvin asked that the Committee note the expert opinions of Mr Vivian and Council officers.

DECISION

43. The Committee has determined an application for a **VARIATION** of a 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 did so when determining this application.
44. The Committee regard to the fact that planning permission had been granted for the permanent extended hours on Thursdays to Saturdays and that the test for nuisance to residential premises in the vicinity under the Planning regime, is a stricter test than that under the Act.
45. The EHO, has also supported the application and stated that noise nuisance from the Courtyard reported by the residents had not been substantiated. The EHO also confirmed that he and the EH department were of the view that the grant of this application will not cause a Public Nuisance at the times requested, with good management and in an area which is mixed commercial and residential use.
46. It was noted that a majority of the complaints related to noise/music escape from the Premises but not from the Courtyard. Noise escape from inside the Premises is currently being addressed.
47. Noise from the courtyard is, in the main, noise from customer speech but noise which the Acoustic expert, the EHO and his colleagues historically confirmed to Planning and Licensing Committees, does not amount to a public nuisance.
48. The Committee had regard to the report and evidence from Mr Vivian, but this would have carried more weight if there was partnership working between the Applicant and residents and the acoustic assessment had been conducted using readings from inside residential properties.
49. The Committee noted the number of staff present in the courtyard when used, which includes SIA registered door staff and that there is no substantiated occurrence of public nuisance caused as a result of the trade of the Courtyard.
50. Attempts have been made by the Applicant to engage with residents and Mr Kolvin KC reiterated that the Applicant welcome future partnership working with local residents, and this is encouraged.
51. However, the Committee heard the resident's concerns, which in the main concerned the escape of noise from within the Premises. The video footage and pictures were noted and the fact that previous extensions were permitted during the COVID period to support businesses. The Committee would encourage the residents to work with the Applicant to appease their concerns. However, should the residents have ongoing issues in relation to the

Premises Licence or breaches of conditions, then they are entitled to apply for a Premises Licence Review.

52. The Committee noted that there are a number of conditions on the current Premises Licence which aims to support residents, namely conditions 11, 12, 13, 21, 45, 46, 49 and 58.

53. The Committee balanced the needs of the business with the needs of residents and considered that the operation of the Courtyard promotes the Licensing Objectives based on the evidence. The Members have carefully considered the Act, the Guidance issued under sec 182 of the Act, Westminster's Statement of Licensing Policy, committee papers, the additional papers, video evidence and the submissions made by all of the parties orally.

54. The Committee is satisfied that, the Applicant have shown on the balance of probability that they have systems in place, and a sufficiently conditioned Premises Licence to promote the four licensing objectives. It is appropriate and proportionate, in all the circumstances, to **GRANT** the application: -

1. To amend the wording of **Condition 46** on the current Premises Licence, to:

46. All tables and chairs shall be removed from the outside area or rendered unusable by 21:00 daily Sunday to Wednesday, and 22:00 daily Thursday, Friday and Saturday.

2. To amend **Condition 49** to:

49. There shall be at least 1 SIA door supervisor **and** a dedicated and trained duty manager in the courtyard to manage the courtyard area whose primary purpose is to ensure that the four licensing objectives are promoted in particular that of prevention of public nuisance.

3. Retain current and relevant Mandatory Conditions.

4. Retain all other conditions on the existing Premises Licence, insofar as they are not amended by this application:

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

**Licensing Sub-Committee
21 March 2024**

2. M&S SIMPLY FOOD, 83-85 SHAFTESBURY AVENUE, W1D 5DA

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 3
("The Committee")

Thursday 21 March 2024

Membership: Councillor Robert Eagleton (Chair),
Councillor Concia Albert and
Councillor Ed Pitt Ford

Officer Support: Legal Adviser: Steve Burnett
Policy Officer: Aaron Hardy
Committee Officer: Jonathan Deacon
Presenting Officer: Kevin Jackaman

Others present: Mr Luke Elford (John Gaunt & Partners, representing the
Applicant),
Mr Jody Styles (Applicant Company),

Mr Maxwell Koduah (Environmental Health - EHS),
PC Dave Morgan (Metropolitan Police - MPS) and
Mr James Hayes (Licensing Authority - LA).

FULL DECISION

Application for a New Premises Licence in respect of M&S Simply Food
83 - 85 Shaftesbury Avenue, London W1D 5DX - 24/00330/LIPN.

Premises

M&S Simply Food
83 - 85 Shaftesbury Avenue
London
W1D 5DX

Applicant

London Retail Partners Limited

Ward

West End

Cumulative Impact

West End

Special Consideration Zone

None

There is a resident count of 100.

Application

This is an application for a new premises licence under the Licensing Act 2003 (“The Act”). The premises intends to trade as a Marks and Spencer’s (M&S) Simply Food retail store.

To Permit:

The sale of alcohol (off sales)

Mondays to Saturdays - 08:00 to 23:00
Sundays 09:30 to 22:30

Opening Times:

Sundays to Thursdays 06:00 to 24:00
Fridays and Saturdays 00:00 to 24:00

Representations Received

- Karyn Abbott – Licensing Authority (LA)
- Maxwell Koduah – Environmental Health Services (EHS)
- PC Dave Morgan – Metropolitan Police Service (MPS)

Issues raised by Objectors.

The LA state that the premises will be a M&S Simple Food would the applicant agree to:

MC86. The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a grocery shop.

The LA would also like to know if the premises will be doing any deliveries and how this will monitor and control off sales, and how the premises will not add to cumulative impact in the in accordance with policy CIP1.

The EHS state the hours requested to supply alcohol would have the likely effect of causing an increase in Public Nuisance and public safety. Additional conditions are being proposed to meet the licencing objectives of Public Nuisance and Public Safety.

The MPS state the addition of conditions would prevent crime and disorder and protect children in the CIZ.

Policy Considerations

Policy CIP1

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

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

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

Policy HRS 1

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.

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

Monday to Thursday: 9am to 11.30pm.

Friday and Saturday: 9am to Midnight.

Sunday: 9am to 10.30pm.

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

Policy SHP1

B. Applications for a shop inside the West End Cumulative Impact Zone will be considered on their own merits and subject to:

1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1.
2. The hours for licensable activities are within the council's Core Hours Policy HRS1.
3. The operation of any delivery services for alcohol meeting the council's Ancillary Alcohol and/or Late-night Refreshment Delivery Service Policy DEL1.
4. The applicant having taken account of the Special Consideration Zone Policy SCZ1 if the premises are located within a designated zone.
5. The application and operation of the venue meeting the definition of a shop.

SUBMISSIONS

1. The Presenting Officer, Mr Jackaman, Senior Licensing Officer, introduced the application.
4. Mr Elford, representing the Applicant, whilst stating that he would not make a significant issue of the matter, expressed concerns that Mr Koduah on behalf of the EHS had indicated in writing on 15 March, that the EHS withdrew their representation on the basis of 2 of the proposed conditions being accepted by the EHS.
5. Mr Elford sought additional confirmation by email as the Applicant had not agreed a condition requiring lockable cabinets. Mr Elford did not received a response. The Applicant had therefore worked on the basis that Environmental Health would not be a party to the hearing.
6. Mr Koduah informed the Committee that there had been a misunderstanding on his part, and he had thought that all his proposed conditions had been agreed with the Applicant. On that basis he had indicated he was withdrawing his representation. He had been unwell when Mr Elford had sought clarification on the position. Mr Koduah made the point at the hearing that the condition requiring lockable cabinets was one also being proposed by the Metropolitan Police and not solely by EHS.
7. Mr Burnett, the Legal Advisor to the Committee, advised that the Licensing Act 2003 (Hearings) Regulations 2005 gave the opportunity for Members to ask questions of those present at the hearing. The Committee had not been informed prior to the hearing that the Environmental Health representation had been withdrawn. Mr Jackaman stated that he had not been informed by Mr Koduah that he had formally withdrawn the EHS representation (Mr Elford did comment that he had forwarded notification to the Licensing Authority of the apparent withdrawal of the EHS representation). The Committee decided to permit Mr Koduah to make representations solely in relation to the lockable cabinets.
8. Mr Elford outlined the application. He wished to address the Committee on three grounds, the Council's policy, Police evidence and the measures the Applicant was taking in relation to the premises at Shaftesbury Avenue. Mr Elford emphasised that the differences between the parties at the hearing was based on the terms and conditions of the licence and not whether the application should be granted or not. There were no residential objections to the application.
9. In respect of the Council's policy, Mr Elford referred to there being no presumption to refuse the application in the West End Cumulative Impact Zone (CIZ) as the Shops Policy (SHP1) applied and the hours being within the Council's Core Hours policy. There will be not delivery service connected with the business and the shop is not in a Special Consideration Zone.
10. In relation to Police evidence, Mr Elford asked the Committee to look at this with a critical eye on the basis that he believed there was a lack of direct

evidence that the application would undermine the licensing objectives, including in terms of the data and statistics received which he commented were generic and not specific. This, he said, included figures from the whole of the West End Ward, including all from retail stores. Mr Elford also explained that he was of the view that it was irrelevant that there were specific conditions on other premises licences relating to locked cabinets as each case is heard on its own merits.

12. In terms of the measures taken at the premises, Mr Elford advised the Committee that the alcohol was located at the very rear of the store. Also, there would be a person standing near the entrance, greeting customers as they came in and there would always be a member of staff near the tills. In total there would be four to six people overseeing the store at any one time, in addition to CCTV. Staff would be trained to the standards of M&S (the Applicant was a franchisee). Mr Elford expressed the view that the types of alcohol that were stocked at the store were not attractive to street drinkers. They did not include high Alcohol By Volume (ABV) products.
13. Mr Elford confirmed that there were two outstanding conditions which had not been agreed by the Applicant. These were 'A minimum of 1 SIA licensed door supervisors shall be on duty at the premises at all times whilst it is open for business and they must correctly display their SIA licence(s) when on duty so as to be visible' **and** 'Outside of the hours authorised for the sale of alcohol and whilst the premises are open to the public, the licence holder shall ensure that all alcohol within the premises (including alcohol behind the counter) is secured in a locked store room or behind locked grilles, locked screens or locked cabinet doors so as to prevent access to the alcohol by both customers and staff'. Mr Elford explained that his client wished to risk assess when security staff were required and not for it to be imposed as a requirement at all times the store was open for business. He added that this would impact on the viability of the franchisee's stores as they were seeking to open twenty across three boroughs, including Westminster.
13. In relation to alcohol being secured, Mr Elford explained that the chillers did have blinds that could be brought down which would show that the alcohol was not for sale at that time. They were refrigeration devices, designed to keep cool air in, rather than anti-theft devices. They were provided by M&S and they did not have a locking mechanism. Mr Elford also informed the Committee that the Applicant had considered providing a barrier in front of the alcohol, but this was not possible due to fire safety reasons.
14. In response to questions from the Committee, Mr Styles advised that in the lease, which was for a minimum of fifteen years, the premises could only change ownership to M&S and it would have to remain a M&S store. Mr Styles also clarified that M&S had cross trained staff, engaging with customers, rather than a SIA security person on the premises at all times.

15. The Committee heard from Mr Koduah. He confirmed that the only remaining issue of concern for him was the lack of a lockable cabinet being available outside of the hours authorised for the sale of alcohol. He expressed concerns that the availability of the alcohol, exposed staff to risk and created the risk of public nuisance and public safety.
16. The Committee was addressed by PC Morgan on behalf of the Metropolitan Police. He stated that the Police had no issues with M&S or the Applicant. The point of difference between the Police and the Applicant was the SIA and secured alcohol conditions. The Police sought these in order to prevent crime and disorder. The store is located in a very busy part of the CIZ and had the highest crime rate in the West End.
17. PC Morgan referred to an issue with street drinkers and people who suffered with drug and alcohol addictions. Often their only source of obtaining alcohol was to steal from shops. PC Morgan added there was a Public Space Protection Order in this area which acted as a no drinking zone because of the issues there. He also mentioned a significant rise in shoplifting.
18. PC Morgan commented that without the two proposed conditions, the venue could be targeted by criminals and street drinkers. He appreciated the requirement for at least one SIA licensed door supervisor to be on duty at the premises at all times whilst it was open for business was an onerous condition but believed it was necessary at the location. The cost was not just to the store but to Police time and resources, potential anti-social behaviour elsewhere and drinking in the street. It was not really the staff's role to approach or potentially confront shoplifters.
19. PC Morgan commented that alcohol being safely secured would prevent shoplifting in the early hours. Lockable shutters would also prevent any confrontation after 23:00 hours when the shop was open for an additional hour after the sale of alcohol had ceased. He made the point that the Police had sought similar conditions for similar sized stores in the CIZ given the crime rate.
20. In response to questions from the Committee, PC Morgan remarked that he thought that shoplifters would be attracted to the store in the event there was no security present, or the shutters were not locked. He advised that the crime information provided referred to the West End rather than Shaftesbury Avenue specifically. Shoplifting had the third highest rate of any crime. The highest was theft from the individual on the street such as pickpocketing. Mr Elford disputed that the store is located where the highest levels of crime took place as set out in the Police data for shoplifting.
21. The Committee also heard from Mr Hayes on behalf of the LA. He had asked for further submissions that with the premises being in the heart of the CIZ there were sufficient conditions that the granting of the application would not add to cumulative impact. Mr Hayes added that had all the conditions been agreed between the parties then the Licensing Authority would have withdrawn their representation.

22. Mr Hayes referred to the area being extremely busy and that there would be stress on the business. He supported the proposed lockable shutters condition to prevent alcohol being stolen and staff being challenged. He also referred to the Council's cumulative impact assessment statistics from December 2023 which had found that theft was increasing back to pre-Covid levels. The assessment also set out that there was a higher rate of crime in the evenings in Soho along Charing Cross Road and roads such as Old Compton Street, Greek Street and Frith Street. Mr Hayes added that the store was close to the junction of Frith Street, and he therefore was of the view that the conditions were therefore proportionate.
23. Mr Hayes clarified in response to a question from the Committee that the crime statistics he had mentioned from the cumulative impact assessment were retail premises generally and not specifically off sales premises.
24. PC Morgan was asked by the Committee whether the premises he had listed in his representations all had a requirement for lockable cabinets and SIA security on their premises licence. He replied that all the stores listed had a condition on their premises licences requiring lockable cabinets/blinds/shutters, including M&S in Charing Cross Station (this was confirmed by the Licensing Service). However, the M&S in Charing Cross Station did not have a condition on its licence requiring SIA security at all times.
25. Mr Elford, in response to this point commented that this was possibly because station premises were operated by Select Service Partners. Mr Styles stated that he had seen the blind brought down at Liverpool Street. It was possible that it had been retro fitted so that a locking mechanism was added. Mr Styles believed that it might be possible for retro fitting to be introduced. He added that having spoken with the security team at M&S he was not aware of any stores that had incorporated the retro fitting or had lockable units. The Committee were informed that the effectiveness of the screens could be affected by the adaptation, and this could void any guarantee.
26. PC Morgan clarified that in the event the alcohol was stored in lockable cabinets outside of the hours authorised for the sale of alcohol, he was content for the Applicant to risk assess the need for SIA security.
27. Mr Elford advised that his client had agreed a condition with the Police that 'there shall be no self-selection of spirits on the premises, save for spirit mixtures less than 8% ABV'.
28. The Committee asked whether the lockable cabinets condition was entirely appropriate given that it was particularly for the period after off sales ceased whilst the shoplifting data peaked in the early evening and reduced significantly when alcohol was not being sold. Mr Hayes responded that this was potentially because surrounding businesses had their blinds down or were closed. These premises would be open both prior to and after the sale of alcohol.

29. In his summing up, Mr Elford mentioned that the Committee had been provided with a list of stores that had the SIA and lockable cabinets/blinds/shutters conditions on their premises licences. Members had not been provided with the premises licences which did not include these conditions. He concurred with the point that when the shoplifting data peaked was not the time when the alcohol would potentially be locked away. He reiterated that there was a substantial cost in having a condition requiring a SIA security person employed at all times the premises were in operation. The operators were experienced, running a franchise business for a globally known business and should be trusted to look at their own operation and promoting the licensing objectives. He added that there were a number of conditions designed to address cumulative impact. The issues raised by the cumulative impact assessments tended to be on street. It had not been demonstrated that retail premises added negatively to cumulative impact.

DECISION

28. 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 did so when determining this application.
29. The Committee noted that the data produced by the Authorities in relation to shop thefts, did not distinguish between shoplifting generally and off-licence premises and this Premises is not located where the highest levels of shoplifting took place as set out in the Police data.
30. It is clear that there is no objection to the grant of the application, however there are two conditions in contention.
31. The Authorities wants SIA door supervisors during all times the Premises is open to the public which would be at a cost of approximately £160,000 per annum to the Applicant. The Committee decided that in the absence of evidence showing high levels of shoplifting alcohol in this area, this condition was not proportionate. The Applicant has however agreed to using door supervisors on a risk assessed basis. The Committee determined that any risk assessment should be written, regularly updated and made available to the Authorities.
32. The Authorities also wanted alcohol to be secured. Again, in the absence of evidence showing the shoplifting of alcohol is a problem in the vicinity around the Premises, the Committee, whilst accepting that that ideally it would be better that alcohol was not visible outside permitted hours, the proposed condition was not appropriate or proportionate. This is considering, the cost, the risk of rendering shutters unsuitable, without recourse under a guarantee and that whilst the shoplifting data peaked in the early evening, it reduced significantly when alcohol was not being sold. Namely at the time that the Authorities required lockable shutters.

33. The Committee determined that alcohol should not be visible outside permitted hours and that it would be appropriate and proportionate to notify staff and members of the public at the shelves when alcohol is not for sale.
34. Having carefully considered the Act, the Guidance issued under sec 182 of the Act, Westminster's Statement of Licensing Policy committee papers, the additional papers and the submissions made by all of the parties orally, The Committee has decided, after taking into account all of the individual circumstances of this particular case and the promotion of the four licensing objectives: -

1. To **GRANT** permission:

To Permit:

The sale of alcohol (off sales)

Mondays to Saturdays - 08:00 to 23:00

Sundays 09:30 to 22:30

Opening Times:

Sundays to Thursdays 06:00 to 24:00

Fridays and Saturdays 00:00 to 24:00

2. **Relevant Mandatory Conditions to apply.**

3. **Appropriate and proportional conditions consistent with the operating schedule:**

1.

(a) The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team.

(b) All entry and exit points shall be covered enabling frontal identification of every person entering in any light condition.

(c) The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises and shall include the external area immediately outside the premises entrance.

(d) All recordings shall be stored for a minimum period of 31 days with date and time stamping.

(e) Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.

2. 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.

3. A Challenge 21 or Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification shall be recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.

4. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the premises by the police or an authorised officer of the City Council at all times whilst the premises is open.

5. All members of staff working on the tills shall receive training relevant to the sale of alcohol prior to being authorised to sell alcohol. Such training shall be refreshed at least annually. Records of training shall be maintained for a period of at least 12 months and made available for inspection at the premises by the police or authorised officer of the City Council at all times when the premises is open.

6. No more than 15% of the sales area shall be used at any one time for the sale, exposure for sale, or display of alcohol.

7. All sales of alcohol for consumption off the premises shall be in sealed containers.

8. All tills shall automatically prompt staff to ask for age verification identification when presented with an alcohol sale.

9. Prominent signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises, where alcohol is on public display, and at the point of sale.

10. 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 shall record the following:

- i) all crimes reported to the venue
- ii) all ejections of patrons
- iii) any complaints received concerning crime and disorder
- iv) any incidents of disorder
- v) all seizures of drugs or offensive weapons
- vi) any faults in the CCTV system, searching equipment or scanning equipment
- vii) any refusal of the sale of alcohol
- viii) any visit by a relevant authority or emergency service.

11. No miniature bottles of spirits of 20 cl or below shall be sold from the premises.

12. There shall be no self-selection of spirits on the premises, save for spirit mixtures less than 8% ABV.

13. On the Day of Pride in London:

- i. Alcohol sales in respect of cans of beer or cider shall be limited to no more than 4 cans per person.
- ii. The premises shall not externally advertise local promotions of alcohol.
- iii. No sales of alcohol in glass bottles or glass containers shall be made during this period.
- iv. Upon the direction of a Police Officer, using the grounds of the prevention of crime and disorder or public safety, the premises shall immediately cease to sell alcohol until further directed by the Police.

14. 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.

15. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.

16. The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a grocery shop.

Conditions imposed as proportionate and appropriate:

17. Outside of the hours authorised for the sale of alcohol and whilst the premises are open to the public, the licence holder shall ensure that all alcohol within the premises (including alcohol behind the counter) is not visible or secured in a locked storeroom, behind locked grilles, locked screens or locked cabinet doors.

18. When the sale of alcohol is not permitted, prominent signage indicating the permitted hours for the sale of alcohol or that alcohol is not for sale, shall be displayed so as to be visible at the points where alcohol is appropriated during permitted hours.

19. The requirement for SIA registered door supervisors at the premises, shall be subject of a detailed written risk assessment, updated 6 monthly and a copy retained at the Premises. This document shall be made immediately available to the Relevant Authorities on request.

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

**Licensing Sub-Committee
21 March 2024**

CHAIRMAN: _____

DATE _____