CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (4)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (4)** held on **Thursday 15th February, 2024**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Angela Piddock (Chair), Judith Southern and Karen Scarborough

1. MEMBERSHIP

1.1 There were no changes to the membership.

2. DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1. ARGYLL, 1ST, 2ND & 5TH FLOORS, 20 NORTH AUDLEY STREET, W1K 6WP

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

Thursday 15 February 2024

Membership:	Councillor Angela Piddock (Chair) Councillor Judith Southern and Councillor Karen Scarborough
Officer Support	Legal Advisor: Horatio Chance Policy Officer: Daisy Gadd Committee Officer: Jonathan Deacon Presenting Officer: Kevin Jackaman
Others present:	Mr Peter Mayhew (Beyond the Blue Limited, representing the Applicant), Mr Marco De Rosa (Head of Operations, Applicant Company), Ms Zsofia Ivanics (General Manager, Applicant Company), Mr Maxwell Koduah (Environmental Health Service), Mr Richard Brown, Licensing Advice Project (on behalf of Residents' Society of Mayfair and St. James's and 1 local resident) and 1 local resident (Residents' Society of Mayfair and St. James's).

Application for a New Premises Licence in respect of Argyll First, Second and Fifth Floors 20 North Audley Street London W1K 6WP 23/08775/LIPN

Full Decision

Summary of application

The Sub-Committee has determined an application for a New Premises Licence under the Licensing Act 2003 ("The Act") in respect of Argyll first, second and fifth Floors 20 North Audley Street London W1K 6WP ("The Premises"). The Premises operate as a high-end serviced office company. Via a concierge service, clients can order alcohol and or food to accompany corporate events such as meetings, presentations and conferences.

This is for the whole of the first, second and fifth floors and no licensable activities will take place on any other floors of the building. The Premises is not to open to the general public and this is no permanently open bar, clients must pre-order alcohol.

This is a new premises licence application and therefore no premises licence history exists. The Premises has had two temporary event notices one in 2021 and the other in 2022.

The applicant has provided the final proposed and agreed conditions and mediation letters to interested parties. This can be found at **Appendix 2** of the agenda report.

The proposed and agreed conditions can also be found at **Appendix 4**.

The Premises are located within the West End Ward but do not fall within either the West End Cumulative Impact Zone or any Special Consideration Zone. There is no policy presumption to refuse applications for a premises operating as an office space outside of the West End CIZ. The matter was assessed on its individual merits having regard to the evidence before the Licensing Sub-Committee and the promotion of the licensing objectives.

There is a resident count of 117.

Representations were received from the Environmental Health Service and two local residents all citing concerns regarding public nuisance.

Premises

Argyll
First, Second and Fifth Floors
20 North Audley Street
London
W1K 6WP

Applicant

Argyll Management Limited

Cumulative Impact Area

N/A

Activities and Hours applied for

Late Night Refreshment (Indoors)

Monday to Sunday 23:00 to 00:00

Seasonal variations: None

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

Monday to Sunday 08:30 to 00:00

Seasonal variations: None

Opening Hours of the Premises

Monday to Sunday: 00:00 to 00:00
Seasonal variations: None

Representations Received

- Environmental Health Service (EHS) (Maxwell Kodouh).
- Local resident.
- Local resident on behalf of Residents' Society of Mayfair and St. James's.

Summary of Representations

- *The Applicant has indicated that the supply of alcohol shall be through a concierge. The premises, according to supporting information, is not accessible to the general public on a walk-in basis and that access is via an electronic key-fob system for clients and their bona-fide guests.*
- *The fifth floor plan submitted with the application has been identified with a terrace within the proposed licenced area and this is an area of high risk of public nuisance.*
- *Given that the hours sought are in excess of the council's core hours, I make a representation on ground of public nuisance and public safety risk to the application.*
- *This office building is close to residential properties on three sides - on North Audley Street, North Row and Balderton Street (the rear of Clarence Buildings and other flats). Noise from open windows and from the terrace is a potential problem.*

- *Noise from upper floors of properties on North Row travels down that street and through gaps to the Balderton Flats courtyard, also affecting therefore the second block of Balderton Flats.*
- *A second source of noise problems concerns extra deliveries, waste and recycling generated events at this office building.*
- *Please therefore could the following conditions be included in the licence:*
- *No music or amplified sound on the terraces of the building.*
- *No music or vibration from inside the premises to be audible outside the premises between 9pm and 9am.*
- *No deliveries, servicing, waste and recycling collections between 8pm and 7am, other than WCC waste and recycling services.*
- *No movement of goods or items outside the premises between 8pm and 7am (except waste/recycling for Westminster collections).*
- *RSMSJ wishes to support local residential objections on grounds of public nuisance. I could not see a set of licence conditions proposed but at the very least the following issues need to be addressed :-*
- *Core hours. The licence should be restricted to core hours only. The argument about international clients is a red herring.*
- *Deliveries and collections. Restricted hours must apply.*
- *Terrace. We suggest that use of the terrace be terminated at 9pm*
- *Smokers. We suggest that smokers temporarily leaving the premises are not allowed to take drinks or glass containers with them.*
- *We are not opposed to the grant of the licence per se and if the above can be satisfactorily included in the final conditions of the licence we shall be minded withdrawing.*

Policy Considerations

Policies HRS1 and PB1 apply under the City Council's Statement of Licensing Policy ("SLP").

Policy HRS1

A. Applications within the core hours set out below in this policy will generally be granted for the relevant premises uses, subject to not being contrary to other policies in the Statement of Licensing Policy.
B. Applications for hours outside the core hours set out in Clause C will be considered on their merits, subject to other relevant policies, and with particular regard to the following:
1. The demonstration of compliance in the requirements of policies CD1, PS1, PN1 and CH1 associated with the likelihood of the effect of the grant of a licence for later or earlier hours on crime and disorder, public safety, public nuisance and the protection of children from harm.
2. If the application is located within a Special Consideration Zone they have demonstrated that they have taken account of the issues identified in that area and provided adequate mitigation.
3. Whether there is residential accommodation in the proximity of the premises that would likely be adversely affected by premises being open or carrying out operations at the hours proposed.
4. The proposed hours of the licensable activities and when customers will be permitted to remain on the premises.

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

Policy PB1

A. Applications outside the West End Cumulative Zone will generally be granted subject to:
1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1.
2. The hours for licensable activities being within the council's Core

Hours Policy HRS1.
3. The operation of any delivery services for alcohol and/or latenight refreshment meeting the council's Ancillary Delivery of Alcohol and/or Late-Night Refreshment Policy DEL1.
4. The applicant has taken account of the Special Consideration Zones policy SCZ1 if the premises are located within a designated zone.
5. The application and operation of the venue meet the definition of a Public House or Bar in Clause D.
B. It is the Licensing Authority's policy to refuse applications within the West End Cumulative Impact Zone other than:
1. Applications to vary the existing licence hours within the council's Core Hours Policy HRS1.
2. Applications that seek to vary the existing licence so as to reduce the overall capacity of the premises.
C. The applications referred to in Clause B1 and B2 will generally be granted subject to:
1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1, and/or,
2. The operation of any delivery services for alcohol and/or latenight refreshment meeting the council's Ancillary Delivery of Alcohol and/or Late-Night Refreshment Policy DEL1.
3. The application and operation of the venue continuing to meet the definition of a Public House or Bar in Clause D.
D. For the purposes of this policy a Public House or Bar is defined as a premises, or part of a premises that's primary use is the sale or supply of alcohol for consumption on those premises and/or for consumption off the premises for consumption outside the venue.

If the proposed operation of a premises does not meet all or part of the definition within the premises use policies the Licensing Authority will I have regard to the policy that most closely relates to that operation. For example, if an application is for a food led establishment providing meals for customers for consumption on the premises that does not fit the definition of a restaurant within the Restaurant Policy (RNT1), the licensing authority will generally look to apply the same considerations under the Restaurant Policy when determining that application. The Licensing Authority is aware that the operation, styles and experience that licensed premises offer are always evolving and in that some operations will not fit the premises use policy definitions.

SUBMISSIONS AND REASONS

1. The Presenting Officer, Kevin Jackaman introduced the application to the Sub-Committee.

2. Mr Mayhew, representing the Applicant, outlined the application. He described the nature of the business as a high end provider of serviced office space and on occasion alcohol was part of the service provided, including for clients' meetings or professional networking events. He advised that there

were different companies occupying the various office spaces and it was important that other businesses were not disturbed by any events held.

3. Mr Mayhew stated that the Applicant Company had been operating at the Premises for six years and had been delivering events, either without alcohol or providing alcohol via Temporary Event Notices (TENs). They had twenty nine sites across London and Mr Mayhew explained that seven or eight of them had licences until Midnight. He made the point that there had been no complaints relating to the Applicant Company and their provision of licensable activities at the premises they serviced.

4. Mr Mayhew confirmed that conditions had been agreed with the EHS in the event Members were minded granting the application.

5. Mr Mayhew expressed the view that the Applicant had addressed many of the concerns of the local resident who was not in attendance. One outstanding issue, he advised, was the collection of waste. The resident's current request was that there was to be no waste collection before 08:00 hours. Mr Mayhew explained that the waste carrier operated at the moment from 07:30 hours and that Environmental Health was content with this being conditioned. It was the Applicant's view that the amount of waste collected would not change in the event the application was granted.

6. Mr Mayhew commented that in terms of security, access was via an electronic key fob system for clients and their bona fide guests and it was necessary to be greeted in order to attend a function with alcohol at the Premises.

7. Mr Mayhew referred to the use of the terrace area on the fifth floor of the building at 20 North Audley Street. He stated that the Applicant was proposing that neither licensable activities nor the consumption of alcohol would take place on the terrace after 23:00 on any day. There would be no amplification on the terrace at any time. Environmental Health had proposed a capacity of 20 on the terrace (excluding staff) and this had been agreed by the Applicant. He added that there had been no complaints about the use of the terrace to date.

8. Mr Mayhew queried whether in fact Policy PB1 under the City Councils SLP was applicable on the basis that the proposed areas involved office spaces where alcohol was ancillary and was not open to the public rather than being a pub or a bar.

9. Mr Mayhew explained that whilst it was not thought that the office spaces would operate beyond 23:00 very often, flexibility was sought so that events could be held for clients at short notice until Midnight. He stated that there was no evidence to suggest that operating until Midnight would lead to public nuisance.

10. Mr Mayhew was asked by the Sub-Committee to respond to the point that it was now being proposed that up to 20 people were now able to consume alcohol on the terrace which had not been the case before. There was the potential for more noise if people were drinking. Mr Mayhew replied that his

client operated at a number of sites which all conformed to the same standards. It was also the case that the Applicant had to prevent noise affecting workers in other office spaces in the building. There was also not a drinking culture as there was no bar and drinks had to be pre-ordered.

11. It was also put to Mr Mayhew that people would also be potentially leaving the premises at Midnight, having consumed alcohol and there were residents in the area. He responded that in terms of a risk assessment the meetings involved a relatively small number of people and they did not stay in the area after meetings.

12. Mr Mayhew stated in response to a question from the Sub-Committee that the ability to sell alcohol was sought because clients expected it and it was permitted at other premises. It would be for a handful of events per year. He believed that those consuming alcohol on the terrace would generally sit down.

13. Mr Mayhew was asked by the Sub-Committee why children's parties were referred to in the application. He replied that children would generally not be present. There was the possibility of something like a 'bring your child to work' day. Children would be accompanied.

14. Members were advised that a telephone number for the manager at the Premises would be publicly available at all times the premises were open. There was a person at reception, including when events were taking place. It was clarified that the Applicant had requested that the condition agreed with the EHS set out there were no deliveries to the Premises, in respect of licensable activities, between 23:00 and 08:00 hours on the following day because there may be deliveries such as items being couriered that did not involve licensable activities.

15. It was explained by the local resident on behalf of the Residents' Society of Mayfair and St. James's that North Audley Street runs in a North-South direction and the terrace is to the rear of the number 20 building. Parallel to North Audley Street is Balderton Street where there is a significant block of flats on the west side.

16. The Sub-Committee heard from Mr Koduah on behalf of the EHS. He referred to his written representation and the concern that the terrace was initially seen as an area with a high risk of public nuisance. Mr Koduah stated that he had been content to amend the conditions for the telephone number for the manager of the Premises upon request and that the no deliveries between the Premises between 23:00 and 08:00 only related to licensable activities. He added that the primary reason for retaining his representation was that the proposed hours were outside the Council's Core Hours, particularly half an hour after the terminal hour Monday to Thursday.

17. In response to a question from the Sub-Committee, Mr Koduah advised that in order to address his concerns, he had sought that the terrace on the fifth floor was not used after 23:00 on any day and that the capacity was limited to 20 at any time, excluding staff.

18. Mr Brown confirmed he was representing a local resident who was not in attendance and also a local resident on behalf of Residents' Society of Mayfair and St. James's who was in attendance. Mr Brown stated that the local resident not in attendance was a long term resident of Mayfair and had lived through the growth of commercialisation and the resultant noise. It was being suggested that there was a consistent approach in relation to noise, particularly in terms of waste collections and deliveries and that a waste condition reflected the use of Westminster Council services which would increasingly involve electric and environmentally friendly vehicles.

19. Mr Brown queried whether proposed Condition 31 in the report which states that "*No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 20:00 hours and 07:30 hours on the following day"* referred to collections of waste. Mr Brown had concerns because there was a separate Council model condition for waste collections. He advised that Mr Mayhew was prepared to agree a separate condition, namely; Model Condition MC43, relating to no collections of waste or recycling materials (including bottles) from the premises taking place between specific hours. The preferred hours of the local resident were for the waste or recycling materials not to be moved between 20:00 and 08:00 hours the following day except if the Applicant was using the Council's waste services. This was on the basis that there would be no additional noise or disturbance because the Council already undertook collections.

20. Mr Brown commented that he accepted that there was a case for the Applicant to ask that the no deliveries condition between specific hours only included licensable activities due to the business needs within 20 North Audley Street. He requested however that in addition to no deliveries on the premises, there was also no associated catering taking place between 20:00 and 08:00 hours. The proposed hours were proposed in Condition 29 in the report. Mr Mayhew confirmed that he had no objection to the associated catering aspect of the condition being added if the Sub-Committee felt it necessary to do so. The Applicant had agreed with Environmental Health no deliveries in respect of licensable activities between 23:00 and 08:00 hours the following day.

21. The local resident on behalf of the Residents' Society of Mayfair and St. James's wished to bring to the attention of the Sub-Committee that the resident numbers were quite high in the area. It was confirmed that there was not an objection to this type of operation being granted. However, there were concerns regarding the proposed conditions, in particular the hours of licensable activities and the use of the terrace. It was proposed that the terminal hour for the use of the terrace was 21:00 hours as this was considered the right balance when it came to nuisance being caused in an outside space.

22. Mr Brown referred to the red line of the plans being drawn around the whole Premises rather than round where the alcohol station would be. He requested that in the light of the Applicant saying that there was no bar at the Premises that this was reflected in a condition.

23. Mr Brown also requested that proposed Condition 24 in the report was amended for enforcement purposes with the words "*in conjunction with an event (children's parties, family events etc"* be removed. The condition would then read "*Children are generally not present at the premises and the security of the building means they cannot gain access".* However, where they are invited onto the Premises they shall be accompanied by an adult'.

24. The Sub-Committee asked Mr Mayhew for his view on the terrace on the fifth floor being closed at 21:00. Mr Mayhew responded that the Applicant did not feel that the 23:00 terminal hour for the terrace was unreasonable. He added that it was a sit down area and had a hedge for protection. It had been used for six years without a problem and it was not perceived that there would be a public nuisance issue.

25. Mr Mayhew clarified that in relation to waste collections, the Applicant Company had a contract for all twenty nine sites and the collectors arrived from 07:30 hours. He referred to the requested condition from the local resident going further than the original representation which had originally sought a start time of 07:00 hours.

26. Mr Mayhew was asked about the proposed condition that there was no bar at the Premises. He responded that it was reasonable to put up a temporary bar for an event. He agreed for the avoidance of doubt an amendment that "*there shall be no fixed bar at the premises*".

27. Mr Aaron Hardy the Policy Advisor to the Sub-Committee clarified that the hours were outside Core Hours. Whilst the Premises did not fall clearly within one of the use types, however the closet policy relevant to the operation of the Premises fell within Policy PB1. Mr Mayhew responded that it was the Applicant's position that a midnight terminal hour was reasonable and it had been permitted at some of their other premises. He accepted the Core Hours policy but made the point that it was not a blanket policy where premises could not operate beyond that time. Applications were considered on their own merits and he did not believe it would cause public nuisance.

28. Mr Horatio Chance the Legal Advisor to the Sub-Committee asked Mr Mayhew whether the Applicant would consider a compromise of the hours for the terrace not being used after 22:00. Mr Mayhew asked that the Sub-Committee decide on a 23:00 terminal hour there. The local resident on behalf of the Residents' Society of Mayfair and St. James's stated that he would accept the compromise time of 22:00 for the terrace area and that the Applicant had the option, if seeking longer hours than Core Hours for licensable activities, to opt for TENs given that the Applicant's Representative had said they would only be required on a handful of occasions.

29. In his summing up, Mr Mayhew referred to the risk assessment his client had undertaken. He believed his client had compromised with the various parties except in relation to the terminal hours for the terrace and the licensable activities. He added that it was not like a pub where everyone left at the same time and it was therefore not felt that there should be a dispersal policy put in

place. There was a review process in the event there were public nuisance issues. Mr Mayhew re-iterated that the Applicant was seeking flexibility to hold events at short notice and this would potentially be too late to apply for TENs.

Conclusion

30. The Sub-Committee realises that it has a duty to consider each application on its individual merits and did so when determining the application for a premises outside of the West End CIZ. There was no policy presumption to refuse the application under Policy PB1 provided that the granting of it will not lead to the undermining of the licensing objectives and does not conflict with existing policies such as Policies HRS1, CD1, PS1, PN1 and CH1.

31. The Sub-Committee noted that the Premises operates as a high end provider of serviced office space and on occasion alcohol is to be sold as part of the service provided, including for clients' meetings or professional networking events and a licence was required to facilitate this. The licensable area relates to the whole of the first, second and fifth floors and no licensable activities will take place on any other floors of the building. The Premises is not to open to the general public and there is no permanently fixed bar so clients must pre-order alcohol. It was noted that the Applicant had used the TEN regime to facilitate the sale of alcohol on selected events.

32. In deciding the application, the Sub-Committee took into account the Sub-Committee papers, the requirements of the Act, the s.182 Home Office Guidance the submissions made by all the parties, including the EHS and supplementary submissions made by the Applicant during the hearing in its determination of the matter and the promotion of the licensing objectives.

33. The comments advanced by Mr McCann in his submissions regarding the Premises operating as an office space were noted and the proposed condition restricting the Premises as such was welcomed.

34. The Sub-Committee was satisfied that the application was suitable for the local area and had listened and addressed any key concerns raised. Moreover, it was noted that the Metropolitan Police Service did not object to the application who are considered the experts on crime and disorder.

35. The Sub-Committee considers that the right balance has been struck here when considering the needs of the operator, local business and residents given the various undertakings given by the Applicant in his submissions to the Sub-Committee when considering the daily management of the Premises and any adverse impact this could have for residents. This was also relevant when considering the terminal hour for the outside terrace which was to be restricted until 22:00 hours as this could have the potential to cause nuisance to nearby residents given the high residential count.

36. The Sub-Committee concluded based on the evidence that the Applicant would help promote the licensing objectives with the offered conditions. In terms of the conditions these are all the conditions as stated at pages 34-39

of the agenda report together with the inclusion of additional conditions namely a restriction that there shall be no fixed bar at the Premises and a slight adaptation to Model Condition MC43 on collections of waste by extending the definition to include the words “associated catering”.

37. The Sub-Committee concluded that the licensing objectives will be promoted in light of the ongoing commitment by the Applicant to collaborate with local residents, the measures it has in place when it came to the management of the Premises by continuing to be a competent and professional operator promoting the licensing objectives for the hours sought and therefore decided to ***GRANT*** the application for a Premises Licence.

38. The Sub-Committee concluded that the conditions imposed on the Premises Licence will mitigate the concerns of those parties who had objected to the application and have the desired effect of promoting the licensing objectives.

39. Going forward the Sub-Committee would welcome that the Applicant continues to maintain a fruitful dialogue with those who had objected to the application to ensure the smooth running of the Premises and the promotion of the licensing objectives.

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

1. To grant permission for **Late Night Refreshment (Indoors)** Monday to Thursday: 23:00 to 23:30 Friday to Saturday: 23:00 to 00:00 Sunday 23:00 to 23:30 **Seasonal variations**: None.

2. To grant permission for the **Sale by Retail of Alcohol (On and Off the Premises)** Monday to Thursday: 09:00 to 23:30 Friday to Saturday: 09:00 to 00:00 Sunday: 09:00 to 22:30 **Seasonal variations**: None

3. To grant permission for the **Opening Hours of the Premises** Monday to Sunday: 00:00 to 00:00 **Seasonal variations**: None

4. That the Licence is subject to any relevant mandatory conditions.

5. That the Licence is subject to the following conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

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

6. Appropriate induction training will be undertaken with all relevant staff who do not hold a Personal Licence to cover appropriate subjects for their role including:
   a. The responsible sale of alcohol.

b. The prevention of under-age sales of alcohol, the Challenge 25 policy and in checking & authenticating accepted forms of identification.
c. The responsibility to refuse the sale of alcohol to any person who is drunk.

7. The premises will maintain written reports and registers. These will be kept for a minimum of 12 months and made available to the police and any authorised officer of the licensing authority on request. Records will be maintained of the following:
a. Any complaint against the premises in respect of any of the licensing objectives
b. Any crime reported at the premises
All written reports and registers will be regularly checked by the DPS

8. Access to the premises shall be restricted to clients of the Premises Licence Holder, who maintain a contract for office space at any of their serviced offices, their employees and bone-fide guests or pre-invited guest attending meetings, conferences and events. No members of the public (other than those described here) will be given access on a walk in basis.

9. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping.
Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.

10. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.

11. A Zero Tolerance Policy towards the use, possession and supply of illegal drugs will be adopted and enforced.

12. Non-intoxicating beverages including drinking water shall be available in all parts of the premises when alcohol is sold or supplied on the premises.

13. A fire risk assessment will be conducted and regularly reviewed. In-line with the Fire Risk Assessment:
a. An integrated fire detection and alarm system is installed, checked, regularly tested and maintained by a competent person.
b. Fire extinguishers are installed in accordance with the recommendations of the fire risk assessment.
c. Emergency lighting is installed in accordance with the recommendations of the fire risk assessment.
d. All emergency exits are marked on the premises plan.

14. Adequate and suitable first aid boxes shall be maintained at the premises.

15. The area immediately outside the premises will be maintained to ensure that any litter generated by the premises and/or its customers is regularly cleared.

16. The external terrace on the 5th floor of the building shall not be used for Licensable Activities after 22.00 on any day, nor shall any alcohol be consumed on the terrace after 22.00 on any day.

17. No amplification system or speakers shall be used on the 5th floor terrace at any time.

18. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.

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

20. 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.

21. Children are generally not present at the premises and the security of the building means they cannot gain access. However where they are invited onto the premises in conjunction with an event (children's parties, family events etc.) they shall be accompanied by an adult.

22. The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a serviced office.

23. The number of persons permitted on the fifth floor terrace at any one-time (excluding staff) shall not exceed 20 persons.

24. 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 alcoholic drinks in open containers with them.

25. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number and/or is to be made available to residents and businesses in the vicinity.

26. No deliveries to the premises including licensable activities shall take place between 20.00 and 08.00 hours on the following day.

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

28. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 20:00 hours and 07:30 hours on the following day.

29. 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.

30. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.

31. All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.

32. The premises licence holder shall ensure that there is no fixed or permanent bar at the premises.

33. No collections of waste or recycling materials (including bottles) from the premises shall take place and associated catering between (***23:00***) and (***08:00***) hours on the following day except for if using Westminster City Council's collection service.

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

The Licensing Sub-Committee
15 February 2024

2. PARK MODERN APARTMENTS, 123 BAYSWATER ROAD, W2 3JH

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

Thursday 15 February 2024

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Membership: Councillor Angela Piddock (Chair) Councillor Judith Southern and Councillor Karen Scarborough

Officer Support
Legal Advisor: Horatio Chance
Policy Officer: Daisy Gadd
Committee Officer: Jonathan Deacon
Presenting Officer: Kevin Jackaman

Others present: Mr Jeremy Bark (BCLP Law, representing the Applicant), Mr Alex Pitchford and Ms Michelle Chillingworth (Applicant Company), Mr Richard Brown, Licensing Advice Project (on behalf of *South East Bayswater Residents' Association*) and 1 local resident (on behalf of *South East Bayswater Residents' Association and Bayswater Residents' Association*).

Application for a New Premises Licence in respect of Park Modern Apartments 123 Bayswater Road London W2 3JH 23/08777/LIPN

FULL DECISION

Case Summary

The Sub-Committee has determined an application for a New Premises Licence under the Licensing Act 2003 ("The Act") in respect of Park Modern Apartments 123 Bayswater Road London W2 3JH ("The Premises"). The Premises intends to operate as a high class restaurant with an external seating area where alcohol and food will be available.

The Premises previously held a premises licence from September 2005 until it was surrendered in June 2016.

The Premises are located within the Lancaster Gate Ward and fall within the Queensway and Bayswater Special Consideration Zone. Therefore the Applicant must demonstrate that they have had regard to the matters contained in the SLP (Paragraphs D49 an D50 on page 56 namely: "***The Queensway/Bayswater area is 0.13km2 in size, accounting for 0.5% of the boroughs footprint. The local issues that need to be considered by applicants are: elevated levels of noise at night, illegal waste, incidents relating to ambulance call outs at night to the locations of licensed premises for intoxication, injury related to intoxication and/or assault, serious violent crimes and robberies at night. The incidents recorded between 2017 and 2019 for this area were nearly three times the boroughs average rate of incidents per square kilometre***")

The licensed areas are predominantly on the ground floor with a small private dining area within the basement. The building within which the Premises are located also has its own delivery and waste collection areas within the building.

The Applicant has made submissions addressing the SCZ policy which appear at **Appendix 2** of the agenda report.

There is no policy presumption to refuse applications for a restaurant premises outside of the West End CIZ. The matter was assessed on its individual merits having regard to the evidence before the Licensing Sub-Committee and the promotion of the licensing objectives.

Representations were received from the Metropolitan Police Service, Environmental Health Service, SEBRA and BRA all citing concerns regarding public nuisance.

There is a resident count of 153.

Premises

Park Modern Apartments
123 Bayswater Road
London
W2 3JH

Applicant

Park Restaurant Property Limited

Cumulative Impact Area

N/A

Activities and Hours

Late Night Refreshment (Indoors)

Monday to Thursday: 23:00 to 00:00
Friday to Saturday: 23:00 to 00:30
Sunday N/A

Seasonal variations: On any Sunday immediately before a bank holiday late night refreshment may be provided between the hours of 23:00 and 00:30.

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

Monday to Thursday: 08:00 to 23:30
Friday to Saturday: 08:00 to 00:00
Sunday: 08:00 to 22:30

Seasonal variations: On any Sunday before a bank holiday then the hours for the sale of alcohol shall extend to midnight.

Opening Hours of the Premises

Monday to Thursday: 07:00 to 00:00
Friday to Saturday: 07:00 to 00:30
Sunday: 07:30 to 23:00

Seasonal variations: None

Representations Received

- Metropolitan Police Service (MPS) PC Adam Deweltz (**withdrawn 6 February 2024**).
- Environmental Health Service (EHS) (Sally Fabbricatore) (**withdrawn 8 February 2024**).
- 1 local resident on behalf of The Bayswater Residents Association (BRA)
- 1 local resident on behalf of the South East Bayswater Residents Association (SEBRA)

Summary of Representations

- *I write to confirm that the Bayswater Residents Association (BRA) objects to this application and supports the detailed comments contained in the SEBRA objection, below.*
- *The premises is situated in a Special Consideration Zone, as per the Statement of Licensing Policy 2021. Care must be taken that the nature of this operation and licence is appropriate to promote the licensing objectives.*
- *We are concerned that the hours proposed and the nature of the licence if granted as presented would lead to an increase in public nuisance, including from dispersal of customers late at night and issues with servicing.*
- *The hours proposed are beyond 'Core Hours.' We object to a licence being granted beyond hours in accordance with policy HRS1 for restaurants i.e. 9am to 11.30pm Mon-Thurs, 9am to midnight Fri-Sat, 9am to 10.30pm Sun. In fact, at present even these hours are too much as the application does not offer a 'restaurant' condition, which we are very surprised about.*
- *The proposed conditions do not require anyone to consume food. Customers would have to be seated and served by waiter/ess service, but even this requirement would not apply to the private dining room, the entire premises when in use for a 'private function' (which could be table booking?), or the ground floor bar area.*
- *Servicing must take place via the dedicated loading bay provided for in the development, at the rear of the development.*
- *There needs to be a comprehensive plan to manage taxis/uber etc traffic dropping off and picking up from the premises. Is there any intention for the units to offer a takeaway/delivery service, including on apps such as Deliveroo? We do not believe there is, but would object to this if it is proposed.*
- *'Off' sales are sought, although not for general takeaway/delivery. Applicant's proposed condition: The sale and supply of alcohol for consumption on the premises shall (other than within the private dining room, when in use for a bone fide private function, or the area immediately in front of*

the ground floor bar shown on the approved layout drawing) only be permitted where: alcohol is supplied by way of waiter/waitress service; and alcohol is only consumed by persons who are seated.

- *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.*
- *The licence should include Model Condition 66 to require the premises to operate as a restaurant. We do not see why Private Dining Room should be different. A large table could be taken on night by walk in customers. Regarding the bar, we are happy for a condition that this is for customers before or after meal or someone eating at bar.*
- *The sale of alcohol of consumption off the premises shall be limited to: alcohol sold to persons for consumption in any outside tables and chairs area (shown hatched green on the approved layout drawing) where persons are seated; or partially consumed bottles of wine where the customer does not wish to finish the bottle but take it home and then only where the bottle is resealed.*
- *We are happy for outside tables and chairs subject to inclusion within MC66, and that tables and chairs are brought in or rendered unusable by 23.00. Applicant's proposed condition:*
- *There shall be no sales of hot food or hot drink for consumption off the premises after 23.00.*
- *SEBRA comment: Is this for takeaway and/or delivery? If so, how is this managed?*
- *Applicant's proposed condition:*
- *Unless the existing internal dedicated building refuse system is used, no collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 07.00 hours on the following day. And*
- *Unless the existing dedicated building delivery system is used, no deliveries to the premises shall take place between 23.00 and 07.00 hours on the following day.*
- *SEBRA comment: There is a dedicated loading bay, at the rear, approached via Queensway to back of the development with hours controlled, seven days a week. There is no public loading bay outside premises, only one opposite premises in Queensway, where loading only allowed between 7am to noon, every day and bay gets ticketed outside those hours. No loading is allowed on Bayswater Road as it is a bus route and to have cycle lane soon.*
- *SEBRA therefore proposes:*
- *No collections of waste or recycling materials (including bottles) from the premises shall take place between 19.00 and 07.00 Mon-Sat and only between 10.00 to 16.00 Sunday & Bank Holidays*
- *No deliveries to the premises shall take place between 19.00 and 07.00 Mon-Sat and only between 10.00 to 16.00 Sunday & Bank Holidays*
  iii) Additional conditions
  We ask for the following additional conditions:
- *MC66 The premises shall only operate as a restaurant, (i) in which customers are shown to their table or the customer will select a table themselves, (ii) where the supply of alcohol is by waiter or waitress service only, (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table, (iv) which do not provide*

any takeaway service of food or drink for immediate consumption off the premises, (v) 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.

- *All servicing, including refuse & recycling collections, should take place via the dedicated.*
- *MC20 All tables and chairs shall be removed from the outside area by (23.00 hours) each day.*
- *MC71 The premises licence holder shall ensure that any patrons smoking outside the premises do so in an orderly manner and are properly supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.'*
- *There shall be no use of food and alcohol delivery services, to customers outside of the premises, such as Deliveroo.*
- *MC87 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.*

Policy Considerations

Policies SCZ1, HRS1 and RNT1 (A) apply under the City Council's Statement of Licensing Policy ("SLP").

Policy SCZ1

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

Policy HRS1

A. Applications within the core hours set out below in this policy will generally be granted for the relevant premises uses, subject to not being contrary to other policies in the Statement of Licensing Policy.
B. Applications for hours outside the core hours set out in Clause C will be considered on their merits, subject to other relevant policies, and with particular regard to the following:
1. The demonstration of compliance in the requirements of policies CD1, PS1, PN1 and CH1 associated with the likelihood of the effect of the grant of a licence for later or earlier hours on crime and disorder, public safety, public nuisance and the protection of children from harm.
2. If the application is located within a Special Consideration Zone they have demonstrated that they have taken account of the issues identified in that area and provided adequate mitigation.

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

Policy RNT1 (A)

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

SUBMISSIONS

- The Presenting Officer, Kevin Jackaman introduced the application. He confirmed that the Applicant had amended the application so that Late Night Refreshment (Indoors) would conclude at Midnight on Friday and Saturday rather than 00:30 hours which had originally been applied for. Environmental Health had now withdrawn their representation. The Metropolitan Police Service had previously withdrawn their representation.

- Mr Jeremy Bark appearing on behalf of the Applicant addressed the Sub-Committee. He clarified that there was one particular outstanding matter which required resolving following discussions with Mr Brown and the local residents associations. He stated this involved seeking conditions relating to the sale of alcohol proposed by the Applicant rather than the Council's Model restaurant Conditions MC66 or MC38 which required alcohol to be ancillary to a substantial table meal sought by Mr Brown and both South East Bayswater Residents Association and Bayswater Residents Association (SEBRA/BRA).

3. Mr Bark commented that he believed the application would promote the licensing objectives and did not believe it would be an issue for the Queensway and Bayswater Special Consideration Zone (SCZ).

4. Mr Bark stated that the person behind the application was Jeremy King who had previously been involved with Caprice, The Ivy and The Wolseley. The concept of the premises operation was grand café style and an entry to the casual dining market. It was intended that the majority of customers would be eating and seated. It was proposed that the sale and supply of alcohol for consumption on the Premises would (other than the private dining room when in use for a private function on no more than 30 occasions per year, or the area immediately in front of the ground floor bar) only be permitted where alcohol was supplied by waiter/waitress service and where alcohol was consumed by seated customers.

5. Reference was also made by Mr Bark to the Applicant's proposed condition that 'the primary use of the premises shall be as a restaurant where the majority of customers shall be consuming a table meal'. He added that he saw the combination of the proposed conditions as an appropriate way to condition the sale of alcohol for consumption on the premises. Off sales would be limited to the outside area until 23:00 hours in the event a tables and chairs licence was obtained or to people who were consuming a bottle of wine and wanted to take it home with them.

6. Mr Bark said that Environmental Health and the Metropolitan Police had taken the view that appropriate safeguards had been given prior to withdrawing their representations, including in the event that the establishment was a hybrid restaurant/bar in policy terms. He also made the point that there were other premises in Queensway listed in the licensing register, including Bella Italia and Manoush which did not have alcohol ancillary to a substantial table meal condition. He added that the application was not in a Cumulative Impact Zone.

7. Mr Bark was asked by the Sub-Committee to explain why the Applicant had not agreed MC66 and asked to define flexibility in terms of the alcohol conditions. He replied that if there was one person in a group who did not want to eat, they could have a drink without food. There could be periods during the day when a few customers might wish to visit the Premises and have a drink without food. The majority of customers would be eating. He believed there were a range of restaurants in the area which did not all have MC66 attached to their premises licences.

8. Mr Bark was asked by the Sub-Committee whether MC66 or MC38 were raised when the Applicant sought pre-application advice. Mr Bark replied that it was discussed. The suggested conditions had been largely similar to those being proposed now apart from the addition of 'the primary use of the premises shall be as a restaurant where the majority of customers shall be consuming a table meal' which Mr Bark believed provided some protection for the local residents associations. Mr Bark also advised that the Police had sought alcohol to be ancillary to a table meal between 08:00 and 10:00. Alcohol would be served with breakfast.

9. It was raised with Mr Bark by the Sub-Committee that in the event the Premises were sold, the licence would remain which was why SEBRA had been seeking MC66/MC38. Mr Bark responded that case law referred to the here and now. He believed the condition regarding the primary use of the premises as a restaurant meant it could not be turned into a different type of premises without a variation.

10. The Sub-Committee was addressed by Mr Brown, representing SEBRA. He referred to an additional condition namely; Model Condition MC26, which had been agreed with the Applicant as set out in the additional correspondence received by Members. Rather than mentioning 'door staff', the condition would refer to 'staff'. The condition would therefore read 'The licence holder shall ensure that any queue to enter the premises which forms outside the premises is orderly and supervised by staff so as to ensure that there is no public nuisance or obstruction to the public highway'.

11. Mr Brown stated that SEBRA welcomed the Applicant to the area and wished the venture every success. However, it needed to be licensed in accordance with what was appropriate for Queensway and the SCZ where there was the increased risk of various adverse effects of either too many or inappropriately licensed premises.

12. Mr Brown commented that the planning permission was for restaurant use. In licensing policy, a restaurant was defined in such a way as to be reflected in MC66 which enshrined the less impactful use with alcohol being ancillary to a substantial table meal, waiter/waitress service and to seated customers. He emphasised that SEBRA was not being inflexible when requesting MC66 because it allowed drinking at a bar before, during or after the table meal.

13. Mr Brown expressed concerns regarding the enforceability of the Applicant's proposed condition that 'the primary use of the premises shall be as a restaurant where the majority of customers shall be consuming a table meal'. He made the point that this could mean anything above 50% and it would be very difficult for a City Inspector to judge whether the condition was being complied with.

14. Reference was made by Mr Brown to the premises being licensed not the operator. He stated that he had looked at the licensing register and found that either MC66 or MC38 had been attached for the licensed premises which had been granted in recent years in the area. In response to Mr Bark's point, he said that Bella Italia did have an alcohol being ancillary to a substantial table meal condition after 23:00 hours and he believed that Manoush had had an ancillary condition attached to the premises licence.

15. The Sub-Committee also heard from the local resident on behalf of SEBRA. He stated that the residents association had done its upmost to try and reach agreement but felt strongly that MC66 was appropriate for the benefit of local residents. MC66 provided some flexibility for customers to have a drink before, during or after a substantial table meal. There was the potential for the premises licence to be sold on. He believed Bella Italia was not a valid comparison on the grounds that the premises licence had been granted many years ago. It was the case that all new restaurants in the area had MC66 or

MC38 attached to their premises licences. He welcomed that there would be no deliveries after 23:00 hours.

16. The Sub-Committee asked Mr Bark if the Applicant would be agreeable to a slight variation of MC66. This could potentially include that the private function area was excluded from the MC66 condition. Mr Bark responded that whilst it could be conditioned in that way, the overall principle from the Applicants point of view was that the proposed conditions were the right conditions for the venue. He expressed the view that the planning definition of the restaurant did not automatically mean that it was necessary to impose a licensing restaurant condition. He believed that the Responsible Authorities in withdrawing their representations had taken the view that it was possible to have a restaurant without a full restaurant condition.

17. Mr Bark re-iterated that MC66 or MC38 would not enable the Applicant to take forward the flexibility required in the casual dining concept. He stated he was potentially prepared to offer an amendment to the wording of 'the primary use of the premises shall be as a restaurant where the majority of customers shall be consuming a table meal' and propose a percentage of customers such as 75% rather than 'the majority'. He proposed that this was enforced via the Applicant being required to provide the till receipts.

18. Mr Brown made the point that he often advised clients that the dynamic between the Applicant and the Interested Parties was that the Applicant tended to want the maximum flexibility they could get whilst the Interested Parties sought the maximum certainty. He suggested that whilst the Sub-Committee's role was to mediate between the two, because of the way the licensing objectives were set out, including prevention of public nuisance, if there was a choice then Members should err on the side of seeking certainty and futureproofing. This was an application for a new licence in a key location. He questioned the enforceability of the Applicant's conditions including the 'primary use as a restaurant' condition, including setting a percentage of customers who would be consuming a table meal.

19. Mr Brown also wished to draw the Sub-Committee's attention to the point that whilst Mr Bark was relying on the Responsible Authorities being experts in their field and having withdrawn their representations, residents were the experts in the area where they live and the local resident on behalf of SEBRA was an expert on the Queensway area. The Responsible Authorities had reached their view based on the parameters of their specific requirements.

20. Mr Bark in his summing up referred to there being a general acceptance that the premises licence should be granted. However, there was a difference of view over whether the Applicant's conditions or MC66/MC38 should be attached to the premises licence. He stated that futureproofing was not how licensing worked. It was necessary to look at the evidence and what was appropriate or proportionate. He did not believe there was evidence to show that the conditions proposed by the Applicant would lead to the licensing objectives being undermined. Mr Bark re-iterated that the Responsible Authorities had withdrawn their representations. He offered an increased percentage of 90% of customers being required to consume a table meal.

Conclusion

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

22. The Sub-Committee had regard not only to the written and oral evidence but also to the Act, the Revised Home Office Guidance issued under section 182 of the Act and the City Council's SLP, in particular policies SCZ1, HRS1 and RNT1.

23. The Sub-Committee noted that there was no presumption to refuse an application for a restaurant premises outside of the West End CIZ provided the requirements of policies CD1, PS1, PN1 and CH1 are met. However, the Premises does fall within the Queensway/Bayswater SCZ and so the onus is on the Applicant to address the local issues identified in the SLP which was satisfactorily addressed by good reasoning in the Applicant's previous written submission at Appendix 2 on pages 55 and 56 of the agenda report.

24. The Sub-Committee noted that Conditions had been agreed with the Responsible Authorities namely the EHS and the MPS who had withdrew their objections and so were not present at the hearing. The Licensing Authority did not object to the application. During the hearing it was taken as read that those conditions (including the revised conditions agreed with the Applicant and SEBRA shortly before the hearing) agreed between the parties could be imposed on the licence and so there was no need for further discussion.

25. The only real sticking point seemed to be what suitable restaurant condition was appropriate to be imposed on the premises licence and that was either the condition advanced by the Applicant or Model Conditions MC66 and MC38. Mr Horatio Chance the Legal Advisor to the Sub-Committee discussed with the Applicant a slight adaption to Model Condition MC66 so that the holding bar and private dining areas would be excluded from the condition a view already expressed by the Sub-Committee in its questioning of the Applicant.

26. The Sub-Committee carefully considered whether the Premises was a "hybrid" as described by Mr Bark in his submissions but came to the overall conclusion that the Premises was a restaurant with a holding bar which fitted neatly into the casual dining concept so the Applicant did have degree of flexibility when running the Premises. It did not consider the Applicant's proposed condition that the Premises should operate "primary" as a restaurant as this was confusing and thus could be interpreted as being "too vague" and lacking certainty as to the true meaning of the condition.

27. This was particularly relevant when considering any enforcement issues that may potentially arise if the Premises were ever to be inspected by the City Councils City Inspectors. It would be difficult to inspect a premises and try and to determine whether it was operating 75% or even 90% of the time as a restaurant as opposed to a bar. Moreover, the Premises in operational terms would be food led in nature and not alcohol as the predominate factor and that

is indicative of the proposed conditions when looking at the character, style and nature of the Premises.

28. Accordingly, the Sub-Committee considered it a far better approach to impose conditions on a premises licence that were unambiguous, certain, appropriate and proportionate to promote the licensing objectives as this was the ultimate test under section 4 of the Act. Furthermore, this accords with the Home Office Guidance for best practice to be adopted by Licensing Authorities when considering paragraphs 9.42-9.44 on pages 81-82 of the revised Guidance.

29. That being the case the application was considered under the City Councils RNT1 policy. Paragraph F110 on page 100 of the SLP states "*This policy applies to those premises that are proposed to be used as a restaurant as defined within this policy, and not to fast food premises. This policy distinguishes between restaurants, where dining (a substantial table meal) is the main evening activity for its customers, and fast food premises which at certain hours are likely attract and provide food for people at the end of an evening's drinking*".

30. The Sub-Committee considered that it would be overly burdensome on the part of the Applicant to be saddled with Model Condition MC66 (although the Premises clearly satisfies the definition of a restaurant) so instead imposed as a compromise Model Condition MC38 with the proviso that the holding bar/private dining areas would not be subject to this aspect of the condition which then allowed the Applicant to operate the Premises with flexibility and to be able to fit into their business model of casual dining. This would enable the Premises to operate as a hybrid but would provide increased certainty that the Premises would operate as a bona fide restaurant. It was therefore appropriate and proportionate in all the circumstances for the Sub-Committee to impose this specific condition on the premises licence as it went to the core operation of the Premises.

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31. The Sub-Committee noted that the planning permission granted for the Premises was for restaurant use and whilst planning and licensing are separate regimes in licensing terms the Premises should also be considered as such under the SLP's restaurant policy, namely RNT1 because of the way it would operate and this important aspect could not be ignored.

32. The Sub-Committee took the view that the right balance has now been struck when considering the needs of SEBRA/BRA those residents who had objected to the application (who are considered "Experts" in the area of Queensway and Bayswater and therefore well aware of the challenges licensed premises faces) and the commercial needs of the Applicant who after all has a duty to run his Premises to the highest professional standards and in accordance with the promotion of the licensing objectives. It is hoped that the parties going forward can work together to ensure that a fruitful dialogue is maintained whereby any issues are resolved expeditiously.

33. The Sub-Committee having carefully considered the matter and the evidence before it decided to ***Grant*** the Premises Licence with the licensable activities and to outside core hours. The Sub-Committee considered that this was the

right balance when considering the resident objections for the start time and terminal hours accordingly.

34. The Sub-Committee noted the various undertakings and commitments given by Mr Bark on behalf of the Applicant company into the daily running of the Premises and the robust management practices the Applicant was to employ by an experienced professional team as well as the many offered conditions as amended which would have the desired effect of promoting the licensing objectives.

35. The Sub-Committee considers that the conditions it has imposed on the premises licence to include licence CCTV by way of security, signage, age verification, a direct telephone number for the manager of the Premises, a dispersal policy for when customers leave the Premises, no vertical drinking policy with limited off sales of alcohol, deliveries and collections of waste to the Premises within permitted hours so as to prevent nuisance and the inclusion of Model Condition MC38 (as varied) requiring that the supply of alcohol at the Premises shall only be to a person seated taking a substantial table meal by waiter/waitress service to be appropriate and proportionate and will have the overall effect of promoting the licensing objectives, in particular the prevention of public nuisance and crime and disorder licensing objectives.

36. With the imposition of Model Condition (MC38) some of the proposed conditions offered by the Applicant are now redundant and do not apply.

37. In order to properly reflect the true nature of the operation of the Premises appropriate conditions have therefore been substituted and are stated as follows:-
    - *Condition 12 (as amended by updated Condition 4) has been deleted given that the premises is to operate as a restaurant and is superseded by MC38.*
    - *Condition 14 (now 10) (as amended by updated Condition 6) has been deleted and substituted for Model Condition MC38 with the proviso that the private dining and bar areas are to be excluded.*
    - *Condition 15 (as amended by updated Condition 7) is no longer relevant and has been deleted due to MC38.*
    - *MC39 (now 11) has been added for waiter/waitress service for the supply of alcohol.*
    - *MC26 has been added making a new condition 38 where the word "door" has been deleted (as requested by Richard Brown).*
    - *Condition 19 (as amended by updated Condition 11) (now 15) dovetails with condition 11.*

38. In reaching its decision, the Sub-Committee concluded that the conditions attached to the licence would mitigate and alleviate the residents' concerns of the parties who had objected and were appropriate, proportionate, enforceable and would have the desired effect of promoting the licensing objectives.

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

1. To grant permission for **Late Night Refreshment (Indoors)** Monday to Thursday: 23:00 to 00:00 Friday to Saturday: 23:00 to 00:00 Sunday N/A

   Seasonal variations: On any Sunday immediately before a bank holiday late night refreshment may be provided between the hours of 23:00 and 00:00.

2. To grant permission for the **Sale by Retail of Alcohol (On and Off the Premises)** Monday to Thursday: 08:00 to 23:30 Friday to Saturday: 08:00 to 00:00 Sunday: 08:00 to 22:30

   Seasonal variations: On any Sunday before a bank holiday then the hours for the sale of alcohol shall extend to midnight.

3. To grant permission for the **Opening Hours of the Premises** Monday to Thursday: 07:00 to 00:00 Friday to Saturday: 07:00 to 00:~~3~~00 Sunday: 07:30 to 23:00 **Seasonal variations**: None.

4. That the Licence is subject to any relevant mandatory conditions.

5. That the Licence is subject to the following conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

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

6. CCTV condition:

   a. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team.
   b. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.
   c. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises and will include the external area immediately outside the premises entrance.
   d. All recordings shall be stored for a minimum period of 31 days with date and time stamping.
   e. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.

7. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the

premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.

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

9. The premises licence holder shall risk assess the need to employ SIA security personnel at the premises and where the risk assessment identifies such need then the premises licence holder shall employ SIA security personnel on such days, times and in such numbers as the assessment identifies.

10. Save for the private dining room, when in use for a bona fide private function on no more than 30 occasions per year, or the area immediately in front of the ground floor bar shown on the approved layout drawing the supply of alcohol at the premises shall be to a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal.

For the purpose of this condition '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.

11. The supply of alcohol shall be by waiter or waitress service only.

12. 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.

13. The sale of alcohol of consumption off the premises shall be limited to:
a. alcohol sold to persons for consumption in any outside tables and chairs area (shown hatched green on the approved layout drawing) where persons are seated; or
b. partially consumed bottles of wine where the customer does not wish to finish the bottle but take it home and then only where the bottle is resealed.

14. 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 alcohol with them.

15. Notwithstanding Condition 11 above there shall be no sales of alcohol for consumption off the premises after 23.00.

16. There shall be no sales of hot food or hot drink for consumption off the premises after 23.00.

17. All outside tables and chairs shall be rendered unusable by 23.00 each day.

18. Patrons permitted to temporarily leave and then re-enter the premises (e.g, to smoke)shall not be permitted to take drinks or glass containers with them unless seated in an authorised external area.

19. Loudspeakers shall not be located in the entrance and exit of the premises or outside the building.

20. All windows and external doors shall be kept closed after 21.00, or at any time when regulated entertainment takes place, except for the immediate access or egress of persons.

21. Notices shall be prominently displayed at all exists requesting patrons to respect the needs of local residents and businesses and leave the area quietly.

22. No licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.

23. Unless the existing internal dedicated building refuse system is used, no collections of waste or recycling materials (including bottles) from the premises shall take place or be moved, removed from or placed in outside areas between 23.00 and 07.00 hours on the following day.

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

25. Unless the existing dedicated building delivery system is used, no deliveries to the premises shall take place or be moved/removed from or placed in outside areas between 23.00 and 07.00 hours on the following day.

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. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone

number and/or is to be made available to residents and businesses in the vicinity.

28. A copy of the premises' dispersal policy shall be readily available at the premises for inspection by a police officer and/or an authorised officer of Westminster City Council.

29. 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.

30. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police. It must be completed within 24 hours of the incident and will record the following:
(a) all crimes reported to the venue
(b) all ejections of patrons
(c) any complaints received concerning crime and disorder
(d) any incidents of disorder
(e) all seizures of drugs or offensive weapons
(f) any faults in the CCTV system
(g) any refusal of the sale of alcohol
(h) any visit by a relevant authority or emergency service.

31. No licensable activities shall take place at the premises until the capacity of the premises has been determined by the Environmental Health Consultation Team and the licensing authority has replaced this condition on the licence with a condition detailing the capacity so determined.

32. Before the premises open to the public, the plans as deposited will be checked by the Environmental Health Consultation Team to ensure they are an accurate reflection of the premises constructed. Where there are minor changes to the premises layout during the course of construction new plans shall be provided to the Environmental Health Consultation Team and the Licensing Authority.

33. The number of persons permitted in the premises at any one-time (excluding staff) shall not exceed (X) persons.

34. All servicing, including refuse & recycling collections, should take place via the dedicated loading bay, at the rear of the development, provided for that purpose. The premises licence holder shall use the dedicated refuse and loading bay area within the development unless prevented from doing so for reasons beyond its control.

35. The premises licence holder shall ensure that any patrons smoking outside the premises do so in an orderly manner and are properly supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.

36. There shall be no use of food and alcohol delivery services, to customers outside of the premises, such as Deliveroo. The premises shall not use or employ a third party company providing food delivery services.

37. 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.

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

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

The Licensing Sub-Committee
15 February 2024

CHAIRMAN: _____ **DATE** _____