



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (3)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (3)** held on **Thursday 29th February, 2024**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Robert Eagleton (Chair), Judith Southern and Ed Pitt Ford

1. MEMBERSHIP

1.1 There were no changes to the membership.

2. DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1. MR FOGGS APOTHECARY, BASEMENT, 34 BROOK STREET, MAYFAIR, W1K 3DN

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

Thursday 29 February 2024

Membership: Councillor Robert Eagleton (Chair)
Councillor Ed Pitt Ford
Councillor Judith Southern

Officer Support: Legal Adviser: Michael Feeney
Policy Officer: Aaron Hardy
Committee Officer: Steve Clarke
Presenting Officer: Roxsana Haq

Other Parties: Gary Grant (Applicant's Counsel)
Charlie Gilkes (Co-Founder Brook Street Bar Limited)
Duncan Sterling (Co-Founder Brook Street Bar Limited)
Maxwell Koduah (Environmental Health Service)
Judy Kuttner (Interested Party)
Richard Brown (on behalf of Judy Kuttner and Mike Dunn)

Application for a Variation of a Premises Licence in respect of Mr Foggs Apothecary, Basement, 34 Brook Street, Mayfair, W1K 3DN (23/09083/LIPV)

FULL DECISION

Case Summary

This is an application for a Variation of a Premises Licence under the Licensing Act 2003 (“The Act”). The Premises operates as a themed bar / public house.

The application proposes to vary the wording of conditions 37, 42 and 43, details of which can be seen in section 1D of the officer’s report.

The premises has had the benefit of a premises licence since 2022. The current premises licence (24/00115/LIPDPS) and licence history can be viewed at Appendix 3 of the officer’s report.

The Premises is located within the West End Ward but does not fall within either the West End CIZ or any Special Consideration Zone.

There is a resident count of 23.

Representations were received from the Environmental Health Service, and 3 Interested Parties citing concerns regarding public nuisance and public safety. Subsequently to the publication of the Sub-Committee agenda, one of the representations received from Interested Parties was withdrawn.

Premises

Mr Foggs Apothecary
Basement 34 Brook Street
Mayfair
W1K 3DN

Applicant

Brook Street Bar Limited

Cumulative Impact Area

None

Special Consideration Zone

None

Ward

West End

Variations to the Licence Applied For

Condition	Proposed Variation
37. There shall be no admittance or re-admittance to the premises after midnight (00.00 hours) except for patrons permitted to temporarily leave the premises (e.g. to smoke, make a phone call).	37. There shall be no admittance or re-admittance to the premises after 01.00 hours except for patrons permitted to temporarily leave the premises (e.g. to smoke, make a phone call).
42. SIA licensed door supervisors, (the number to be calculated by way of a written risk assessment), shall be on duty from 18:00 at the premises whilst it is open for business, and they must correctly display their SIA licence(s) when on duty so as to be visible. A copy of the written risk assessment is to be made available to the Metropolitan Police and/or the Licensing Authority on request.	42. SIA licensed door supervisor(s), (the number to be calculated by way of a written risk assessment), shall be on duty from 18:00 (when required) at the premises whilst it is open for business, and they must correctly display their SIA licence(s) when on duty so as to be visible. A copy of the written risk assessment is to be made available to the Metropolitan Police and/or the Licensing Authority on request.
43. Notwithstanding the SIA condition above (no 42), at least 2 members of door supervisors shall be on duty at the entrance of the premises and patrolling the outside area on Brook Street from 23:00 hours until 30 minutes after the premises close, to supervise and prevent potential nuisance from customers.	43. Notwithstanding the SIA condition above (no 42), at least 2 members of door supervisors shall be on duty at the entrance of the premises and patrolling the outside area on Brook Street from 23:00 hours until 30 minutes on Fridays and Saturdays after the premises close, to supervise and prevent potential nuisance from customers.

Representations Received

- Environmental Health Service (Maxwell Koduah)
- Tarun Patel, Mayfair W1K (**Withdrawn 21 February 2024**)
- Judy Kuttner, Mayfair W1K
- Mike Dunn, Mayfair W1K

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.

Submissions

The Presenting Officer summarised the Application, highlighting that the premises did not fall within any Cumulative Impact Area or Special Consideration Zone. A representation had been received from the Environmental Health Service who were represented at the hearing by Maxwell Koduah. It was also noted that representations had been received by 3 other Interested Parties, of which one had been withdrawn. The remaining two Interested Parties were being represented at the hearing by Richard Brown.

Gary Grant was present as the Applicant's Counsel and addressed the Sub-Committee, noting that the reason for the application was two sets of conditions

imposed on the licence in the premises' 2022 application, which were deemed no longer necessary in their original format to promote the licensing objectives. These were conditions 37, regarding the admittance and re-admittance of patrons, condition 42, regarding the requirement for SIA door supervisors, and condition 43, regarding the number of SIA door supervisors. It was highlighted that the premises had operated for 18 months since the 2022 application and there had been no complaints.

It was highlighted that the company were excellent and experienced operators operating 15 licenced premises, including four within Westminster; and that in 14 years of operating premises, no licensing reviews had taken place.

The Applicant noted that under the current licence, they were restricted in that no patrons could enter the premises after midnight despite the premises being open until 02:00. The Applicant was minded to push that entry time back to 01:00, and following discussions with the Environmental Health Service, it was agreed that a cap could be introduced whereby 25 patrons would be allowed to enter the premises between midnight and 01:00. It was highlighted that the clientele of Mr Foggs were respectable and quiet, commonly those going for a drink following the theatre.

Another principal change applied for related to SIA door supervisors. It was noted that the premises was currently conditioned to require two SIA door supervisors present until 30 minutes after close every day. It was noted that this was onerous, disproportionate and not viable for the business. The Applicant also highlighted that there were difficulties in hiring door supervisors for shorter periods of time and that the need for door supervisors skewed towards later in the evening and the end of the night.

In response to the representations submitted by interested parties, it was reiterated that after 18 months of trading under the current licence there had been no issues. It was also highlighted that 11 Temporary Event Notices had been granted which ran until 03:00 without any last entry time and they were all successful and safe events.

Members queried whether the absence of complaints and issues during the previous 18 months could have been attributed to the requirements of the conditions on the current licence. The Applicant stated that the requirement was not present at the operator's other London premises and there were no issues arising from those sites. In response to a question, the Applicant confirmed that on Thursdays they were not so busy but they would be amenable to having one door supervisor on duty.

The Environmental Health Service (EHS) had submitted a representation with Maxwell Koduah being present at the hearing. The EHS addressed the Sub-Committee reiterating the discussion and agreement between the Applicant and the EHS regarding the potential introduction of a 25 person cap on the number of new patrons who could be admitted to the premises between midnight and 01:00. Given this, EHS noted that they were now happy with the application because it ensured that there would be gradual dispersal.

Richard Brown was present on behalf of two of the Interested Parties and addressed the Sub-Committee noting that it was important for Members to note that the last

entry condition imposed on the 2022 application was agreed by the Applicant at the time.

With regard to SIA door supervisors, the Interested Parties noted that the requirement for two door supervisors was indeed excessive for this type of premises from Sundays to Wednesdays; however, the Interested Parties would still like to have seen at least two SIA door supervisors on Thursdays to Saturdays. It was also proposed by the Interested Parties that condition 43 be amended to show Thursdays to Saturdays.

Judy Kuttner was present as an Interested Party and addressed the Sub-Committee highlighting that they had been a resident in the area for 48 years and were aware of other residents who sought to make a representation but had missed the deadline. It was highlighted that the primary concern was not with noise emanating from the premises but with those leaving the premises and making noise. It was appreciated that the current operator was responsible but there was a concern that the licence would sit with whoever operated the premises and should it change hands, residents were not assured that the new operator would be as respectful. The Sub-Committee questioned whether residents experienced increased or prolonged levels of noise nuisance from the premises when they held temporary events until 03:00. It was confirmed that residents could not directly attribute any heightened level of noise to the premises as there were a number of establishments within the vicinity.

Upon questioning from the Sub-Committee, the Applicant agreed that, should the Sub-Committee grant the variation, they would be happy to provide at least one SIA door supervisor on Thursdays, with two SIA door supervisors present on Fridays and Saturdays. As per the conditions, written risk assessments would also be undertaken to determine any further need for SIA door supervisors. The Interested Parties confirmed that they felt that at least two door supervisors should be present on Thursdays, in addition to Friday and Saturdays.

Upon summing up, there were no further comments from the Interested Parties and the EHS. The Applicant highlighted that revenue on Thursdays was just over half of what it was on a Friday, evidencing their desire to reduce the number of SIA door supervisors required on Thursdays. The Applicant's Counsel also highlighted that the EHS were the guardians of the public nuisance licensing objective and that they agreed with the EHS in that having the ability to admit 25 further patrons between midnight and 01:00 struck the right balance in promoting that objective. Applicant's Counsel said that in relation to condition 42 the Applicant was willing to agree that from 8pm there would be door supervisors deployed in accordance with a risk assessment from Thursdays-Saturdays, with at least one on Thursdays-Saturdays.

It was also further reiterated that no representations were received from the Licensing Authority or the Metropolitan Police Service, and the premises did not fall within any special consideration zones or cumulative impact areas.

Reasons and Conclusion

The Sub-Committee has determined an application for a Premises Licence Variation under the Licensing Act 2003. The Sub-Committee realises that it has a duty to

consider each application on its individual merits and did so when determining this application.

In relation to condition 37, the Sub-Committee considered that the proposed extension of the last entry time to 01:00 was acceptable in light of the agreement reached with EHS to cap the number of people allowed entry after midnight. EHS advised that this would still allow for gradual dispersal, and the Sub-Committee therefore concluded that this would promote the licensing objectives.

For conditions 42 and 43, the Sub-Committee considered it appropriate and proportionate to reduce the requirement to have SIA door supervisors at the premises every day. The Sub-Committee accepted the Applicant's explanation that this was unduly onerous for a premises of this type. The Sub-Committee noted the Applicant's explanation that Thursdays were not as busy as Fridays or Saturdays but considered that overall there was a growing tendency for Thursdays to be increasingly busy. The Sub-Committee therefore considered it appropriate and proportionate to ensure that at least one door supervisor would be on duty on Thursdays from 8pm, in accordance with the concession made by the Applicant during summing-up.

The Sub-Committee in reaching this conclusion noted that the provision of one door supervisor on Thursdays and two door supervisors on Fridays and Saturdays was a minimum and that if the risk assessment indicated that more were needed then more would have to be provided. The Sub-Committee considered that this provision of door supervisors would be sufficient to ensure that dispersal of customers from the premises did not lead to public nuisance.

Overall, in granting the application as varied, the Sub-Committee took into account the fact that the Applicant had operated the premises for a considerable period of time without causing any complaints and that the Licensing Authority and the Metropolitan Police were satisfied with the application.

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

1. Vary condition 37 to read: 'Except for patrons permitted to temporarily leave the premises (e.g. to smoke or make a phone call), the number of persons admitted or re-admitted to the premises between midnight and 1:00 hours shall be limited to 25 persons. Except for patrons permitted to temporarily leave the premises (e.g. to smoke or make a phone call), there shall be no admittance or re-admittance to the premises after 01:00 hours.'
2. Vary condition 42 to read: 'On Sundays-Wednesdays, SIA licensed door supervisor(s) (the number to be calculated by way of a written risk assessment), shall be on duty from 20:00 (when required) at the premises whilst it is open for business, and they must correctly display their SIA licence(s) when on duty so as to be visible. On Thursdays-Saturdays, SIA licensed door supervisor(s) (the number to be calculated by way of a written

risk assessment but always to be at least one), shall be on duty from 20:00 at the premises whilst it is open for business, and they must correctly display their SIA licence(s) when on duty so as to be visible. A copy of the written risk assessment is to be made available to the Metropolitan Police and/or the Licensing Authority on request.'

3. Vary condition 43 to read: 'Notwithstanding the SIA condition above (no 42), at least one door supervisor on Thursdays and at least two door supervisors on Fridays and Saturdays shall be on duty at the entrance of the premises and patrolling the outside area on Brook Street from 23:00 until 30 minutes after the premises close, to supervise and prevent potential nuisance from customers.'
4. That the Licence is subject to any relevant mandatory conditions.
5. That the existing conditions on the licence shall remain in full force and effect save as otherwise varied.

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

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

2. JERU, 11 BERKELEY STREET, W1J 8DS

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

Thursday 29 February 2024

Membership: Councillor Robert Eagleton (Chair)
Councillor Ed Pitt Ford
Councillor Judith Southern

Officer Support: Legal Adviser: Michael Feeney
Policy Officer: Aaron Hardy
Committee Officer: Steve Clarke
Presenting Officer: Roxsana Haq

Other Parties: Craig Bayless (Keystone Law - Applicant's Agent)
Corey Lane (Operations Director – 11 Berkeley Street Limited)
Maxwell Koduah (Environmental Health Service)
Richard Brown (Interested Party)

Application for a Variation of a Premises Licence in respect of Jeru, 11 Berkeley Street, W1J 8DS (23/09171/LIPV)

FULL DECISION

Case Summary

This is an application for a Variation of a Premises Licence under the Licensing Act 2003 ("The Act"). The premises operates as a restaurant with ancillary bar and bakery/patisserie.

The application seeks the following:

- To extend the terminal hour for licensable activities to midnight Sunday to Wednesday and to 01.00 on Thursday.
- To vary condition 50 and 51 as shown in section 1-D of the officer's report.

The premises has had the benefit of premises licence since 2016 which is still in place (22/07913/LIPRW). A new premises licence was granted in 2021, however, it was surrendered in November 2023 (23/04503/LIPDPS). A new premises licence was granted in September 2023 (23/03922/LIPN) and is proposed to be varied as part of this application. A copy of the full premises and Temporary Event Notice history can be found at Appendix 3 to the officer's report.

The Premises is located within the West End Ward and falls within the Mayfair Special Consideration Zone. The Premises does not fall within any cumulative impact area.

There is a resident count of 49.

Representations were received from the Environmental Health Service, and 3 Interested Parties citing concerns regarding public nuisance and public safety.

Premises

Jeru
11 Berkeley Street
London
W1J 8DS

Applicant

11 Berkeley Street Limited

Cumulative Impact Area

None

Special Consideration Zone

Mayfair Special Consideration Zone

Ward

West End

Representations Received

- Environmental Health Service (Maxwell Koduah)
- Mike Dunn, Mayfair W1K
- 17 Berkeley Street Residents Association
- Bill Way, Mayfair W1J

Policy Considerations

Policies HRS1, RNT1 and SCZ1 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.
 8. Restaurants 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.
- 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. Applications outside the West End Cumulative Impact Zone will generally be granted subject to:
1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1.
 2. The hours for licensable activities being within the council's Core Hours Policy HRS1.
 3. The operation of any delivery services for alcohol and/or latenight refreshment meeting the council's Ancillary Delivery of Alcohol and/or Late-Night Refreshment Policy DEL1.
 4. The applicant has taken account of the Special Consideration Zones Policy SCZ1 if the premises are located within a designated zone.
 5. The application and operation of the venue meeting the definition of a restaurant as per Clause C.
- B. Applications inside the West End Cumulative Impact Zone will generally be granted subject to:
1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1.
 2. The hours for licensable activities are within the council's Core Hours Policy HRS1.
 3. The operation of any delivery services for alcohol and/or latenight refreshment meeting the council's Ancillary Delivery of Alcohol and/or Late-Night Refreshment Policy DEL1.
 4. The applicant has demonstrated that they will not add to cumulative impact within the Cumulative Impact Zone.
 5. The application and operation of the venue meeting the definition.
- 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.

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 Zones are:

- West End Buffer
- Queensway/Bayswater
- Edgware Road
- East Covent Garden
- Mayfair
- Victoria

Submissions

The Presenting Officer summarised the Application, highlighting that the Premises fell within the Mayfair Special Consideration Zone. The Premises did not fall within any cumulative impact area. A representation had been received from the Environmental Health Service who were represented at the hearing by Maxwell Koduah. It was also noted that representations had been received by 3 other Interested Parties; the Interested Parties were being represented at the hearing by Richard Brown.

Corey Lane (11 Berkeley Street Limited) was present as the Applicant with Craig Bayless present as the Applicant's Agent. They addressed the Sub-Committee highlighting that the application was not an example of the operator looking to get more patrons in the door later into the night; the application was a way in which the operator could allow patrons who were already on the premises at 23:30 to comfortably stay for longer. It was also noted that there had been no complaints

arising directly as a result of the premises' operation and that noise concerns were a result of more general concerns raised with the local area.

It was noted that one of the Environmental Health Service's concerns was dispersal, and the Applicant highlighted that they did have a formal dispersal policy and utilised an area of the premises as a holding area whilst patrons waited for their taxis. By day, the area was a café/bakery associated with the restaurant; during the evenings this area was a safe and quiet area available to be used as an indoor space for patrons waiting on their taxis, and there were also door supervisors present.

The Sub-Committee queried whether, should the application be granted, it would be an opportunity for the restaurant to take more bookings later into the evening. The Applicant denied this noting that they had applied for a number of temporary event notices which had been successful occasions and that the primary reason for the application was to allow patrons more time to finish their meal and not be hurried.

A representation had been received from the Environmental Health Service (EHS) who were represented at the hearing by Maxwell Koduah. It was noted that the EHS were still not satisfied with the application and concerns remained with the premises' opening hours and the dispersal of patrons from the premises. It was noted that the EHS had not seen the operator's dispersal policy and that they would need to see the policy before being satisfied that it addresses their concerns. The EHS highlighted that part of the application pushed the premises beyond Westminster's core hours policy.

Richard Brown was present on behalf of the three Interested Parties who had submitted representations. He addressed the Sub-Committee noting that residents did not have any specific concerns with the premises in question, however, there were concerns regarding the situation on Berkeley Street as a whole.

Mr Brown noted that the application in front of Members was not particularly considerable, but residents were concerned that the premises had altered its operating hours significantly over time by way of piece meal applications. Specific attention was drawn to the context of the application with regard to creep applications. The Interested Parties remained concerned with the proposed opening hours on Thursdays and Sundays.

The Applicant noted that they could circulate the dispersal policy to all parties for their review. The Sub-Committee agreed to briefly adjourn for all parties to read and review the dispersal policy, specifically for the EHS to review the policy.

The Sub-Committee adjourned the hearing at 11:32am for all parties to review the dispersal policy. The Sub-Committee reconvened at 11:53am.

It was noted that there were enough provisions within the dispersal policy to satisfy the EHS' concerns regarding dispersal from the premises. It was understood that a particular concern on the street was inconsiderate parking and occurrences of double parking. The Applicant highlighted that they were unable to control parking on the street, but the café/bakery area used for holding customers waiting for taxis was beneficial to the situation by facilitating the quick and quiet dispersal of patrons

waiting for a taxi. Mr Brown raised concern with the dispersal policy primarily relating to events and functions rather than the day to day operation of the restaurant.

In summing up, Mr Brown highlighted that the Interested Parties were happy with the additional 30 minutes applied for on Mondays to Wednesdays, their concerns remained with the additional 90 minutes applied for on Thursdays and Sundays, these were deemed excessive. The Applicant stated that on Sundays, they had an Arab clientele who were accustomed to later hours, this was part of the reason for the variation application.

Reasons and Conclusion

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

The Sub-Committee decided that it would be reasonable and appropriate to extend the opening times Monday-Wednesday by half an hour, as this was deemed generally acceptable by all parties, and the Applicant is a responsible operator.

The Sub-Committee was more concerned about the proposal to extend the closing time on Thursdays and Sundays by 1.5hrs, to 01:00 and 00:00 respectively. The Premises already operated beyond core hours on Fridays and Saturdays, and the proposal was considered a significant extension beyond core hours for both Thursday and Sunday. The Interested Parties had presented evidence of noise nuisance being a significant problem on Berkeley Street, and the Mayfair SCZ policy stipulated that one of the local issues that had to be addressed by applicants was noise nuisance. Although the dispersal policy was eventually provided at the hearing, an extension to 01:00 on Thursdays and 00:00 on Sundays was considered likely to exacerbate existing noise nuisance problems on Berkeley Street by pushing dispersal of customers later into the evening.

Furthermore, although the Applicant stated that the current intention was not to have more people in the restaurant, extending the hours on Thursdays and Sundays by 1.5hrs created the potential for there to be later sittings and more people attracted into the area.

The Sub-Committee therefore decided that it was appropriate and proportionate to extend the opening hours Sunday and Thursday by half an hour on each day, in line with the extension granted Monday-Wednesday. This would allow patrons in the restaurant to stay longer but would strike the right balance in protecting the residential amenity of local residents. As the revised closing time on Thursdays is midnight, there is no need to amend conditions 50 and 51 as the amendments were predicated on the closing time on Thursdays being extended to 01:00.

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

1. To grant permission for **Playing of Recorded Music** Monday to Thursday 23:00 to 00:00 Friday to Saturday 23:00 to 01:00 Sunday N/A
2. To grant permission for **Performance of Live Music** Monday to Thursday N/A Friday to Saturday 23:00 to 01:00 Sunday N/A
3. To grant permission for **Late Night Refreshment** Monday to Thursday 23:00 to 00:00 Friday to Saturday 23:00 to 01:00 Sunday N/A
4. To grant permission for **Sale by Retail of Alcohol** Monday to Thursday 10:00 to 00:00 Friday to Saturday 10:00 to 01:00 Sunday 12:00 to 23:00
5. To grant permission for **the Opening Hours of the Premises** Monday to Thursday 07:00 to 00:00 Friday to Saturday: 07:00 to 01:00 Sunday 07:00 to 23:00
6. That the Licence is subject to any relevant mandatory conditions.
7. That the proposed revisions of Conditions 50 and 51 by the Premises Licence Holder are refused and therefore remain the same in full force and effect along with the rest of the other conditions imposed on the Licence.

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

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

**3. HOUSE OF CANS, GROUND FLOOR FRONT, 12 D'ARBLAY STREET,
W1F 8DU**

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

Thursday 29 February 2024

Membership: Councillor Robert Eagleton (Chair)
Councillor Ed Pitt Ford
Councillor Judith Southern

Officer Support: Legal Adviser: Michael Feeney
Policy Officer: Aaron Hardy
Committee Officer: Steve Clarke
Presenting Officer: Roxsana Haq

Other Parties: Marcus Lavelle (Keystone Law - Applicant's Agent)
James Bowthorpe (Co-Founder and Creative Director – House
of Cans Limited)
Adrian Studd (Expert Witness)
Richard Brown, Marina Tempia and Wendy Monkhouse on
behalf of the Soho Society

**Application for a New Premises Licence in respect of House of Cans, Ground
Floor Front, 12 D'Arblay Street, W1F8DU (23/08735/LIPN)**

FULL DECISION

Case Summary

This is an application for a New Premises Licence under the Licensing Act 2003 ("The Act"). The premises will operate primarily as a specialist, can-only off-licence focussed on premium, small-batch produced beers, wine, cider, cocktails and soft drinks.

This is a new premises licence application and therefore no premises licence history exists.

The Premises is located within the West End Ward and falls within the West End cumulative impact area. Following consultation, the applicant has reduced the applied for terminal hour for the sale of alcohol and the closing time from 23:00 to 21:00. The hours as now applied for are set out at section 1-B of the officer's report.

There is a resident count of 44.

Representations were originally received from the Environmental Health Service, the Licensing Authority, the Metropolitan Police and 1 Interested Party citing concerns regarding promoting the core Licensing Objectives and the impact the premises may have on the West End cumulative impact area. Following the reduction of the applied

for terminal hour for the sale of alcohol and the closing time from 23:00 to 21:00, the Environmental Health Service, the Licensing Authority and the Metropolitan Police withdrew their representations.

Premises

House of Cans
Ground Floor Front
12 D'Arblay Street
London
W1F 8DU

Applicant

House of Cans Limited

Cumulative Impact Area

West End

Special Consideration Zone

None

Ward

West End

Representations Received

- Environmental Health Service (Kudzaishe Mondhlani) – **Withdrawn 26 February 2024.**
- Licensing Authority (Karyn Abbott) - **Withdrawn 26 February 2024.**
- Metropolitan Police Service (Reaz Guerra) - **Withdrawn 28 February 2024.**
- Soho Society

Policy Considerations

Policies HRS1, CIP1 and SHP1(B) 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:
10b. Shops (off-sales of alcohol where it forms either the ancillary or primary use of the premises)
Monday to Saturday: 8am to 11pm.
Sunday: 9am to 10.30pm.

D. Core hours are when customers are permitted to be on the premises and therefore the maximum opening hours permitted will be to the same start and terminal hours for each of the days where licensable activity is permitted.

E. For the purposes of this policy, 'premises uses' are defined within the relevant premises use policies within this statement.

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

Policy 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.

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

Policy SHP1(B)

A. 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 Latenight Refreshment Delivery Service Policy DEL1.
4. The applicant having demonstrated that they will not add to cumulative impact within the Cumulative Impact Zone.
5. The application and operation of the venue meeting the definition of a shop in Clause C.

Submissions

The Presenting Officer summarised the Application, highlighting that the premises was within the West End ward and fell within the West End Cumulative Impact Area. Representations had originally been received from three responsible authorities: the Licensing Authority, Environmental Health Service, and the Metropolitan Police Service. All the Responsible Authorities had withdrawn their representations upon the Applicant amending the proposed terminal hour for the sale of alcohol and the closing time of the premises from 23:00 to 21:00. It was also noted that representations had been received from one other Interested Party, the Soho Society, who had maintained their representation and were represented at the hearing by Richard Brown, Marina Tempia and Wendy Monkhouse.

Marcus Lavelle was present as the Applicant's Agent and addressed the Sub-Committee noting that the premises was to operate as an upscale specialist off-licence in a former hardware store under flexible use class E, which gave businesses the ability to use former retail shops as food and drink establishments to recognise the drop in retail demand. It was highlighted that this application would continue the premises' operation as a retail unit.

The Applicant's Agent made clear that there would be no more than 10 people consuming alcohol on site at any one time which, along with Model Condition 86 kept the operation as a retail shop. It was noted that this facility to accommodate a small number of customers sampling the products on site was important to the functioning of the business.

The Sub-Committee were informed that the premises would be selling premium products, and the cheapest alcoholic drink on sale was £5 per can. It was highlighted that there were cheaper alternatives nearby and if an individual were looking to purchase alcohol cheaply to consume immediately, they would most likely utilise the convenience stores nearby.

On the matter of amending the proposed terminal hour for the sale of alcohol and the closing time of the premises, the Agent explained that the original application, which proposed a 23:00 terminal hour and closing time was made due to the King's Cross House of Cans branch having a licence until midnight. It was noted that the King's Cross branch closed at 21:00 despite having a later licence because, due to the peak hours for the retail business, it was not deemed necessary to remain open past 21:00. A similar approach would be operated at the new branch and therefore the Applicant was happy to amend the closing time down to 21:00.

The Applicant's Agent called an expert witness, Adrian Studd, and asked whether he felt that a premises such as House of Cans in the location on D'Arblay Street would have a negative impact on the West End Cumulative Impact Area. The witness highlighted that the customers attending House of Cans were not the same as those who would be purchasing drinks from supermarkets and off-licences. He explained that the operator sold a premium product at a premium price and that those who would be looking to drink at retail prices before heading on to bars would not be seeking out House of Cans.

The Sub-Committee sought further information on the products sold by House of Cans and queried the alcohol content of their strongest product. The Applicant explained that the product sold with the highest alcohol content was a negroni mixed cocktail at around 17% strength, it was also noted that this was a very small can and reiterated that an individual was looking to street drink, they would not be looking to purchase a premium product.

Members sought clarification on the tastings that would take place at the premises. The Applicant noted that this was an integral part of the business that kept the operator going following the Covid-19 pandemic; it was not a significant part of the business currently, however, as part of launching the proposed venue on D'Arblay Street, they would be looking to reintroduce tastings and one off can design collaborations with various artists. The Applicant estimated that there would probably be a tasting once per fortnight at the D'Arblay Street venue; it was clarified that the Applicant would be happy to have a limit of 26 tasting events per year conditioned on the licence, should it be granted. The Applicant also noted that they had opened their King's Cross branch in 2018 when the Coal Drops Yard area was completed.

Richard Brown, Marina Tempia and Wendy Monkhouse were present as representatives of the Soho Society. They addressed the Sub-Committee highlighting that, on the matter of street drinking, the unit on D'Arblay Street was use class E, a retail unit, Coal Drops Yard in King's Cross was a different style of location. D'Arblay Street had a number of small mews entrances in addition to the nearby Soho Square which could be tempting for those drinking on the streets before going into licenced premises, which was something seen often and it added to the cumulative impact. It was also noted that it could be dangerous to say that the business' product was premium and costly, therefore the customers behave well.

Wendy Monkhouse noted that she lived on D'Arblay Street and raised concerns that customers would purchase cans from the premises and seek to drink them immediately in the street. It was noted that the issue of street drinking in D'Arblay Street had worsened, and residents were worried about the closing hour of the premises being 21:00. It was noted that the premises was small and on a compact street compared to the sister branch at Coal Drops Yard in King's Cross which benefitted from open space. The residents were surprised and disappointed that the responsible authorities had withdrawn their representations as residents felt that the premises would contribute to cumulative impact. A primary concern raised by the Soho Society was that there would effectively be an off licence on D'Arblay Street with on sales.

It was understood that residents had concerns over the levels of outdoor drinking of D'Arblay Street and Members highlighted that The George pub had a lot of outdoor drinking, but the premises had a door supervisor present. The Sub-Committee noted that if people were to buy cheaper alcohol from convenience stores to drink outside, then they would be venturing towards Soho Square to drink; the outdoor drinking seen on D'Arblay Street was a result of the existing premises on D'Arblay Street. Residents raised concerns that people used cars as tables on the street and that this would get worse if the House of Cans premises were to have tables and chairs outside.

The Applicant highlighted that as part of the pre-application, the Environmental Health Service had advised that the capacity for the premises would be 25, the Applicant had proposed a capacity of only 20 and noted that they did not want to pack the space with tables and chairs. The Applicant confirmed that they were happy to have a capacity of 20 excluding staff conditioned on the licence, should it be granted. There was an intention to utilise the small amount of forecourt space where the operator would like to place a couple of tables and chairs, however it was understood that this would be subject to a separate application.

In summing up, the Soho Society highlighted that it was understood that cumulative impact started to significantly impact areas from 21:00 but argued that what happened beyond 21:00 was fed into by what had happened in the area before 21:00; the Soho Society asked that the application be refused.

The Applicant noted that retail in general was struggling, and the ability to facilitate a limited amount of consuming the products on site was necessary to the viability of the business; the Applicant saw the local community as their neighbours and would be happy to work with the Soho Society going forward regarding any of their concerns.

The Applicant highlighted that there were much larger capacities at the other establishments of D'Arblay Street such as The George pub. They also agreed to the possibility of having a condition on their licence which dictated that alcohol would not be sold for immediate consumption outside of the premises. The Applicant and their Agent reiterated that the responsible authorities had all withdrawn their representations, specifically mentioning the withdrawal of the Licensing Authority who were the guardians of the cumulative impact areas and that, when the closing hour changed to 21:00, the Licensing Authority withdrew as there was no addition to cumulative impact.

The Sub-Committee queried how the operator would enforce a rule dictating that no customers could drink immediately outside the premises. The Applicant noted that they would explain this to customers at the point of purchase and that they could deny any customers from the premises who went on to break that rule.

Reasons and Conclusion

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

In reaching its decision, the Sub-Committee placed great weight on the fact that all responsible authorities had withdrawn their representations. It was particularly significant that the Licensing Authority, the custodian of the Council's Licensing Policy, considered that it was acceptable to grant the application within the Cumulative Impact Zone.

The Sub-Committee considered that granting the application would not add to cumulative impact and that it was therefore policy compliant. The application was tightly-conditioned, which would ensure that the premises operated as a specialist,

can-only off-licence whose main business model was to sell alcohol for consumption at home. The Sub-Committee also considered that the early closing hour for the premises would ensure that there was no addition to cumulative impact.

The Sub-Committee accepted the explanation given by the Applicant that those engaged in street drinking would be more likely to buy alcohol from the cheaper off-licences nearby. The Sub-Committee accepted the seriousness of what it was being told by the local resident in relation to public nuisance on the street, but the nature of the Premises, the small number of customers, the limited number of tasting events and the early closing time would all help ensure that the Premises did not add to cumulative impact. In order to ensure that there would be a limited number of tasting events, the Sub-Committee decided it was appropriate and proportionate to impose a condition limiting the number of tasting events each year.

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

1. To grant permission for **Sale by Retail of Alcohol (On and Off Sales)**. Monday to Sunday 12:00 to 21:00.
2. To grant permission for **the Opening Hours of the Premises** Monday to Sunday 12:00 to 21:00.
3. That the Licence is subject to any relevant mandatory conditions.
4. That the Licence is subject to the following conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.
5. The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a specialist, can-only off licence.
6. The consumption of alcohol on the premises shall cease at 9pm.
7. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 20 persons.
8. No deliveries to the premises shall take place between 23.00 hours and 08.00 hours on the following day.
9. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.
10. All tills shall automatically prompt staff to ask for age verification identification when presented with an alcohol sale.
11. Outside the hours authorised for the sale of alcohol and whilst the premises are open to the public, the licence holder shall ensure that all

alcohol within the premises (including alcohol behind the counter) is secured in a locked store room or behind locked grilles, locked screens or locked cabinet doors so as to prevent access to the alcohol by both customers and staff.

12. There shall be no self-selection of spirits on the premises, save for spirit mixtures less than 5.5% ABV.

13. 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.

14. There shall be no more than 10 persons consuming alcohol on the premises at any one time, save for when such persons are attending a tasting event, where the number of persons shall be increased to no more than 20.

15. There shall be no more than 26 tasting events in a calendar year. A register of tasting events shall be kept at the premises and made available on request for inspection by police or an authorised officer of the Council.

16. Deliveries shall only be made to bonafide residential or business addresses.

17. No persons under the age of 18 shall be allowed in the shop.

18. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke or make a phone call, shall not be permitted to take alcohol with them.

19. No super-strength beers, lagers, ciders, or spirit mixtures of 5.5% ABV (alcohol by volume) or above shall be sold at the premises, except for craft/premium beers and ciders, cocktails and wines supplied in cans.

20. The sale of alcohol for consumption on the premises shall only be to those that are seated and there will be no vertical drinking on the premises.

21. Alcohol shall not be sold for immediate consumption outside of the premises.

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

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

The Meeting ended at 1.26 pm