

LICENSING SUB-COMMITTEE No. 5

Thursday 21st April 2016

Membership: Councillor Angela Harvey (Chairman), Councillor Jan Prendergast and Councillor Rita Begum

Legal Adviser: Horatio Chance
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon
Presenting Officer: Ola Owojori

Relevant Representations: In support – 52 x residents and representation from 72 interested parties

Objections - Environmental Health, 10 x residents (a copy of one of the representations was signed by 86 other residents).

Present: Mr Niall McCann (Solicitor, representing the Applicant), Mr Alun Thomas (Solicitor, on behalf of the Applicant), Mr Ben Robson and Mr Ed Robson (Applicant Company), Councillor Lindsey Hall (representing Mr Maxwell Owusu Koduah and Mr Anil Drayan (Environmental Health), Mr Andrew Woods (Counsel, representing residents objecting to application), Mr John Harrison, Mr Simon Aron and Mr Simon Blackford (local residents objecting to application)

The Clifton, 96 Clifton Hill, NW8 16/01702/LIPN	
1.	Late Night Refreshment (Indoors)
	Monday to Saturday: 23:00 to 23:30
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): Prior to the hearing the Applicant's Representative, Mr McCann, produced a written statement of his clients' case. The Sub-Committee also received the views of Mr McCann and Mr Woods, representing the Clifton Hill Residents Group (local residents who had particular concerns about the application). Mr McCann commented at the hearing that it was his understanding that the residents Mr Woods was representing were not requesting that the application was refused but that specific conditions were attached to the premises licence.

Mr McCann stated that there had been a pub at the premises for a very long time until it was closed in 2013. The current landlord had intended to achieve a change of planning use and develop the premises into a single dwelling house. The planning application was rejected and ultimately The Clifton was given Asset of Community Value status which protects the premises' use as a pub. He added that whilst good quality food would be served, the Robson brothers wished to run The Clifton as a pub and not a restaurant. The proposed hours of operation which were less than the Council's Core Hours policy were the same as those on the previous licence. He commented that it was possible when referring to the plans that the microbrewery concept would not be taken forward.

Mr McCann explained that the pub needed to be renovated. There would be an improvement in comparison with the previous incarnation of the premises in that there would be improved conditions on the premises licence, a superior layout and soundproofing. He also referred to the consultation that his clients had carried out with the local community. He made the point that there was significant support for the venture, as demonstrated in the many representations in favour. He appreciated that there were some concerns but ultimately the Robsons were keen that local residents were patrons of The Clifton.

In terms of the proposed conditions, Mr McCann stated that a number of proposed conditions had been agreed with Environmental Health in the event that the Sub-Committee was minded to grant the application. The Applicant was seeking that deliveries and waste collections take place between 23:00 and 08:00 on each day of the week. Mr McCann expressed the view that he could understand if the residents wanted more flexibility on Sundays in terms of these hours. Mr McCann made the point that a condition had been agreed with Environmental Health that alcohol would not be consumed in the beer garden after 22:00. He added that he was not aware of issues at the premises previously when it had been the case that there had been no restrictive condition on the licence. The Applicant wished to avoid the patrons in the beer garden having to be seated and served by waiter or waitress as requested by the Clifton Hill Residents Group. This would increase staff costs and would be akin to a restaurant.

Mr McCann wished to emphasise that certain conditions proposed by Clifton Hill Residents Group such as that there would be no payment made by or on behalf of the licence holder to any person for bringing customers to the premises suggested that the premises would be a nightclub. He stated this was not the case as the Applicant was not proposing to have regulated music. Windows and doors would be closed after 21:00. He added that his clients would not be bringing in people en masse from Lords. The Applicants did not consider that there was a requirement for a door supervisor when a major sporting event was taking place at Lords Cricket Ground although they would be content to undertake a risk assessment in that respect. They also requested that a blanket ban was not put on cooking outside.

Councillor Hall addressed the Sub-Committee on behalf of the St John's Wood Society. She referred to the history of the premises and the significant

community support for the premises remaining a pub. The Council had found in favour of the premises becoming an Asset of Community Value. She stated that there was support for the Robson brothers as premises licence holders as they had a good track record, were enthusiastic and had consulted residents. The Application was for less than Core Hours and Councillor Hall concurred with Mr McCann's view that it was important not to put such restrictive conditions on the premises licence that it would affect the viable running of The Clifton.

Mr Koduah and Mr Drayan for Environmental Health confirmed that the premises had to operate as a pub and that they had agreed a number of conditions with the Applicant including collection and delivery times. Environmental Health had not agreed the proposed conditions of the Clifton Hill Residents Group that 'flashing or particularly bright lights on or outside the premises shall not cause a nuisance to nearby properties and any lighting will be low level lighting' as there were concerns about how practical it was to enforce it and there were other provisions to assess whether it was a statutory nuisance or not. Environmental Health had also not agreed the Residents Group's noise limiter condition as only background music would be played at The Clifton. Mr Drayan stated that Environmental Health did not believe that a SIA door supervisor was needed on the grounds that The Clifton was not that close to Lords and there had been no recorded complaints of public nuisance. Officers were of the view that it was not proportionate to require food and drink in the outside area to be served by waiter or waitress only or to prevent food being cooked in the outside area of the premises. It was possible that if a barbeque was held outside every day during the Summer it could cause nuisance. However, it was possible to re-heat pre-cooked food in the outside area without this causing a nuisance to local residents. The Applicant would need to ensure that if there was cooking outside it was done in such a way that it did not cause issues to local residents as amplified in those particular objections.

Mr Woods on behalf of the Clifton Hill Residents Group stated that he was representing the residents that were most likely to be affected by the application. He emphasised that the area was exceptionally residential and that Clifton Hill is a very quiet road. Residents' particular concern was the use of the outside area at The Clifton and deliveries. He added that it had been the case that local residents had complained to the previous landlord and landlady, including issues at the front of the property. It was correct to state that there had been no formal complaints to the Noise Team. Mr Woods confirmed that residents did not want to prevent a pub operating at 96 Clifton Hill but wanted appropriate conditions attached to the premises licence.

Mr Woods on behalf of the Clifton Hill Residents Group commented that the description of the front of the premises as a beer garden was incorrect. It was more appropriate to call it a "front patio". Residents were concerned that they would hear talking from patrons in the front area in their houses. It had been used by the previous operators and had adversely affected residents. Mr Woods in addition to requesting that the front area was not used after 21:00, asked that patrons were seated in order to limit the number of patrons and the potential for public nuisance. He also requested that the food and drink was served by waiter or waitress. Mr McCann wished to make the point at this juncture that the beer

garden was hidden behind bushes and there would be tables and chairs in this area.

Mr Woods stated that noise from collections and deliveries or removal of waste would be easily heard by residents and they would be disturbed if these took place as late as 23:00 hours or as early as 08:00. The residents were seeking no collections of waste or recycling materials and no deliveries between 21:00 and 09:00 on the following day and between 21:00 and 10:00 on Saturdays, Sundays and Bank Holidays. Mr Woods, when addressing Members on the remaining conditions, clarified that he did believe there should be a 'no advertisements promoting the establishment' condition and also a 'no payment to any person for bringing customers to the premises' condition because there was the potential for patrons to be brought to The Clifton from Lords Cricket Ground. He informed Members that it was not a vital condition but residents did seek SIA registered door staff to be on duty when there was a major sporting event at Lords. Mr Woods added that he was sure his clients would have good relations with the Robsons but that it should not be necessary for residents to have to complain in the event of being inconvenienced by noise.

The Sub-Committee also heard from the local residents being represented by Mr Woods. Mr Harrison referred to Clifton Hill being a quiet, residential area. He did not object to the idea of a pub. However, the previous operation had created issues. It had been a destination area for patrons from Lords and it needed to be supervised and properly managed. There had been a problem with outside cooking by the previous operators. Congestion was caused in a narrow street by delivery vehicles and those driving to The Clifton. Mr Harrison had been concerned at the lack of consultation from the current Applicant but wished the Robson brothers well with running the pub.

Mr Aron described in some detail patrons speaking outside the pub as a canyon effect. Patrons could not be seen behind the bushes but they could be heard. He had found it necessary to complain to the landlord. A large number of patrons came to the pub on event days at Lords and Mr Aron expressed the view that a SIA security person was therefore required. The previous operators had carried out outside cooking and brought large screens outside. Residents were content with the outside area being used until 21:00.

Mr Blackford informed Members that he supported Mr Jaspert's representation that his young daughter would be affected by use of the premises late in the evening. His biggest concern was the numbers outside in the front area. Collections of bottles would, he believed, also be noisy. Larger vehicles would be a particular issue in the evenings, potentially giving rise to public nuisance.

Mr Drayan, having heard the comments made, stated that Environmental Health tended to agree a terminal hour for the use of the outside area until 23:00. Where residents lived close by, officers tended to advise an earlier time which had led to the agreement with the Applicant of 22:00. He believed that 21:00 was more appropriate given that he had become aware that residents had made complaints in the past. He advised that if the microbrewery was operated it would need to comply with the condition that no fumes, steam or odours would

be permitted to be emitted from the licensed premises so as to cause a nuisance to residents in the area.

Mr McCann responded to some of the points that had been made by residents and also on their behalf. There would be no TVs or outside screens in the outside area. This area would be regularly patrolled and managed. The Applicant had agreed a terminal hour of 22:00 for the outside area with Environmental Health when there had been no condition on the previous licence for the premises. He expressed the view that it was down to management of the area by staff because there were appropriate numbers to be able to do so. If there was a problem the Applicant would voluntarily lessen its hours of use outside and if not would expect to face a review of the premises licence. There would be no leafleting relating to the pub when events took place at Lords.

A designated smoking area was discussed. It had not been designated when the previous licence had been in operation. There were some residents who were concerned that a smoking area to the rear of the premises would adversely affect them and others who were concerned that smokers at the front of the premises would adversely affect them. The Sub-Committee was advised by the Applicants that if a rear area for smoking was used it would mean walking through the conservatory and residents were worried about noise escape when this happened. Environmental Health recommended limiting the smokers to five later in the evening. Mr McCann requested that a maximum of 10 smokers later in the evening was permitted.

The Sub-Committee gave careful consideration to all the points made on behalf of the various parties who had made representations both in writing and at the hearing. Members of the Sub-Committee in reaching their decision, noted that The Clifton had been designated an Asset of Community Value as a pub. They also noted that representations were not seeking the refusal of the application. In assessing how The Clifton would impact on the neighbourhood, Members took into consideration that the Applicant had sought less than Core Hours and that it was not located in a designated cumulative impact area. In granting the application, it was important to impose conditions that created a balance ensuring the successful operation of the pub but also being mindful of the fact that local residents could suffer public nuisance as a consequence.

The Sub-Committee considered that management had to be given the opportunity to run the premises properly in accordance with the promotion of the four licensing objectives. . The Applicant would be required to ensure that staff did in particular monitor the outside area effectively so that a public nuisance was not caused. Should management fail to do so, then local residents would have the ability to request a review of the premises licence. The Applicant had, in discussions with Environmental Health, agreed conditions which had not been on the previous premises licence for The Clifton. These included a terminal hour for the use of the beer garden by customers of 22:00. This had been a compromise based on a recognition that residents are in close proximity to the pub and it was considered that 22:00 was a suitable cut off time for licensable activities to cease in that area. The Sub-Committee whilst noting Environmental Health's subsequent advice considered that 22:00 was an appropriate terminal

hour for licensable activities in the outside area. The Sub-Committee decided that patrons permitted to temporarily leave and then re-enter the premises building after 22:00 hours to smoke would be restricted to a designated smoking area defined as being immediately outside the lobby entrance to the premises as far as the building line. This would be limited to a maximum of five people. This was with the purpose of minimising the impact on residents. Members did not consider it proportionate to require the Applicant to have patrons seated and served by waiter or waitress in the outside area. With the ability to run the premises as a pub, however, came a responsibility to promote the licensing objectives and manage the patrons effectively. A condition was not imposed requiring a door supervisor when events were held at Lords. The Applicant would be expected to be responsible in terms of any outside cooking as recommended by Environmental Health.

The Sub-Committee also gave careful consideration to timings for deliveries and collections. Members considered that it was appropriate and proportionate for these not to take place from Monday to Friday between 22:00 hours and 08:00 hours the day following. There would be additional respite for residents on Saturdays, Sundays and Bank Holidays when deliveries and collections would not take place between 22:00 hours and 09:00 hours the day following.

The Sub-Committee did not impose any conditions relating to music inside the premises, as recommended by Environmental Health, as recorded music had not been applied for. The Applicant had agreed a condition proposed by Clifton Hill Residents Group that 'recorded music, live music, radio, television or other form of noise-producing device or noise producing activity or entertainment whatsoever shall be permitted in the outside area' and this was attached to the premises licence.

2. Sale by retail of alcohol (On and Off)

Monday to Saturday:	10:00 to 23:00
Sunday:	12:00 to 22:30

Amendments to application advised at hearing:

None.

Decision (including reasons if different from those set out in report):

The Sub-Committee granted the application, subject to conditions. The use of the beer garden at the front of the premises was permitted until 22:00 (see reasons for decision in Section 1).

3. Opening Hours

Monday to Saturday:	10:00 to 23:30
Sunday:	12:00 to 23:00

	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below (see reasons for decision in Section 1).</p>

Conditions attached to the Licence

Mandatory Conditions

1. No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
 - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing

objective;

- (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
- (a) a holographic mark, or
 - (b) an ultraviolet feature.
7. The responsible person must ensure that—
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml;
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
 - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are

available.

A responsible person in relation to a licensed premises means the holder of the premise licence in respect of the premises, the designated premises supervisor (if any) or any individual aged 18 or over who is authorised by either the licence holder or designated premises supervisor. For premises with a club premises certificate, any member or officer of the club present on the premises in a capacity that which enables him to prevent the supply of alcohol.

8(i) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

8(ii) For the purposes of the condition set out in paragraph 8(i) above -

(a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;

(b) "permitted price" is the price found by applying the formula -

$$P = D + (D \times V)$$

Where -

(i) P is the permitted price,

(ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence, or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

8(iii). Where the permitted price given by Paragraph 8(ii)(b) above would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

8(iv). (1) Sub-paragraph 8(iv)(2) below applies where the permitted price given by Paragraph 8(ii)(b) above on a day ("the first day") would be different from the

permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.

- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Additional Conditions

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. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
11. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly
12. A Challenge 21 or Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS hologram.
13. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
14. No rubbish, including bottles, shall be moved, removed or placed in outside areas on Monday to Friday between 22:00 hours and 08:00 hours the day following and on Saturdays, Sundays and Bank Holidays between 22:00 hours and 09:00 hours the day following.
15. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
16. 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 and the outside area 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 entire 31 day period.
17. 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.

18. 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.
19. An incident log shall be kept at the premises, and made available on request to an authorised officer of the Council or the Police, which 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 or searching equipment or scanning equipment
 - g. any refusal of the sale of alcohol
 - h. any visit by a relevant authority or emergency service.
20. There shall be no self-service of alcohol.
21. There shall be no striptease or nudity, and all persons shall be decently attired at all times unless the premises are operating under the authority of a Sexual Entertainment Venue Licence.
22. During the hours of operation of the premises, the licence holder shall each day 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.
23. The licence holder shall enter into an agreement with a hackney carriage and/or private carriage firm to provide transport for customers, with contact numbers made readily available to customers who will be encouraged to use such services.
24. The Beer Garden shall not be permitted to be used by customers after 22:00 hours.
25. The windows at the front of the premises shall not be used as a hatch for the serving of food or drinks.
26. All windows and external doors shall be kept closed after 21:00 hours except for the immediate access and egress of persons.
27. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
28. After 22.00 hours patrons permitted to temporarily leave and then re-enter the premises building, e.g. to smoke, shall not be permitted to take drinks or glass

containers with them.

29. After 22:00 hours patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall be limited to 5 persons at any one time.
30. Patrons permitted to temporarily leave and then re-enter the premises building after 22:00 hours to smoke shall be restricted to a designated smoking area defined as being immediately outside the lobby entrance to the premises as far as the building line.
31. During the hours of operation of the premises, the licence holder shall each day 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.
32. No collections of waste or recycling materials (including bottles) from the premises shall take place on Monday to Friday between 22:00 hours and 08:00 hours the day following and on Saturdays, Sundays and Bank Holidays between 22:00 hours and 09:00 hours the day following.
33. No deliveries to the premises shall take place on Monday to Friday between 22:00 hours and 08:00 hours the day following and on Saturdays, Sundays and Bank Holidays between 22:00 hours and 09:00 hours the day following.
34. The premises licence holder shall ensure that any patrons smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.
35. 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.
36. 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.
37. 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.
38. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.
39. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
40. No licensable activities shall take place at the premises until the premises have

been assessed as satisfactory by the Environmental Health Consultation Team and at which time this condition has been shall be removed from the Licence by the Licensing Authority.

41. 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 the premises layout has changed during the course of construction new plans shall be provided to the Environmental Health Consultation Team and the Licensing Authority.
42. 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.
43. No recorded music, live music, radio, television or other form of noise-producing device or noise producing activity or entertainment whatsoever shall be permitted in the outside area.