

**IN THE MATTER OF 21 RUPERT STREET, LONDON**

**REVIEW OF A PREMISES LICENCE**

**LICENSING ACT 2003**

**BEFORE THE LICENSING SUB-COMMITTEE, WESTMINSTER CITY COUNCIL**

**INTERESTED PARTY'S SUMMARY SUBMISSIONS**

London Trocadero 2015 LLP

1. London Trocadero 2015 LLP is the landlord of these premises. It is a responsible and professionally run company which, amongst other things, owns and manages a number of other properties in and around Leicester Square. Many of these enjoy premises licences in one form or another. As is set out in the witness statement of Cosmina Stan, the Asset Manager of Criterion (the asset holding company) these properties include:
  - a. The Assembly Hotel
  - b. The Victory House Hotel
  - c. Hotel Indigo
  - d. The Trocadero, which itself comprises, inter alia;
    - i. 3 nightclubs
    - ii. 6 restaurants
    - iii. A number of cafes and retail units.
2. Further, the company is in the process of completing a 700 bedroom hotel above the Trocadero, which is due to open in early 2020. The hotel is aimed at attracting international custom and will will operate around the clock to accommodate guests arriving from different time-zones.
3. Its commercial interests are therefore entirely coincidental with those of the Council since it wishes to ensure a safe, vibrant, and welcoming environment. Episodes of

disorder and violence in and around Leicester Square are wholly unwanted and damaging to profile of both the Trocadero and the area in which its hotels operate. It therefore has every desire to ensure that the licence at 21 Rupert Street is operated responsibly and well. Generally, the company is to be commended for having invested significantly in the commercial stock of the Leicester Square area and for significant improvements to the amenity.

4. The sub-committee will note that the company has on the more than once occasion actively surrendered licences (see w/s of Cosmina Stan, para 9). Further, on taking over the Trocadero it removed Saga Bowl (amusement / gaming) and has continued to make the offer more low-key, convivial and restaurant-led. It has recently granted a lease to Haidialoa, a highly reputed Chinese hot-pot restaurant, who are opening a 24-hour 1000 sq ft outlet. In all of this it sees the need for a well operated nightclub in the basement at Rupert Street, and has concluded that this is an essential part of the overall offer. It does not want disorder of any kind, but equally it does not want to lose an important element of the hospitality that is available.

#### Application for a shadow licence

5. An application for a 'shadow' licence was submitted on 24 July 2019. This followed a policy review by the company earlier in the year, when it reflected upon the way in which it engaged with those of its tenants operating licensed premises. The company was rightly concerned that it should be able to exert a higher degree of control over both that class of tenant and the properties concerned. An application was therefore submitted in respect of 21 Rupert Street, along with two others and was made a clear month before the incident of 25 August 2019.
6. The application was designed and intended to safeguard the Applicant's commercial interests and to better enable it to ensure the proper running of this, and other licensed premises. That is because:
  - a. Where the landlord holds a licence it has a legal responsibility to ensure compliance with the provisions of the Licensing Act and with the conditions on the licence, even if it is not operating the licence.

- b. It can therefore legitimately engage with the management of the venue, and to an extent insist that it does so whether the tenant likes it or not; otherwise it too may lose its licence on review (see Westminster Licensing Policy 3.2.13 – 3.2.15)
  - c. Importantly, where the landlord holds a premises licence in addition to that held by the tenant, the tenant understands that they are, in a sense dispensable: that if they lose their premises licence through insolvency, breach of conditions or other reason, the landlord’s licence will still exist.
7. The ability to grant a ‘shadow’ licence was expressly provided for in the Licensing Act 2003. (See Section 2(3): *‘Nothing in this Act prevents two or more authorisations having effect concurrently in respect of the whole or a part of the same premises ...’* By contrast, under betting legislation, there can only be one licence in existence at a time). And in Extreme Oyster v Guildford Borough Council [2013] EWHC 2174 the Divisional Court made it plain that a landlord was entitled to be granted such a licence under s.16 of the Act. It follows therefore both that the DCMS envisaged this kind of application in drafting the 2003 Act, and that it is a lawful, and entirely appropriate application for the Applicant to make.
8. The landlord’s application was listed for hearing on Thursday 19 September. It was however adjourned after the MPS made a representation that it was not in the public interest for the matter to be heard until the Review proceedings had been concluded. No further date has yet been allocated.

#### The Incident of 25 August 2019

9. The landlord was in no way involved in the operation of the premises on 25 August and indeed did not believe them to be open. Like the police (see the witness statements of PCs Guerra and Lewis submitted for the Review proceedings), the company believed:
- a. The tenant was a responsible and experienced operator
  - b. The tenant’s intention was to operate the venue by way of higher-end events, moving the venue on from the style of operation previously run by DSTRIKT

- c. There was a well-known, trusted and experienced DPS in situ (Eamonn Mulholland)
- d. The premises had been closed for the summer

## Submissions

10. Owing to the seriousness of the incident that night, then Police are requesting revocation of the licence. It is *exactly* because the landlord was concerned that potentially matters like this could arise in respect of one of its portfolio of licensed properties that it embarked upon the process of applying for shadow licences in respect of a number of them.
11. The landlord submitted a properly made application for a 'shadow' licence which has yet to be determined. It will be denied the opportunity to be granted such a licence if revocation now takes place. Simply put, there will be no licence to shadow. Furthermore, a subsequent application for a new premises licence (the existing one having been revoked) would be unlikely to succeed given the premises' location in the West End Cumulative Impact Area.
12. There is no reason at all why the venue could not in the future be properly, safely and attractively run, in line with the landlord's vision for the high-end international offer it wishes to make at them Trocadero.
13. Although there have been problems at the venue in the past, there is no real pattern of the kind of repeated or continual violence or disorder that any sometimes justify the conclusion that the kind of licence at a particular premises isn't appropriate *whoever is managing the operation*.
14. Indeed, until the occurrence of this episode the police seemed themselves to believe that the new operator was good, knew and liked the DPS who they regarded as responsible and experienced and were optimistic about the future (see w/s PC Lewis pp 2-3).

15. Accordingly the Landlord submits it would be disproportionate and unfair for the sub-committee to revoke the licence because:

- a. To do so in the absence of a shadow licence would mean that the premises would be unlikely ever to reopen as a nightclub
- b. The basement space the premises comprises at the newly refurbished Trocadero is entirely apposite for nightclub usage (and not much else)
- c. There is no evidence that the premises itself is endemically unsuited to being run as a nightclub – the material produced by the police doesn't go anything like that far
- d. To the contrary there is a strong indication in the evidence that the police consider it might be (despite its original objections in 2011)
- e. The sub-committee in 2011 plainly thought usage of the premises as a nightclub was appropriate, despite its location in the Cumulative Impact Area
- f. Since 2011 the landlord has very actively, and at significant cost, improved and upgraded the amenity and offer of both the Trocadero and some surrounding properties in Leicester Square.

16. In the circumstances the sub-committee can and should deal with this matter by way of imposing a lesser sanction and by reviewing the premises' licence conditions.

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