

12 November 2019

Further submissions of Mr S. Beller in relation to Premises Licence Application at 1 Irving Street

For the purpose of these submissions please find attached hereto:

- A. Existing Premises Licence for 2/3 Irving St dated 18 July 2014
- B. Tables and Chairs Licence dated 29 October 2019 for 1 Irving Street (determined on 30 June 2019)
- C. Refusal of Application for tables and chairs licence dated 29 October 2019
- D. Delegated Report dated 25 September 2019 in support of refusal

[These documents have been appended as reference is made to them. It is also possible that the Licensing Committee Members have not been provided with these documents in advance of the hearing fixed for 14 November 2019]

PLANNING and EXISTING LICENSING POSITION

1. There is no existing planning consent for use of the 1 Irving Street Premises (hereafter referred to a "No 1") as explained at paragraph 1 of Document D. The premises is and always has been a sandwich bar. It has no kitchen, no bar and no toilet facilities.
2. Up until 30 June 2019 No1 had the benefit of a tables and chairs licence (Document B) as explained in Document D. The effective renewal thereof was refused [Document C] but nevertheless and in breach of the provisions of document B the tables and chairs remain *in situ* notwithstanding that they should have been removed by 30 June 2019. Food and alcohol are served unlawfully at these tables and chairs from the kitchen premises and bar at 2/3 Irving St {hereafter referred to as No 2/3}.
3. There has **never** been a Premises Licence in existence for No 1. Notwithstanding this deficiency No1 has been used by the Applicant for more than a year for the admitted on and off sales of alcohol, an activity that is not authorised or licensed. An observation by a Licensing Officer will confirm such position and which cannot be denied by the Applicant. This not an isolated incident but s in fact a persistent breach of the licensing regulations as well as

a breach of the conditions of Document A, The Applicant ought not to be rewarded for such persistent breaches by the grant of a new Premises Licence for No 1 and particularly whilst he has been in breach of the License conditions of Document A by allowing the sale of alcohol in unlicensed premises No 1).

4. Document A specifically states that the number of persons permitted in No 2/3 at any one-time including staff shall not exceed 30 persons. Such condition is regularly breached. As far as I am aware no enforcement action has been taken in respect thereof by Westminster.

THE TOILET FACILITIES

5. I am still of the opinion that the available toilets at No 2/3 are insufficient to cope with 40 additional persons that may flow from No 1. It is also highly unusual that persons who drink alcohol in licensed premises or who are eating at a designated restaurant are unable to use the toilet facilities at such premises but must go elsewhere. In the usual way toilet facilities could easily be constructed at No 1 but the Applicant has chosen not to do so. Insufficient attention has been paid to the potentially constant traffic of 40 additional persons across and through No 1 into the stairway at No 2/3 and then up and down the stairs at number 2/3 to the basement toilets which exist there and which in any event are very small. The committee ought to consider a short adjournment for a site visit on the date of the hearing.

COOKING and DUCTING - SMOKE and SMELL

6. I have already indicated that that cooking at No 2/3 is in breach of the lease covenants and the planning consent. Complaints have been lodged with Westminster.
7. There is no proper ducting from the unlawful basement kitchen at No 2/3 and the smoke and smells are released at ground floor level via an extractor and which causes a considerable and continuing nuisance and is environmentally unhealthy. The law indicates that ducting should carry the smoke and smell to at least roof level. This cannot happen unless appropriate ducting is constructed. The applicant has taken no steps to do so. In the event that additional cooking is allowed to take place then the smoke and smell nuisance will increase proportionally and may well double
8. Licensing officers have failed to properly research the overall position and I believe have not checked the ducting or otherwise a Report by an Officer should have been obtained by the Officer and which undoubtedly would have

detailed the environmental dangers and highlighted the continuing health hazards as a result of personal observation thereof.

GENERAL NUISANCE

9. No attention has been made to the continuing and ongoing nuisance of drinkers assembling at No1 and on the public footpath and generally consuming alcohol which has been unlawfully purchased at the unlicensed premises of No1 and in the majority of instances without purchasing food.
10. As indicated previously the outside part of No 1 has virtually been in operation for more than a year as an unlicensed Public House.

A



Schedule 12
Part A

WARD: St James's
UPRN: 100023431715

City of Westminster

64 Victoria Street, London, SW1E 6QP

Premises licence

Regulation 33, 34

Premises licence number:	14/00705/LIPV
Original Reference:	05/10347/LIPC

Part 1 – Premises details

Postal address of premises:

Stephano's Cafe La Chandelle
2-3 Irving Street
London
WC2H 7AT

Telephone Number: 020 7930 4727

Where the licence is time limited, the dates:

Not applicable

Licensable activities authorised by the licence:

Playing of Recorded Music
Late Night Refreshment
Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit
Sale by Retail of Alcohol

The times the licence authorises the carrying out of licensable activities:

Playing of Recorded Music	Unrestricted
Late Night Refreshment	
Monday to Saturday:	23:00 to 00:30
Sunday:	23:00 to 00:00
Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit	Unrestricted
Sale by Retail of Alcohol	
Monday to Sunday:	10:00 to 23:00 (Off Sales)
Monday to Saturday:	10:00 to 00:00 (On Sales)
Sunday:	10:00 to 23:30 (On Sales)

For times authorised for Christmas, New Year and Good Friday see conditions at Annex 1 & 3

The opening hours of the premises:

Monday to Saturday:	08:00 to 00:30
Sunday:	08:00 to 00:00

Where the licence authorises supplies of alcohol, whether these are on and/or off supplies:

Alcohol is supplied for consumption both on and off the Premises.

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence:

Mr Abdul Rahman Husseinbor
Stephano's Cafe
La Chandelle
2-3 Irving Street
London
WC2H 7AT

Registered number of holder, for example company number, charity number (where applicable)

N/A

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol:

Name: Abdul Rahman Husseinbor

Please note: It is the policy of the Licensing Authority not to display the address details of a designated premises supervisor.

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol:

Licence Number: 20579
Licensing Authority: London Borough Of Richmond Upon Thames

Date: _____18 July 2014_____

This licence has been authorised by Mrs Taruna Adnath on behalf of the Operational Director - Premises Management.

Annex 1 – 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 shall take all reasonable steps to 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 in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children;
 - (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 (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);
 - (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;
 - (d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on;
 - (i) the outcome of a race, competition or other event or process, or
 - (ii) the likelihood of anything occurring or not occurring;
 - (e) 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.
5. The responsible person shall ensure that no alcohol is dispensed 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).
6. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.
7. (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

- (2) 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 a holographic mark.

8. The responsible person shall 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; and
- (b) customers are made aware of the availability of these measures.

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.

9(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.

9(ii) For the purposes of the condition set out in paragraph 9(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.
- 9(iii). Where the permitted price given by Paragraph 9(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.
- 9(iv). (1) Sub-paragraph 9(iv)(2) below applies where the permitted price given by Paragraph 9(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.

Conditions which reproduce the effect of any restriction imposed on the use of the premises by specified enactment

- 10. No person under fourteen shall be in the bar of the licensed premises during the permitted hours unless one of the following applies:
 - (a) He is the child of the holder of the premises licence.
 - (b) He resides in the premises, but is not employed there.
 - (c) He is in the bar solely for the purpose of passing to or from some part of the premises which is not a bar and to or from which there is no other convenient means of access or egress.
 - (d) The bar is in railway refreshment rooms or other premises constructed, fitted and intended to be used bona fide for any purpose to which the holding of the licence is ancillary.

In this condition "bar" includes any place exclusively or mainly used for the consumption of intoxicating liquor. But an area is not a bar when it is usual for it to be, and it is, set apart for the service of table meals and alcohol is only sold or supplied to persons as an ancillary to their table meals.

- 11. The terminal hour for Late Night Refreshment on New Years Eve is extended to 05:00 on New Years Day.

Annex 2 – Conditions consistent with the operating Schedule

None

Annex 3 – Conditions attached after a hearing by the licensing authority

12. Substantial food and suitable beverages other than intoxicating liquor (including drinking water) shall be available during the whole of the permitted hours in all parts of the premises where intoxicating liquor is sold or supplied.

Conditions which reproduce the effect of any restriction imposed on the use of the premises by specified enactment

13. Alcohol shall not be sold, supplied, consumed in or taken from the premises except during permitted hours.

In this condition, permitted hours means:

- (a) Monday to Saturday, other than Christmas Day or Good Friday, 10:00 to 00:00 for sale of alcohol for consumption on the premises and 10:00 to 23:00 for sale of alcohol for consumption off the premises
- (b) On Sundays, other than Christmas Day, 10:00 to 23:30 for sale of alcohol for consumption on the premises and 10:00 to 23:00 for sale of alcohol for consumption off the premises
- (c) On Good Friday, 12:00 to 22:30
- (d) On Christmas Day, 12:00 to 15:00 and 19:00 to 22:30
- (e) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day for the sale of alcohol for consumption on the premises.

NOTE - The above restrictions do not prohibit:

- (a) during the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking table meals there if the alcohol was supplied for consumption as ancillary to the meals;
- (b) the sale or supply of alcohol to or the consumption of alcohol by any person residing in the licensed premises;
- (c) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
- (d) the sale of alcohol to a trader or registered club for the purposes of the trade or club;
- (e) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;
- (f) the taking of alcohol from the premises by a person residing there;
- (g) the supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied;
- (h) the supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

In this condition, any reference to a person residing in the premises shall be construed as including a person not residing there but carrying on or in charge of the business on the premises.

14. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
15. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
16. 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.
17. After 23:00 Patrons temporarily leaving the premises e.g. to smoke shall not be allowed to take any alcoholic drinks with them.
18. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
19. No waste of recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23:00 hours and 08:00 hours on the following day.
20. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises and that this area shall be swept and or washed and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.
21. The number of persons permitted in the premises at any one time (including staff) shall not exceed 30 persons.
22. There shall be no striptease or nudity and all persons shall be decently attired at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue Licence.
23. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.
24. 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.
25. The premises, including any permitted external area, shall only operate as a restaurant
 - (i) in which customers are shown to their table,
 - (ii) where the supply of alcohol is by waiter or waitress service only,
 - (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery,
 - (iv) which do not provide any take away service of food or drink for immediate consumption, save for consumption at tables and chairs outside the premises granted by a temporary licence under the City of Westminster Act 1999,
 - (v) which do not provide any take away service of food or drink after 23.00, and
 - (vi) where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.

26. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police, 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.
27. Tables and chairs outside the premises shall be rendered unusable or removed by 23:30.

Annex 4 – Plans

Attached



Schedule 12
Part B

WARD: St James's
UPRN: 100023431715

City of Westminster
64 Victoria Street, London, SW1E 6QP

**Premises licence
summary**

Regulation 33, 34

Premises licence number:

14/00705/LIPV

Part 1 – Premises details

Postal address of premises:

Stephano's Cafe La Chandelle
2-3 Irving Street
London
WC2H 7AT

Telephone Number: 020 7930 4727

Where the licence is time limited, the dates:

Not applicable

Licensable activities authorised by the licence:

Playing of Recorded Music
Late Night Refreshment
Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit
Sale by Retail of Alcohol

The times the licence authorises the carrying out of licensable activities:

Playing of Recorded Music Unrestricted

Late Night Refreshment

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

Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit Unrestricted

Sale by Retail of Alcohol

Monday to Sunday: 10:00 to 23:00 (Off Sales)
Monday to Saturday: 10:00 to 00:00 (On Sales)
Sunday: 10:00 to 23:30 (On Sales)

For times authorised for Christmas, New Year and Good Friday see conditions at Annex 1& 3

The opening hours of the premises:

Monday to Saturday: 08:00 to 00:30
Sunday: 08:00 to 00:00

Where the licence authorises supplies of alcohol, whether these are on and/or off supplies:

Alcohol is supplied for consumption both on and off the Premises.

Name and (registered) address of holder of premises licence:

Mr Abdul Rahman Husseinbor
Stephano's Cafe
La Chandelle
2-3 Irving Street
London
WC2H 7AT

Registered number of holder, for example company number, charity number (where applicable)

N/A

Name of designated premises supervisor where the premises licence authorises for the supply of alcohol:

Name: Abdul Rahman Husseinbor

State whether access to the premises by children is restricted or prohibited:

Restricted

Date: _____ 18 July 2014 _____

This licence has been authorised by Mrs Taruna Adnath on behalf of the Operational Director - Premises Management.

Your ref: MR MOHAMAD CHAHINE
My ref: 18/00451/TCH

Please reply to:
Tel No:

Nikki Mitchell
020 7641 2681

Mr Mohamad Chahine
Chahine brothers ltd
1, Irving Street
London
WC2H 7AT

Development Planning
Westminster City Council
PO Box 732
Redhill, RH1 9FL

7 June 2018

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990
PERMISSION FOR DEVELOPMENT (CONDITIONAL)**

The City Council has considered your application and permits the development referred to below subject to the conditions set out and in accordance with the plans submitted. Unless any other period is stated in the Schedule this permission, by virtue of Section 91(1) of the Town and Country Planning Act 1990 (as amended) is subject to a condition that the development shall be commenced within 3 years of the date of this decision. Your attention is drawn to the Applicant's Rights.

SCHEDULE

Application No: 18/00451/TCH

Application Date:

Date Received: 19.01.2018

Date Amended: 20.04.2018

Plan Nos: Site location plan; Floor plan 1 Irving Street

Address: 1 Irving Street, London, WC2H 7AT,

Proposal: Use of the public highway for the placing of 16 tables and 32 chairs and a free standing menu in an area measuring 6.00m x 2.95m in connection with the existing ground floor use.

See next page for conditions/reasons.

Yours faithfully



John Walker
Director of Planning

Condition(s):

- 1 The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.

Reason:

For the avoidance of doubt and in the interests of proper planning.

- 2 You must not put the tables and chairs in any other position than that shown on drawing floor plan 1 Irving Street. (C25AA)

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25AC)

- 3 You can only put the tables and chairs on the pavement between 8.00 and 23.00. (C25BA)

Reason:

To protect neighbouring residents from noise and disturbance as set out in S29 and S32 of Westminster's City Plan (November 2016) and ENV 6 and TACE 11 of our Unitary Development Plan that we adopted in January 2007.

- 4 The tables and chairs must only be used by customers of 1 Irving Street Ground floor unit. (C25CA)

Reason:

In the interests of public safety and to avoid blocking the road as set out in S41 of Westminster's City Plan (November 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. (R25AC)

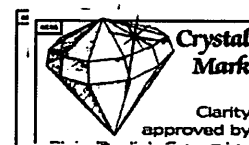
- 5 This use of the pavement may continue until 30 June 2019. You must then remove the tables and chairs. (C25DA)

Reason:

We cannot give you permanent permission as the area in question is, and is intended to remain, public highway and Section 130 (1) of the Highways Act 1980 states that "It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority". We also need to assess the effect of this activity regularly to make sure it meets S41 of Westminster's City Plan (November 2016) and TACE 11 of our Unitary Development Plan that we adopted in January 2007. For the above reasons, and not because this is seen a form of trial period, we can therefore only grant a temporary permission.

Note:

- The Plain English Crystal Mark applies to those conditions, reasons and informatives in this letter which have an associated reference number with the prefix C, R, X or I.
- The terms 'you' and 'your' include anyone who owns or occupies the land or is involved with the development.
- The terms 'us' and 'we' refer to the Council as local planning authority.



- 6 You can only put out on the pavement the tables and chairs shown on drawing floor plan 1 Irving Street. No other furniture, equipment or screening shall be placed on the pavement in association with the tables and chairs hereby approved.

Reason:

To make sure that the type and appearance of the tables and chairs (and where appropriate other furniture or equipment) is suitable and that no additional furniture, equipment or screening is placed on the pavement to the detriment of the character and appearance of the area. This is as set out in TACE 11 and DES 7 of our Unitary Development Plan that we adopted in January 2007.

Informative(s):

- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way. We have made available detailed advice in the form of our statutory policies in Westminster's City Plan (November 2016), Unitary Development Plan, Supplementary Planning documents, planning briefs and other informal written guidance, as well as offering a full pre application advice service, in order to ensure that applicant has been given every opportunity to submit an application which is likely to be considered favourably. In addition, where appropriate, further guidance was offered to the applicant at the validation stage.
- 2 You must keep the tables and chairs within the area shown at all times. We will monitor this closely and may withdraw your street trading licence if you put them outside this area. (I48AA)
- 3 You cannot put tables and chairs in the area unless you have a street trading licence.

If you want to know about the progress of your application for a licence, you can contact our Licensing Service on 020 7641 8549. If you apply for a licence and then decide to change the layout of the tables and chairs, you may have to apply again for planning permission. You can discuss this with the planning officer whose name appears at the top of this letter.

Please remember that once you have a licence you must keep the tables and chairs within the agreed area at all times. (I47AB)

Note:

- The Plain English Crystal Mark applies to those conditions, reasons and informatives in this letter which have an associated reference number with the prefix C, R, X or I.
- The terms 'you' and 'your' include anyone who owns or occupies the land or is involved with the development.
- The terms 'us' and 'we' refer to the Council as local planning authority.





Your ref: Italiano
My ref: 19/04106/TCH

Please reply to:
Tel No:
Email:

Jonathon Metcalfe
020 7641 6929
southplanningteam@westminster.gov.uk

Mr Mohamad chahine
1, Irving Street
LONDON
WC2H 7AT

Development Planning
Westminster City Council
PO Box 732
Redhill, RH1 9FL

29 October 2019

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990
REFUSAL OF PERMISSION TO DEVELOP**

The City Council has considered your application and REFUSES to permit the development referred to below as shown on the plans submitted.

Your attention is drawn to the Applicant's Rights.

SCHEDULE

Application No: 19/04106/TCH **Application Date:**
Date Received: 29.05.2019 **Date Amended:** 05.06.2019
Plan Nos: Location Plan; Floor Plan 1 Irving Street

For Further Information;
Design & Access Statement dated 25/07/19

Address: 1 Irving Street, London, WC2H 7AT,

Proposal: Use of the public highway for the placing of 16 tables and 32 chairs and a free standing menu in an area measuring 6.00m x 2.95m in connection with the existing ground floor use.

See next page for reasons for refusal.

Yours faithfully

Deirdra Armsby
Director of Place Shaping and Town Planning

Reason(s) for Refusal:

- 1 The proposed tables and chairs would unacceptably intensify an existing unauthorised use at the application site. This could cause a nuisance to residents and harm the amenity of the area which would be contrary to Policy TACE 11 and ENV 6 of our Unitary Development Plan that we adopted in January 2007 and S29 and S32 of Westminster's City Plan (November 2016).

Informative(s):

- 1 In dealing with this application the City Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive way so far as practicable. We have made available detailed advice in the form of our statutory policies in Westminster's City Plan (November 2016), Unitary Development Plan, neighbourhood plan (where relevant), supplementary planning documents, planning briefs and other informal written guidance, as well as offering a full pre application advice service, in order to ensure that the applicant has been given every opportunity to submit an application which is likely to be considered favourably. However, the necessary amendments to make the application acceptable are substantial and would materially change the development proposal. They would require further consultations to be undertaken prior to determination, which could not take place within the statutory determination period specified by the Ministry of Housing, Communities and Local Government. You are therefore encouraged to consider submission of a fresh application incorporating the material amendments set out below which are necessary to make the scheme acceptable.

Required amendments:

- Regularise the unlawful use prior to applying for planning permission for tables and chairs.

Note:

- The Plain English Crystal Mark applies to those conditions, reasons and informatives in this letter which have an associated reference number with the prefix C, R, X or I.
- The terms 'you' and 'your' include anyone who owns or occupies the land or is involved with the development.
- The terms 'us' and 'we' refer to the Council as local planning authority.



Delegated Report**Development Planning****Address:** 1 Irving Street, London, WC2H 7AT,

Case No.:	19/04106/TCH	TP:	PP-07890962
Date Received:	29.05.2019	Date Valid:	05.06.2019
Date amended/ completed:	05.06.2019	8 Wk Date:	31.07.2019
		EoT date:	
Agent:	/	On behalf of:	
Development Plan Context:	- London Plan July 2011 - Westminster's City Plan November 2016 - Unitary Development Plan (UDP) January 2007		

LB: **CA:** Leicester Square**Proposal:**

Use of the public highway for the placing of 16 tables and 32 chairs and a free standing menu in an area measuring 6.00m x 2.95m in connection with the existing ground floor use.

Consultations:

WESTMINSTER SOCIETY: No response.

PLANNING ENFORCEMENT: No formal written response. History of enforcement investigations regarding numbers of tables and chairs and unauthorised advertisements.

HIGHWAYS PLANNING: No objection.

WASTE PROJECTS: No objection.

NEIGHBOURING OWNERS/ OCCUPIERS AND OTHER REPRESENTATIONS

No. consulted: 30

No. of responses: 2 Objections

- Impact of smoke from shisha.
- The potential of outdoor consumption of alcohol
- Noise disturbance
- Lack of toilet facilities
- The change of use from sandwich bar that was primarily sandwich takeaway
- Overspilling of customers onto the pavement

SITE AND PRESS ADVERTISEMENT NOTICE: Yes.

Relevant Planning History:18/00451/TCH

Use of the public highway for the placing of 16 tables and 32 chairs and a free standing menu in an area measuring 6.00m x 2.95m in connection with the existing ground floor use.

Application Permitted 7 June 2018

86/04856/FULL

NEW SHOPFRONT AND CHANGE OF USE TO SANDWICH BAR

Unknown - Legacy data

29 January 1987

Considerations:

SITE

1 Irving Street is located on the north western corner of Irving Street where Irving Street adjoins Leicester Square. The property is unlisted and located within the Leicester Square Conservation Area. The nearest residential properties are located at 5 Irving Street which appear to be in close proximity to 1 Irving Street.

PLANNING HISTORY

86/04856/FULL

1 Irving Street appears to have a lawful use as a Class A1 sandwich bar, most recently used as a 'Subway' sandwich bar, as per the planning per permission dated January 29th 1987. Google Streetview imagery shows the sandwich bar use to be still present and operational in October 2017 whilst there appears to be no history of planning permission being granted for a change of use to a restaurant use.

It appears that currently unit 1 at 1 Irving street, now named 'Caffe Italiano' operates in connection with 2-3 Irving Street, now named 'Rosso Italiano' which is operating as a restaurant. However the lawful use for 1 Irving Street would still likely be considered A1 as planning permission has not been sought for such a change in use. Though 1 and 2-3 are internally separated the external tables and chairs areas of the two units appear to be operating together as one.

ENFORCEMENTS

The site has a history of planning enforcement investigations.

18/67415/O

This planning enforcement investigation related to unauthorised A-Board and partitions that were erected without planning permission nor advertisement consent around 1 Irving Street. The investigation file shows photographs of the partition as advertising 'Fish and Chips' and 'Beer and Wine'. Following a site visit for this current application for tables and chairs this advertisement partition was still being displayed as of July 2019.

19/70645/N

The property has a history of planning permission being granted for tables and chairs. This planning enforcement investigation arose when it became evident that the applicant was not abiding by the approved tables and chairs layout previously permitted (RN: 18/00451/TCH), placing 20 tables and 40 chairs on the public highway exceeding the 16 tables and 32 chairs permitted.

18/00451/TCH

Planning permission was most recently granted on 7th June 2018 for the placing of 16 tables and 32 chairs upon the public highway. During the course of determination of this application no public objections were received whilst permission was granted for the tables and chairs on the basis of their use in connection with the lawful sandwich bar use, as acknowledged within the Officer's report. This was on the basis of Council records that showed 1 Irving Street to be in use as a sandwich bar. However as noted above, following a site visit in July 2019 it is evident that the use of 1 Irving has now changed with its association and operation with 'Rosso Italiano' at 2-3 Irving Street.

CONSIDERATIONS

In correspondence the applicant claims that 1 Irving Street is being run separately and independently from the restaurant operation at 2-3 Irving Street. However, from a site visit there is no separation of the areas for tables and chairs for 1-3 Irving Street whilst they have shared unauthorised advertisements

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encompassing the table and chair area as one whole serving 1-3 Irving Street, including a shared awning advertising 'Cocktails, Pasta, Grills etc.' that spans across 1-3 Irving Street. These advertisements and further unauthorised advertisements on the barriers at 1 Irving Street that encompass the proposed tables and chairs advertise 'Beer and Wine' and 'Fish & Chips', offerings that would not be consistent with the lawful sandwich bar use. Furthermore within the window of 1 Irving Street is a poster advertising the unit as a Shisha Bar offering pastries, cakes, wine and beer. As such the currently proposed tables and chairs at 1 Irving Street would be considered an extension of an unauthorised use to the public highway at 1 Irving Street.

AMENITY

Policy ENV6 of the Unitary Development Plan (adopted January 2007) and S29 of Westminster's City Plan (adopted November 2016) seeks to protect residential amenity and safeguard from unacceptable levels of noise disturbance. Westminster's 'Tables and Chairs on the Highway' SPG (adopted March 2005) also states that permission may be refused where the use of such furniture would result in unacceptable levels of noise disturbance or harm towards residential neighbouring occupiers.

Objection has been received from nearby residents. Objection is raised due to the impact of shisha smoke to the windows of residential properties above and the disturbance from noisy groups of customers. A further objection notes that they have no objection to a sandwich bar and its associated tables and chairs as previously approved, however they note that the applicant has applied for a license to sell alcohol at 1 Irving Street (RN: 19/08807/LIPN). They raise concern that the consumption of alcohol outside within such a large tables and chairs area would result in increased noise disturbance. The objector also observes that the meals and drinks currently served at 2-3 also serve customers sitting within the tables and chairs areas outside number 1.

This above licensing application (which at the time of consideration is still pending) notes that those who would purchase alcoholic drinks at 1 Irving Street would use the toilets of 2/3 Irving Street. This alongside the evidence of shared advertising (as discussed above) would suggest that 1-3 are effectively operating, unauthorised, as a combined operation and use.

Leicester Square is characterised by a high number of tables and chairs outside of businesses whilst the site has a history of tables and chairs. Therefore the principle of tables and chairs to the frontage of 1 Irving Street is not resisted. The concerns raised regarding shisha smoke, increased noise disturbance and outdoor consumption of alcohol relates to the unauthorised use of the area and property as a restaurant or other use; these issues would be considered as part of a change of use application. The applicant has been advised that they may require a retrospective change of use application in this case. As part of such an application these amenity impacts would be assessed.

CONCLUSION

If planning permission were to be granted for this application for tables and chairs, this would be permitting an extension and intensification of an unauthorised use to the public highway. As such, the current application for tables and chairs is recommended for refusal.

Recommendation:

Refuse permission.

Case Officer or Morning Meeting Officer: Jonathon Metcalfe	Date: 25 September 2019
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