

Dear Michelle/Kevin,

I have been asked to represent the Soho Society at the hearing of this application. Unfortunately, I am not able to attend the hearing, and no-one from the Soho Society is currently able to attend. I am therefore instead making this written submission to explain the Soho Society's position as regards the application.

I am in receipt of a number of documents submitted on behalf of the applicant, and I will deal with these in due course.

Introduction

The application form describes the application as being for a 'club/live music venue'. It is described in the 'Summary of Proposals' ("SoP") para 9 as 'a live music/performance venue'. The nature of the proposed operation is enumerated in more detail at various points in the applicant's additional documentation. Clearly, the nature of the proposed operation, and how this is reflected in licence conditions should Members be minded to grant a licence, is of great importance.

The Soho Society's representation is predicated on a concern that a new premises licence in the West End cumulative impact area ("CIA") to these hours will increase existing problems in the CIA (as a whole) and will fail to promote the licensing objectives.

For the avoidance of doubt, the Soho Society does not object to a licence being granted to the 'core hours' set out in the City Council's Statement of Licensing Policy ("SoLP"), or possibly to midnight Mon-Sat. The Soho Society supports live music venues, provided they are low impact in terms of noise and how the arrival and dispersal of patrons is managed. Key to this is the terminal hour.

The SoP makes reference (para 21) to a 'Licensing Impact Assessment Report' prepared by Mr Turnham. My client's view is that the report contains some misinterpretations as to the basis and effect of the 'cumulative impact' policies in the SoLP.

Response to applicant's supporting documentation

'Summary of Proposals'

The SoP sets out the planning and licensing history of the site, and gives an overview of the proposed operation. It is noted that some amendments to the application are proposed, namely:

- No off-sales;
- Minimum of two SIA on Thurs, Fri, Sat;
- That the banquette area is set out with fixed seating at all times; (all referred to in para 10)
- 'The primary use of the premises will be as a live music/performance venue' (referred to in para 27).

The most important of these is the latter, as this condition or whatever variant thereof which Members may be minded to impose goes to the heart of the policy approach to the application.

Para 4 of the SoP states that planning permission was granted in April 2019 for use of the basement for either a) vertical drinking bar; or b) live music venue. The applicant has decided to implement

what is described as the 'more benign' of the two uses. In fact, according to planning permission ref: 18/10854/FULL, the consent is also for use as a restaurant/cafe (Class A3).

Notwithstanding that, it is accepted that a licence for a live music/performance venue is likely to be a 'more benign' use than a nightclub, provided that the live music/performance venue is operated (and, crucially, licensed) in accordance with the intentions expressed in the documentation.

It is accepted that the site has a history of licensed use, but it is noted that this ceased in the mid-1980s – over 30 years ago. It is optimistic for the applicant (if this is their intention) to seek to demonstrate a 'footprint', given (to borrow the applicant's phrase) the 'more benign' uses of the intervening decades.

It is also accepted that Kingly Court has been 'successfully developed' as a food court, under the management of Shaftesbury. However, it is believed that the vast majority, if not all, of the licences granted during this period (including application ref: 19/07670/LIPN for the ground floor unit G1) have been for food-led operations and to 'core hours' for licensable activities. There are of course other pre-2003 Act licences in and around Kingly Court which can operate to a later terminal hour and are not food-led.

The applicant submits that the application falls within policy PVC2, which obviates the need for the applicant to demonstrate a 'genuine exception' as per policy CIP1. The Soho Society do not accept, at this juncture, that the application falls within PVC2. I will explain this in more detail below.

Licensing Impact Assessment Report

There are a number of assertions made and conclusions drawn with which my client disagrees. The report seems to seek to import a reasoning and meaning into the CIA policies which does not, on a proper reading and interpretation of those policies, exist. Points to note include:

1. Mr Turnham undertook a single night of observations, some 9 months ago (section 3.6.(ii)).
2. Mr Turnham has assessed the application against various documents, including *inter alia* the Draft London Plan, the Night Time Commission's Report and the draft and existing Westminster City Plans (section 3.6.(iii and iv)). Whilst we do not suggest that these documents have no relevance, they all exist very much in the shadow of the SoLP, which is of course a statutory document under Licensing Act 2003 and which sets out how the licensing authority will promote the licensing objectives. Planning considerations are separate, albeit there is inevitably some overlap. It will, I trust, be common ground that the existence of planning permission does not constrain the council as licensing authority from considering in detail the licensable activities, just as the absence of planning permission would provide no such reverse constraint.
3. The same points arise in connection with the assessment of the planning consent (section 3.6.(viii)).¹

¹ It should be noted that the planning consent appears to have a significant typo at condition 12: 'You must play play live or recorded music on the premises that is audible outside the premises', which presumably should read 'You must not play live or recorded music on the premises that is audible outside the premises'.

4. Mr Turnham asserts that (his emphasis) ***'cumulative impact is wholly dependent on the type of operation and the type of customer present. It is therefore important to look at what is being proposed by the applicant, as only by taking each case on its merits, can it be said whether there is likely to be any cumulative impact from a new licensed venue.'*** (section 5.2.6.39.).
 - 4.1 Whilst it is of course entirely appropriate for the Sub-Committee to consider the nature of the proposed operation and the target client base, it is not accepted that an assessment of whether an application will add to 'cumulative impact' is 'wholly' (or even largely) dependent on these factors.
 - 4.2 The strictures of policy CIP1 (and PB2 and MD2) are such that the starting point is that *'It is the Licensing Authority's policy to refuse applications...'* in the CIA for certain types of premises (Policy CIP1(i)). This is a rebuttable presumption requiring an applicant to demonstrate 'genuinely exceptional circumstances' so as to justify granting an application contrary to Policy CIP1(i). I appreciate that the applicant's position is that CIP1(i) doesn't in any event apply to this application; I will deal with this due course.
 - 4.3 The CIA policies are aimed at addressing the issues identified in the SoLP, i.e. that the *'cumulative effect of the concentration of late night and drink led premises...has led to serious problems of disorder and/or public nuisance affecting residents, visitors and other businesses.'* (SoLP para 2.4.1).
 - 4.4 Further, the CIA policies are (my emphasis) ***'directed at the global and cumulative effects of licences on the area as a whole...a case is most unlikely to be considered exceptional unless it is directed at the underlying reason for having the policy.'*** (SoLP para 2.4.5). The Soho Society asks that Members look very carefully at the underlying reasons for having the policy (as set out in the policy and appendices) and assess the effect of granting the licence to the terminal hour proposed and on the terms proposed by the applicant when seen in the context of 'the area as a whole' not, as Mr Turnham appears to suggest, the context in and around Kingly Court alone.
 - 4.5 In order for the 'nature of the proposed operation' to have more relevance in terms of background for Members at the time of making their decision, the proposals would need to be secured as far as possible by conditions on the premises licence.
 5. Mr Turnham states that the West End CIA as a whole *'is complex and it varies substantially from street to street.'* The Soho Society agrees with this. However it does not agree that this leads to the conclusion that a premises licence of the type applied for to the terminal hour applied for will either constitute a genuine exception to policy CIP1(i) and/or not add to cumulative impact, for the reasons given at para 4 above. Without wishing to repeat myself, the CIA policies are (my emphasis) ***'directed at the global and cumulative effects of licences***
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on the area as a whole' (SoLP para 2.4.5). Kingly Court does not exist in a vacuum. There are numerous licensed premises in the immediate area, mainly in Kingly Street, Kingly Court, Ganton Street, Newburgh Street, Foubert's Place, Beak Street.

SoLP

It is the applicant's position that the application falls within Policy PVC2. This policy states that:

'Bars are a normal feature of performances venues but they should be ancillary to the overall use of the premises as a performance venue. The hours of the operation of the bar will usually be those related to the times the premises are open for performance and should not extend later than the hours of performances. Any more general use of these bars in Cumulative Impact Areas will only be granted as an exception to policy which will have to be argued for on grounds that it will not add to cumulative impact in the Cumulative Impact areas and will promote the licensing objectives and the overall aims of the Statement of Licensing Policy of promoting a variety of non alcohol led activities.' (para 2.5.33).

On a close scrutiny of the application as it stands, it is submitted that it does not fall within PVC2. For instance, there is nothing in the conditions proposed by the applicant which secure that the hours of operation of a bar do not extend later than the performances, or which requires an individual to purchase a ticket or make a reservation to attend a performance. Therefore, in as much as the application seeks (or at least does not prevent) 'any more general use' of a bar, an exception must be demonstrated.

Policy CIP1(i) sets out the requirement for an exception. I have addressed this in previous sections and will not repeat it here; I know it will be familiar to Members.

The absence of any residential accommodation in the close vicinity is raised by the applicant. The CIA policy states that (my emphasis) *'the absence of residential accommodation in the vicinity of a premises in an area of cumulative impact is not a reason for an exception. The nature of cumulative impact is that it is cumulative and affects not only the immediate vicinity of the premises, but a wider area; thus the number of people visiting the premises, the nature of the licensable activities and the lateness of the operations have an impact on the area as a whole...'* (SoLP para 2.4.13).

Of course, the fact that the capacity is relatively small and that the proposed nature of the operation is of high quality (albeit this is not secured by condition) are relevant to this consideration. The issue of the terminal hour is perhaps more difficult for the applicant to overcome in this context.

It is not suggested that the patrons of this establishment will engage in anti-social behaviour. However, the SoLP is concerned inter alia with nuisance issues which fall short of anti-social behaviour, still less crime and disorder, and which do not necessarily mean that patrons are behaving badly (see for example SoLP para 2.2.12, albeit not specifically in the context of CIAs).

Conditions

I have recently received some proposed conditions from Environmental Health and the police. The Soho Society's view is that these conditions are an improvement on what is currently proposed by the applicant, but they still do not address the fundamental question of how patrons access the

premises on a day-to-day basis. My client feels that additional matters would need to be covered if the application was to fall within PVC2.

The question of whether bar use is likely to be truly 'ancillary' to performances was a question examined by the Sub-Committee on a recent refusal of an application in respect of the 'Admiral Duncan', ref: 19/09810/LIPN, to which the Soho Society alluded in their representation. The Soho Society also alluded to an application in respect of 'Compton Cross', formerly 'Molly Moggs', ref: 18/03718/LIPN, which was granted a licence extension.

Time and space mitigates against me providing a full analysis of those two applications, the differences between them and why one was granted and one was not, but I would respectfully suggest that a reading of these decisions may provide some context as to the way in which the relevant policies have been applied. In particular, the conditions imposed on the 'Compton Cross' licence were clearly aimed at reducing 'churn' and ensuring that consumption of alcohol was truly ancillary – for instance, requiring entry after a certain time to be by pre-purchased ticket only.

It is submitted that the applicant's proposed condition that *'The primary use of the premises will be as a live music/performance venue'* does not go far enough. We suggest that in addition to the amendment proposed by Environmental Health/police, the sale and consumption of alcohol should be referenced in this condition, as an ancillary to the use of the premises as a live music/performance venue.

Conclusion

My client does not doubt that the applicant and proposed operator is a professional and responsible operator, nor that the landlord manages its estate in a responsible manner. The condition suggested by Environmental Health/police which effectively personalises the licence to this proposed operator is helpful.

However, this does not in their view overcome the fundamental difficulty inherent in Members granting a licence to such a late terminal hour, particularly without robust additional conditions which effectively ensure that the premises must operate as a 'PVC2 venue'.

I apologise for not being able to attend the hearing, if only because it has resulted in my written submission being somewhat longer than usual! I hope this is of assistance, and we look forward to hearing the outcome.

RB 7.1.20