

WCC LICENSING SUB-COMMITTEE NO. 4

Thursday 21st May 2020

Membership: Councillor Karen Scarborough (Chairman), Councillor Jim Glen and Councillor Rita Begum

Application for a Variation of the Premises Licence [20/01396/LIPV]

Summary Decision

Premises

Amazónico
Ground Floor and Basement
10 Berkeley Square
London
W1J 6AA

Applicant

Mosela Investments SL

Cumulative Impact Area?

No

Ward

West End

Summary of Application and Decision

This is an application by Mosela Investments SL to vary the premises licence in respect of the premises known as Amazónico which operates from the ground floor and basement of 10 Berkeley Square, London W1J 6AA.

The restaurant was granted a licence in February 2019 and opened in November 2019. This application seeks to increase the hours for licensable activities in the basement only from Wednesday to Saturday and also seeks to increase the opening hours for an additional 30 minutes beyond the terminal hour for those licensable activities.

The increase in hours sought for the licensable activities is 90 minutes from Wednesday to Saturday (from 01.00 to 02.30). The applicant originally sought an increase of 60 minutes on a Sunday but that has now been withdrawn. There is a corresponding increase in the opening hours for 2 hours on Wednesday to Saturday (from 01.00 to 03.00).

The licensable activities for which an increase in hours is sought are the sale of alcohol, the provision of late-night refreshment and the provision of recorded music and live music. The applicant indicated that the capacity that will apply in the basement after 01.00 would be reduced from 100 persons to 80 persons. In addition, there would be no entry or re-entry to the premises after 01.00 other than for persons temporarily leaving the premises to smoke.

A number of areas had been identified on the plans of the premises that were hatched in red. There were two such areas on the ground floor and the entire basement was also hatched in red. A full restaurant condition applied to the entire premises (in accordance with Council's model condition 66) but these areas hatched in red were essentially operating on the basis that they could be used as holding bars, where customers could drink alcohol before a table meal, or as a bar to which customers could retire for an alcoholic drink after a table meal, or as a bar in which customers could consume alcohol during a meal.

This application was essentially seeking permission to use the bar area in the basement for an additional 90 minutes from 01.00 to 02.30 on the days following Wednesday to Saturday. An additional element was also included within the application so as to allow alcohol to be served in the basement bar area to what were described as bona fide guests of the management, not exceeding 15 persons at any one time. There was no requirement for these sales of alcohol to bona fide guests to be ancillary to any table meal. It was also noted that there was no requirement for any of the customers in the areas hatched in red to be served by a waiter or waitress and there was no requirement for the meals to be substantial meals.

The applicant was finally seeking to extend off-sales of alcohol to alcohol that is consumed at tables and chairs in external areas to the front of the premises. That was essentially an extension of the provisions that applied to the main restaurant within the premises. The consumption of alcohol in those external areas, therefore, would have to be ancillary to a substantial table meal and the customers would have to be seated and served by waiter or waitress service. The use of the tables and chairs would have to cease at 23.00 and would also be subject to the applicant being granted a tables and chairs licence by the authority (which would also require the applicant to obtain the necessary planning permission for that use).

There do not appear to be any residential properties in the immediate vicinity of the restaurant but there are a significant number of objections from residents living nearby and especially in Berkeley Street. There was also an objection from the Environmental Health Service. There were no objections from either the metropolitan police or the licensing authority itself, though it was also noted that there was no policy to refuse any aspect of the application as the premises was not situated within one of the Council's Cumulative Impact Areas.

Representations about possible cumulative impact were considered very carefully. It was noted that everyone agreed that there was no policy to refuse the application but that it was also possible for residents to object on the grounds that these specific premises will give rise to a negative cumulative impact on one or more of the licensing objectives, subject to them providing relevant evidence of that cumulative impact. The members of the Licensing Sub-Committee, in reaching this decision, want to make it absolutely clear that the Council's cumulative impact policy does not apply and that this decision has been taken on merit so as to promote the licensing objectives.

The objectors live very close to the premises and they asserted that their local neighbourhood was already saturated with late night operators and that they were already suffering from noise, excessive traffic, and anti-social behaviour. They pointed out that the licensed premises opened in late 2019 and had no track record but it was also suggested that the current licence was very generous and already allowed the applicants to operate beyond the Council's core hours. They were also concerned that the basement of the premises would actually be operated as a late-night bar rather than a restaurant to 2.30 am. Richard Brown, representing a number of the residents, made reference to a report produced by Dr Philip Hadfield in 2017 which was a detailed study of the evening and night time economy in parts of Mayfair. Mr Brown suggested that these premises would operate as what Dr Hadfield described as a restaurant hybrid, i.e., a restaurant that would morph into a bar at later hours.

The Licensing Sub-Committee did acknowledge the point that had been made on behalf of the applicants that Dr Hadfield's report was only part of the picture and it was noted that his findings had not, so far, been incorporated into any amendment of the Council's licensing policy. However, combined with the evidence that the residents had given about the disturbance that they allegedly suffer as a result of the proliferation of licensed premises in their area, it was considered that was a justification for their belief that they were experiencing negative cumulative impact.

The main thrust of this application related to the basement which was an area that was hatched in red and which was not, therefore, subject to the primary restaurant condition referred to above. This area was already licensed to 01.00 hours. The granting of the application would have allowed an additional 80 persons to use that basement area for an additional two hours (allowing for the extended opening hours) and it was considered to be highly likely that many customers would do so having already consumed a meal. That would potentially allow those customers to consume alcohol for a further period of two hours. Moreover, the premises would also be licensed for recorded music and live music during that period. There would be no requirement for any of those customers to be seated so vertical drinking would also be a possibility.

In those circumstances, it was considered that the application for extended hours in the basement and to allow bona fide guests of the management to consume alcohol without a requirement for that consumption to be ancillary to any food at all was not appropriate as it was highly likely to cause the negative cumulative impact referred to by the local residents and their representatives. **That part of the application was refused.**

The local residents had also expressed concern about the potential use of tables and chairs outside the premises until 23.00 hours. However, the members of the Licensing Sub-Committee thought that this aspect of the application was of much less concern provided it was restricted to no more than the 12 persons identified by the applicants when making their presentation. That proposed use was simply an extension of the existing restaurant use inside the premises and there was no suggestion that the current use was causing or was likely to cause a problem. Full restaurant conditions applied so that customers had to be seated and had to be served by a waiter or waitress. There was no suggestion that this would actually cause any serious dispersal issues and there were no residents in the immediate vicinity of the premises who were likely to be disturbed.

The objectors had suggested that the tables and chairs outside the premises might attract noise problems from persons driving super sports cars around the area. However, the Licensing Sub-Committee was not determining whether tables and chairs could be provided on the highway. That was a matter for the planning and highway authorities. The Licensing Sub-Committee was simply determining whether alcohol could be sold for consumption at those tables and chairs and it was not considered that such activity would itself give rise to the concerns identified.

That aspect of the application was granted subject to a further requirement that the number of persons using the tables and chairs at any one time should not exceed 12.

The applicant had proposed to amend the existing condition 13 on the licence which read as follows:

13. All sales of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the premises.

The applicant had proposed the following variation to condition 13:

13. Save for alcohol consumed at the designated external seating area, all sales of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the premises.

The applicant had also proposed the insertion of model condition MC70A which reads as follows:

“The sale and supply of alcohol for consumption off the premises shall be restricted to alcohol consumed by persons who are seated in an area appropriately authorised for the use of tables and chairs on the highway and bona fide taking a substantial table meal there, and where the consumption of alcohol by such persons is ancillary to taking such a meal, and where the supply of alcohol is by waiter or waitress service only”.

In granting the application for tables and chairs, the Licensing Sub-Committee decided that it would prefer to impose just one condition dealing with all off-sales as follows:

The sale or supply of alcohol for consumption off the premises shall either be (i) in sealed containers so as to ensure that it is not consumed on or in the immediate vicinity of the premises or (ii) for consumption by persons (not exceeding 12 at any one time) who are seated in an area appropriately authorised for the use of tables and chairs on the highway and bona fide taking a substantial table meal there; and where the consumption of alcohol by such persons is ancillary to taking such a meal; and where the supply of alcohol is by waiter or waitress service only.

This would replace the current condition 13. It was noted that there was an existing condition on the licence stating that there shall be no sales of alcohol for consumption off the premises after 23.00. However, the Licensing Sub-Committee decided that it also wanted to impose model condition 20 so as to ensure that “All outside tables and chairs shall be removed from the outside area by 23.00 each day”. This would ensure that the tables and chairs would not be utilised beyond 23.00 for any ongoing consumption of alcohol thereafter which might, itself, be a further cause of nuisance to the residents living nearby.

This is a summary of the decision reached by the Licensing Sub-Committee. As part of the application has been refused, the summary decision includes the main reasons why that part was refused. The fully reasoned decision will be sent out to all parties as soon as possible. This will also include details of the submissions made by the parties. The time limit for appealing this decision will not start until the parties have been notified of the fully reasoned decision.