

**WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO.3
("THE COMMITTEE")**

Thursday 22 October 2020

Membership: Councillors: Jacqui Wilkinson (Chairman) Councillor Susie Burbridge and Councillor Maggie Carman

Office Support: Legal Adviser: Vivienne Walker
Policy Officer: Aaron Hardy
Committee Officer: Cameron MacLean
Presenting Officer: Kevin Jackaman

Parties Present: James Anderson, Poppleston Allen, Solicitors for the Applicant, Jack De Wet, Development Director for the Applicant, Enrico Pireddu, Operations Director for the Applicant, Angela Seaward, Licensing Authority, David Nevitt, Environmental Health Service, PC Bryan Lewis, Metropolitan Police Service, Richard Brown, CAB, Licensing Advice Project, on behalf of Tom Cooke, resident and David Kaner for Covent Garden Community Association.

**APPLICATION FOR A NEW PREMISES LICENCE IN RESPECT OF BIG MAMMA
15 HENRIETTA STREET AND 29-30 MAIDEN LANE LONDON WC2 7JS
20/06917/LIPN**

FULL DECISION

Premises

Big Mamma
15 Henrietta Street & 29-30 Maiden Lane
London
WC2E 7JS

Applicant

Big Mamma Holdings Limited

Cumulative Impact Area

The Premises are within the West End Cumulative Impact Area

Ward

West End

Summary of Application

The Committee has determined an application for a New Premises License under the Licensing Act 2003 ("the Act"). The applicants intend to operate the premises as a restaurant. The premises had the benefit of a license 19/08294/LIPT.

Proposed Licensable Activities and Hours

Late Night Refreshment (Indoors)

Sunday to Tuesday 23:00 to 01:00 hours

Wednesday to Saturday 23:00 to 01:30 hours

Sale by Retail of Alcohol (On and Off Sales)

Sunday to Tuesday 10:00 to 00:30 hours

Wednesday to Saturday 10:00 to 01:00 hours

Hours Premises are open to the Public

Monday to Tuesday 08:00 to 01:00 hours

Wednesday to Sunday 08:00 to 01:00 hours.

Representations Received

- Metropolitan Police Service (PC Bryan Lewis)
- Environmental Health Service (David Nevitt)
- Licensing Authority (Angela Seaward)
- Richard Brown CAB, for Mr Tom Cooke
- Covent Garden Community Association (David Kaner)

Summary of issues raised by Objectors

- The Police remained concerned about the operation of the bar areas within the premises in relation to the Cumulative Impact Area (CIA).
- It remained a concern that there were areas within the premises where alcohol consumption would not be ancillary to the consumption of food.
- The premises intended to operate without ancillary conditions in some areas within the premises.
- The resident's concern was the effect the proposed Henrietta Street entrance to the premises would have on local residents.

Policy Position

Policies CIP1, HRS1, PB2, RNT2 and CIA apply under the City Council's Statement of Licensing Policy. The Premises are located within the West End Cumulative Impact Area and, as such, the Applicant must demonstrate that the application will not add to Cumulative Impact in the West End Cumulative Impact Area.

SUBMISIONS AND REASONS

The Presenting Officer, Mr Jackaman summarised the application to the Sub-Committee.

He summarised the various representations received, noting that additional representations had been received from Capital and County CG Limited and Capital and County CG Nominee Limited represented by Mr Alun Thomas in support of the application.

Members heard from Mr James Anderson, solicitor for the Applicant, who stated that the premises were formerly known and traded as Mabel's.

It is the Applicant's intention to turn Mabel's into a Big Mamma Italian Restaurant with a maximum occupancy of 260 customers. The premises will trade on two floors with a ground floor and basement area (shown hatched blue on the plan attached to the Premises Licence).

The main entrance to the premises will be on Henrietta Street.

Mr Anderson also stated that converting the premises into a Big Mamma restaurant could be a significant investment in the area.

Mr Anderson explained that the capacity was down to 260 from 430 and this would benefit the stress area.

Mr Anderson further explained that off sales would be limited to 23:00 hours and there will be no drinking outside the premises.

Mr Anderson stated that with the current health crisis the applicant was looking for the maximum flexibility in the operation of the premises. He stated that the reserved bar area will be used by diners.

When asked by Members where the objector lived Mr Anderson stated directly adjacent the premises and that they shared a party wall. He stated that if the licence was granted with 23:30 hours finish the applicant would abide with that time given the proximity to the objector.

Mr Anderson stated that proper care would be exercised by the door staff. Dispersal could be organised without disturbing the residents.

When asked where smokers will go to smoke, Mr. Anderson stated that they will go onto Henrietta Street at the rear of Maiden Lane.

Members asked whether the Applicant would accept a restaurant condition (Model Condition 66) Mr. Anderson stated that Model Condition 38 would cover the ground floor. The main entrance is through to the centre area with restaurant capacity of 120 customers. To the right, there is a reserved bar likely to be used by diners in the future but does not have to be so used.

Mr. Anderson stated that the basement is not a restaurant. It has a bar where customers must be seated and are served by waiter or waitress service.

When asked by Members whether the Applicant would accept a condition for seating, Mr. Anderson stated no, because Big Mamma has invested several millions of pounds and they do not know when the premises will operate in 2021.

Members stated that it would appear that the Applicant wants the flexibility to remove the tables and chairs and have vertical drinking. Mr. Anderson responded that the Applicant would be required to make an application for a variation of the Premises License and the licensing policy would be against the Applicant.

Mr. Anderson also stated that the Application must be considered in relation to the existing Licence.

In his summing up Mr. Anderson stated that staff would exit the premises via Maiden Lane, as set out in the operating schedule.

In response to PC Bryan Lewis on behalf of the Metropolitan Police comments in relation to the bar element of the application, the Applicant stated that they would be willing to undertake a risk assessment regarding the use of door supervisors at the Maiden Lane entrance/exit.

Mr. Anderson stated that Members should consider the application on its merits. The premises would trade as restaurant, but the Applicant would like the flexibility afforded by the bar spaces on the ground floor and in the basement.

Mr. Anderson explained that to refuse the applicant to use the Henrietta Street entrance after 11:00 p.m. would mean that the premises had a greater restriction imposed upon it than any other premises in Henrietta Street.

The Applicant stated that they would be happy to offer a compromise. Due to the commercial significance of having a main entrance open until 11:30 p.m. it was proposed that customers could enter and exit the premises using the Henrietta Street entrance until 11:00 p.m. and from 11:00 p.m. to 11:30 p.m. only customers exiting into Henrietta Street would be allowed to use the main entrance/ exit.

Members asked how well the premises were managed and whether that made it an exception, Mr. Anderson stated that how well an operator managed their premises was not something that members of the Sub-Committee could take into consideration when determining what might be grounds for an exception to the Council's Cumulative Impact Area policies.

Mr. Anderson stated that the exceptions in this particular case would be the replacement of a high impact licence with a lower impact licence and a reduction in vertical drinking in these premises.

Ms Seaward on behalf of the Licensing Authority stated that the premises fell within the West End Cumulative Impact Area (CIA) and within the Council's Pubs and Bars policy which required that licence applications for premises within a CIA be refused unless the applicant could show there were exceptional circumstances that would allow the application to be granted.

It was noted that the applicant expressed intention to retain some flexibility as to the manner in which the premises operated. Ms. Seaward suggested that this might be achieved by authorising licensable activities subject to such activities being ancillary to the main operation of the premises as a restaurant under the applicant's chosen name for the premises.

In response to questions raised by Members, Ms Seaward stated that the bar areas on the ground floor and the basement floor were exempt from Model Condition 38 and the sale of alcohol would not be ancillary to any food requirements. Also, there was a condition that customers in the basement area should be seated.

Mr Nevitt on behalf of Environmental Health Service stated that the proposed reduction in the capacity of the premises was welcomed in that, it eliminated the previous drink led and regulated entertainment activity that had previously been a destination venue and replaced it with a restaurant.

Mr. Nevitt stated that there was no evidence that the use of Henrietta Street as the main entrance during core hours would be problematic, particularly, as there were no outdoor tables and chairs.

It was noted that the Police and Environmental Health Service had collaborated in putting together a number of proposed conditions intended to address the concerns of residents, the Cumulative Impact Area policy which would promote the Licensing Objectives. These conditions had subsequently been agreed with the applicant.

Mr Brown for Licensing Advice Project on behalf of one objector stated that the objector was concerned about the proposed Henrietta Street entrance to the premises. He stated that his client did not object to the use of a main entrance to the premises on Henrietta Street if the impact on residents of using that entrance could be kept to a minimum up to 23:00 hours.

Mr Kaner on behalf of the Covent Garden Community Association (CGCA) stated that there had been a number of discussions with the applicant's legal representative and they agreed several of the conditions proposed by the CGCA, in particular, the conditions regarding dispersal and service arrangements.

The application was supported by the applicant's landlord, Capco, Mr. Thomas on behalf of the landlord stated that the premises licence conditions had been discussed in detail with the applicant, including the proposal for a bar on the ground floor.

Mr Thomas stated that there would be a significant reduction in the capacity of the premises and a move away from regulated entertainment. The current premises licence allowed for a 430-capacity vertical drinking venue and that was how it had operated.

Mr Thomas also stated that the proposed reduction in capacity provided the exception to allow the application to be granted because the applicant was seeking less than what they presently held.

In response to Member's question in relation to the reduced capacity, it was confirmed that the capacity of the premises was 260.

Having carefully considered all the submissions made by all parties both orally and in writing, the Licensing Sub-Committee decided to **grant** the application subject to conditions.

The Sub-Committee decided that the Applicant had provided valid reasons as to why the granting of the application would be an exception to policy, not add to negative cumulative impact in the Cumulative Impact Area and promote the licensing objectives.

In reaching its decision, the Sub-Committee took into consideration all relevant matters which are not limited to the following:

1. The Applicant explained that the proposed licensable activities and hours are no different from those in the Current Premises Licence save that the opening hours are an hour earlier. Also, there is a reduction in the capacity, and this would have lesser impact on the Cumulative Impact Area.
2. The applicant addressed the specified policy elements and explained that this application should be treated as an exception to the Policy.
3. The capacity for the premises is 260 people and a number of additional conditions have been added to the licence to promote the licensing objectives.

In conclusion, the Sub-Committee was satisfied that, in all of the circumstances of the case, it was appropriate and proportionate to **grant** the licence.

The application was granted subject to the following conditions in addition to the Mandatory conditions applicable to this type of application

CONDITIONS IMPOSED BY THE COMMITTEE AFTER A HEARING

1. 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 are 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 the Police or authorised officer throughout the entire 31-day period.

2. 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 are open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or date with the absolute minimum of delay when requested.
3. The supply of alcohol at the premises except in the ground floor bar area and the basement area shall only be to a person seated taking a table meal there, and for consumption by such a person as ancillary to their meal.
4. The sale and consumption of alcohol in the basement area shall only be to persons who are seated, and only by way of waiter or waitress service.
5. The number of persons permitted inside the whole of the premises at any one time (excluding staff) shall not exceed 260 persons.
6. The maximum number of persons accommodated at any one time in ground floor bar (excluding staff) shall not exceed 71.
7. Sales of alcohol for consumption off the premises shall only be supplied with an ancillary takeaway meal.
8. There shall be no off sales of alcohol after 11 p.m.
9. 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 driving licence, passport or proof of age card with the PASS Hologram.
10. 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. It must be completed within 24 hours of the incident and 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
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.
11. On Thursday, Friday and Saturday from 21:00 hours until closing, a minimum of 1 SIA licensed door supervisors shall be on duty at the Henrietta Street entrance to the premises.
12. There shall be no sales of hot food or hot drink for consumption off the premises after 23.00 hours and such sales shall be delivered to customers from the Maiden Lane entrance only.
13. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
14. No collections of waste or recycling materials (including bottles) from the premises shall take place between (20.00) and (08.00) on the following day.

15. Patrons permitted to temporarily leave and then re-enter the premises, e.g., to smoke, shall not be permitted to take drinks or glass containers with them.
16. Patrons shall not be allowed to enter the Henrietta Street entrance to the premises after 23:30 hours on any day.
17. Patrons shall not be allowed to exit the Henrietta Street entrance after 23:00 hours on any day.
18. All deliveries to the premises shall take place between 08.00 and 20:00 except deliveries by 3 artisanal food suppliers on Monday to Saturday at the Maiden Lane entrance to the premises.
19. No licensable activities shall take place at the premises until the premises have been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.
20. The premises shall only operate as a restaurant except in the ground floor and basement bar areas hatched blue on the plan attached to the Licence.
 - (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 takeaway service of food or drink for immediate consumption;
 - (v) Which do not provide any takeaway 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.

21. Deliveries and Collections (including waste) shall take place only between 08:00 and 20:00 Monday to Saturday and 10:00 to 20:00 on Sunday at and from the Maiden Lane entrance to the Premises.
22. Whenever the premises are in use under this licence the external doors and windows shall not be fixed open after 22:00 on any day of the week.
23. The premises shall operate a dispersal policy and all staff shall be trained in its implementation. The Policy shall include a requirement to inform customers
24. (by notices and other means) that the area is residential and to request that they leave the premises as quickly and quietly as possible.
25. No noise shall emanate from the premises nor vibration be transmitted through
26. The structure of the premises which gives rise to a nuisance.
27. Patrons shall be encouraged not to cause a nuisance to residents whilst
28. smoking in Henrietta Street.
29. All staff shall enter and leave the premises via Maiden Lane.

30.No licensable activities shall take place at the premises until premises licence 19/08294/LIPT (or such other number subsequently issued for the premises) has been surrendered [and is incapable of resurrection].

This is the Full Decision reached by the Licensing Sub-Committee.

This Decision takes immediate effect.