

APPENDIX 1

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 2

(“The Committee”)

Thursday 21 January 2021

Membership: Councillor Tim Mitchell (Chairman), Councillor Susie Burbridge and Councillor Rita Begum

Officer Support:

Legal Adviser:	Vivienne Walker
Policy Officer:	Aaron Hardy
Committee Officer:	Cameron MacLean
Presenting Officer:	Michelle Steward

Parties Present: Mr Alun Thomas, Thomas & Thomas Partners for the Applicant, and Ms Imogen Davies for the Applicant.

APPLICATION FOR A NEW PREMISES LICENCE – BROWNS, 39 BROOK STREET MAYFAIR LONDON W1K 4JE – 20/09601/LIPN

FULL DECISION

Premises

Browns
39 Brook Street
London
W1K 4JE

Applicant

Browns (South Molton Street) Limited

Cumulative Impact Area

The Premises are not located in the Cumulative Impact Area.

Ward

West End

Summary of Application

The Sub-Committee has determined an application for a new Premises Licence under the Licensing Act 2003 (“The Act”). The Premises proposed to operate as a restaurant.

Proposed Licensable Activities and Hours

Late Night Refreshment (Indoors and Outdoors)

Monday to Thursday: 23:00 to 23:30 hours

Friday to Saturday: 23:00 to 00:00 hours

Seasonal Variations: From the end of permitted hours on New Year’s Eve to the start of permitted hours on New Year’s Day.

Sundays before a Bank Holiday until 00:00 hours.

Sale by Retail of Alcohol (On and Off Sales)

Monday to Thursday: 10:00 to 23:30 hours

Friday to Saturday: 10:00 to 00:00 hours

Sunday: 12:00 to 22:30 hours.

Seasonal Variations: From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

Sundays before a Bank Holiday 10:00 to 00:00 hours.

Hours the Premises are open to the Public

Monday to Saturday: 08:00 to 00:00 hours

Sunday: 08:00 to 23:00 hours.

Seasonal Variations: From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

Sundays prior to a bank holiday 10:00 to 00:00 hours.

Representations Received

- Metropolitan Police Service (PC Adam Deweltz) (Withdrawn)
- Environmental Health Service (David Nevitt)
- Mr Fancesco Girino, local resident
- Mr Ron Whelan on behalf of the Mayfair Residents Group

Summary of Issues Raised by Objectors

- The proposals are likely to increase the risk of Public Nuisance and may impact upon Public Safety.
- I believe that the proposed opening hours are too late at night and would create considerable nuisance to the neighbours, who are already deeply and negatively impacted by the Claridge's building construction works. I would ask to reconsider the opening hours, in particular, in relation to the serving of alcohol.
- The Mayfair Residents opposed this application. The immediate area in Brook Street, Avery Row, South Molton Street and Lancashire Court has become increasingly residential in recent years whilst at the same time, the number of late-night licensed establishments have grown.
- Another licensed establishment in this immediate area can only worsen the situation for local people through an increase in late night noise and anti-social behaviour in the streets.

Policy Position

Policies HRS1 and RNT1 apply under the City Council's Statement of Licensing Policy.

SUBMISSIONS AND REASONS

The Presenting Officer, Ms. Michelle Steward summarised the application to the Sub-Committee. She confirmed that this was an application for a new Premises Licence made on behalf of the Applicant Browns (South Molton Street) Limited.

It was confirmed that the Metropolitan Police Service after agreeing the proposed conditions as part of the operating schedule with the Applicant, subsequently withdrew their representations.

Mr. Thomas, representing the Applicant stated that the Applicant was the tenant of the ground floor premises. He stated that the premises were a small restaurant which accommodated 28 covers with a garden area which had a capacity of 40 covers.

Mr. Thomas stated that discussions had taken place with the local resident whose representation was before the Sub-Committee. He stated that he thought an agreement had been reached with the resident on the issue set out in his representation. He had written to the construction company responsible for the development of the site about the noise on behalf of the resident.

In response to the residents' request that the opening hours and times be reduced, Mr. Thomas explained that the premises were not within a Cumulative Impact Area and that the Applicant had addressed the issue of licensable activities. He stated that hours applied for were within the Council's Core Hours.

In response to questions raised by the Sub-Committee, Mr. Thomas and Ms. Davies provided the following information: -

1. The outside area, although an application had been made to use this area from 08:00 to 22:00 there would be no outside music, at present the area was only used for lunch and dinner which was by way of table service. As the premises were part of a retail store, it was anticipated that there may be several customers dining on their own in between shopping.
2. The retail operation comprised of Browns, a high-end fashion retailer. Presently located on South Molton Street which was relocating to Brook Street. By the nature of its business, Browns did not have large numbers of customers visiting its South Molton Street store at any one time, and it was not anticipated that there would be many customers visiting the store on Brook street.
3. The courtyard area was made up of tables for two persons. There were no outdoor heaters and, therefore, when the weather was cold, it was unlikely that customers would choose to sit outdoors.
4. Mr. Thomas, referring to the plans in the papers before the Sub-Committee, described the layout of the premises, including access and egress to and from the premises and the courtyard area, and the location of the Objector's property and its proximity to the courtyard area.
5. Mr. Thomas referred to Model conditions 38 and 41 and noted that these included the main elements of Model condition 66. The main difference was that there was no requirement that customers be shown to their table by a member of staff. Mr. Thomas stated that the red line on the plans, which delineated the licensed areas, included back of house areas where alcohol might be stored. The inclusion of these areas within the licensable areas was to ensure compliance with the requirements of the Licensing Act.

6. Regarding private events, Ms. Davies stated that it was anticipated that these would be small events, given the limited size of the premises, and that these would probably be only one such event each month.

Mr. Thomas added that the Applicant would not wish to limit the number of private events that might be held as it was possible that Browns might wish to hold low-key fashion events in the garden. Ms. Davies confirmed that food would be provided at all private events.

Mr. David Nevitt on behalf of the Environmental Health Service (EHS) stated that there was a list of conditions which had been agreed between the Applicant and EHS including a works condition and that he was satisfied that the proposed conditions, operating hours and physical layout of the courtyard area were sufficient to meet any noise concerns.

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 the agreed conditions.

The Sub-Committee decided that the Applicant had provided valid reasons as to why the granting of the application would 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. Mr. David Nevitt on behalf of the EHS stated that given the list of conditions agreed with the Applicant he was satisfied that with those conditions, the operating hours and the physical layout of the courtyard would mitigate any noise concerns.
2. The Committee was of the view that the points made by Mr. Nevitt, specifically the inclusion of Model Condition 38 requiring the premises, which was not in a Cumulative Impact Area, to operate as a sit-down restaurant, and the operating hours being within the Council's Core Hours were compelling.
3. The Sub-Committee was also reassured that it was appropriate to grant the application as approval of the licence was subject to the following conditions:
 - A "works" condition;
 - A condition limiting the capacity of the premises.

In conclusion, the Sub-Committee was satisfied that, in all 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 supply of alcohol at the premises shall only be to a person seated taking a table meal there and for consumption by such a person as ancillary to their meal.
2. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.

3. Save for private and pre-booked events, alcohol shall only be sold to persons seated and by waiter/waitress service.
4. Condition 11 shall not apply during private and pre-booked events during which substantial food must be available.
5. The garden shall not be used by customers other than between 08:00 and 22:00 hours.
6. 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 Police or authorised officer throughout the entire 31-day period.
7. 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 data with the absolute minimum of delay when requested.
8. 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 sale of alcohol
 - h) Any visit by a relevant authority or emergency service.
9. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
10. 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.
11. The sale and supply of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the premises.

12. No licensable activities shall take place at the premises until the capacity of the premises has been determined by the Environmental Health Consultation Team and the Licensing Authority has replaced this condition on the licence with a condition detailing the capacity so determined.
13. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 70 persons.
14. No licensable activities shall take place at the premises until the works 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. If there are minor changes during the course of construction new plans shall be submitted to the Licensing Authority.
15. The premises shall undertake a risk assessment as to the need for SIA door supervision at private and pre-booked events.
16. A challenge 21 or 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 a driving licence, passport or proof of age card with the PASS Hologram.
17. The Applicant shall provide the Licensing Authority prior to the issuing of the Premises Licence a revised plan showing the exact lay out of the licensable area for the purposes of this application.

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