

**WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO.4
("THE COMMITTEE")**

Wednesday, 28th October 2020

Membership: Councillor Karen Scarborough (Chairman)
Councillor Jim Glen and Councillor Aicha Less

Officer Support: Legal Adviser: Vivienne Walker
Policy Officer: Kerry Simpkin
Committee Officer: Cameron MacLean
Presenting Officer: Michelle Steward

Parties Present: Mr Marcus Lavell, Counsel for the Applicant, PC Bryan Lewis, Metropolitan Police Service, Ms Angela Seaward for the Licensing Authority, Ian Watson for Environmental Health Service, Mr Richard Brown, CAB Licensing Project for the Soho Society and Ms Jane Doyle for the Soho Society.

**APPLICATION FOR A NEW PREMISES LICENCE - 12 OLD COMPTON STREET,
LONDON WD4TQ (20/07331/LIPN)**

FULL DECISION

Premises

12 Old Compton Street
London
W1D 4TQ

Applicant

Swift One Holdings Limited

Cumulative Impact Area?

The Premises are located within the West End Cumulative Impact Area

Ward

West End

Summary of Application

This is a new application for a Premises Licence under the Licensing Act 2003 ("The Act"). The Premises proposed to operate as a lounge bar. The Premises have had the benefit of a Licence Number 19/11486/LIPT since 2005.

Proposed Licensable Activities and Hours

Live Music (Indoors)

Monday to Saturday: 10:00 to 01:30 hours
Sunday: 12:00 to 00:00 hours
Sunday before Bank Holidays: From 12:30 to 01:30 hours

From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day with an additional hour when British summer time commences.

Recorded Music (Indoors)

Monday to Saturday: 10:00 to 01:30 hours
Sunday: 12:00 to 00:00 hours

From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day with an additional hour when British summer time commences.

Late Night Refreshment (Indoors & Outdoors)

Monday to Saturday: 23:00 to 01:30 hours
Sunday: 23:00 to 00:00 hours

From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day with an additional hour when British summer time commences.

Sale by Retail of Alcohol (On or Off Sales)

Monday to Saturday: 10:00 to 01:30 hours
Sunday: 10:00 to 00:00 hours

From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day with an additional hour when British summer time commences.

Hours Premises are open to the Public:

Monday to Saturday: 10:00 to 02:00 hours
Sunday: 10:00 to 00:30 hours

From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day with an additional hour when British summer time commences.

Representations Received

1. Metropolitan Police Service (PC Adam Deweltz)
2. Licensing Authority (Angela Seaward)
3. Environmental Health Service (Ian Watson)
4. Neil Drinkwater
5. Eric Babak
6. Soho Society (Jane Doyle)

Summary of issues raised by Objectors

1. The application if granted would undermine the licensing objectives in relation to the Prevention of Crime and Disorder.
2. There were concerns as to how the premises would promote the four licensing objectives.
3. The operating hours applied for fall outside the Council's Core Hours.
4. The hours requested will have the likely effect of causing an increase in Public Nuisance within the West End Cumulative Impact Area.

Policy Position

Policies CIP1, HRS1, PB2 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.

SUBMISSIONS AND REASONS

The Licensing Sub-Committee heard from Mr. Marcus Lavell, Counsel for the Applicant, who stated that his clients have invested money and effort in order to convert a high volume, vertical drinking establishment into an award-winning establishment that reduced the impact the premises had within the Cumulative Impact Area.

Mr. Lavell referred to the Applicant's submissions which stated that fewer patrons would be accommodated on the premises and that the proposed conditions were more robust than the current licence conditions.

Mr. Lavell stated that the effect of fewer patrons was designed to reduce activities in the stress area.

He explained that application stood on its merits and was an exception to the Statement Licensing Policy.

When asked by Members why the application was not time limited, Mr. Lavell stated that the premises were not a restaurant and under the existing licence the sale of alcohol was not ancillary to ordering a substantial meal. It is proposed that substantial food will be available when the premises become operational.

Mr. Lavell stated that the current licence allowed 190 people to drink alcohol until midnight, the new premises licence, if granted, would reduce the number of customers to 120.

It was proposed that there would be a condition requiring customers in the basement to be seated and that service be restricted to waiter/waitress service only.

Mr. Lavell explained that under the current licence, when the premises closed at midnight, 190 high volume vertical drinkers would leave the premises and enter the stress area. Under the current proposals, when the doors closed at midnight, customers could remain on the premises until such time as they wished to leave and would do so under greater management control both inside and outside the premises.

Mr. Weil on behalf of the owners stated that it was important to the owners to be part of the community. It was the company's intention to operate high quality, low impact lounge venues offering an exceptional experience to its guests.

Mr. Weil stated that they would be willing to set up a WhatsApp group which local residents could join and use to raise general and/or specific concerns regarding the operation of the premises.

He stated that with regard to dispersal, customers tended to leave the premises before closing time and at the end of the evening, there was only a small number of customers remaining on the premises.

Mr. Weil stated that the substantial losses sustained by the business had meant that some staff redundancies had been necessary and that the proposed extension to the licence would provide a lifeline to the business.

When asked by members when did the Applicant open the premises, Mr. Lavell stated that Swift One Holdings Limited took over the lease four years ago and were now running the premises in the manner illustrated in their submission.

It was noted that customers entering the basement area would automatically be seated. Customers on the ground floor would be allocated an area when they entered the premises and where they would be waited upon by staff.

When asked by members if there was a holding area on the ground floor Mr. Lavell stated that customers waiting to enter the premises at peak times queued outside the premises. Under the current proposals, customers would still queue outside the premises, but the doors would be closed at midnight.

Members asked for explanations as to the current practical capacity for the premises. Mr. Lavell stated that the provision of seated areas restricted the number of customers that the premises could currently accommodate, 60 persons on the ground floor and 60 persons in the basement area. He further stated that should the operator wish to remove the furniture they can trade to the safe capacity on the licence.

When asked by Members why the Applicant would not surrender the existing licence, Mr. Lavell stated that his client was concerned that should a time limited premises licence be granted and the existing licence surrendered, when the new licence expired, there would be no Premises Licence in place.

It was noted that because the Applicant did not want to surrender the existing licence, it was not their intention to apply for a time limited license.

Mr. Ian Watson on behalf of the Environmental Health Service stated that given previous concerns regarding public nuisance affecting Greek Court, the following conditions were proposed should the application be granted: -

- Customers shall not enter or leave the premises from Greek Court except in the event of an emergency; and
- After 21:00 hours Greek Court shall not be used for storage, deliveries or refuse and the exit door to Greek Court shall not be used except in an emergency.

Mr Watson stated that there was a concern that, notwithstanding the seating arrangements restricting the number of customers, the capacity for the premises remained the same.

It was noted that during the time the Applicant had been operating the premises, there had been no significant complaints by residents. Also, there had been a number of Temporary Event Notices when the premises had operated until the early hours of the morning.

Mr. Watson stated that there had been concerns regarding arrangements for smoking and dispersal at late hours.

It was proposed that there was a condition that only ten persons at any one time be allowed outside the premises to smoke.

It was noted that the application contained a proposed condition that there be a door supervisor and that the last entry time of midnight would prevent the premises from becoming a late-night destination venue.

When asked by Members about queueing outside the premises, Mr. Watson stated that because there was no entry after midnight, there would be no late-night queues and operators would be expected to manage queues in accordance with social distancing requirements.

PC Bryan Lewis, on behalf of the Metropolitan Police stated that they have never heard of the premises which is an indication that the premises are well run. However, he also stated that the Police did have a concern that customers could be leaving the premises at a time when there was a greater incidence of intoxicated persons on the street, leaving them more vulnerable because of the reduced numbers of persons on the street at that time of night.

It was noted that the conditions proposed by the Police had been agreed by the Applicant.

It was also noted that under Paragraph 2.4.4 of the Statement of Licensing policy, the Licensing Authority will not consider a case to be exceptional merely on the grounds that the premises have been or will be operated within the terms of the conditions on the licence, or that are or will be generally well managed because of the reputation or good character of the licence holder or operator. This is expected in the conduct of all licensed premises.

Representations were made by Mr. Brown on behalf of local residents and the Soho Society, Mr. Brown made reference to the reduction in capacity and proposed that by extending the existing opening hours, the cumulative impact was up to 120 persons entering the Cumulative Impact Area (CIA) after the time at which the premises presently closed.

Mr. Brown stated that residents were concerned about the levels of noise associated with licensed premises in the area but only to the extent of the current hours which were already beyond the Council's Core Hours.

Mr. Brown also stated that the Soho Society had concerns about overcrowding during the alfresco dining period.

The Committee decided that the Applicant had not provided sufficient reasons as to why the Committee should depart from paragraphs 2.5.23 and 2.5.48 of the Statement of Licensing Policy and why granting the application would promote the licensing objectives and therefore **refused** the application for a new Premises Licence.

The Committee noted that the Premises have had the benefit of a Premises Licence since 2005 and have been operating for four years.

The Committee noted that it was proposed to reduce the capacity from 193 to 120 people, and it was argued that this change would be an exception under paragraph 2.4.7 on page 38 of the Statement of Licensing Policy.

The Committee noted that the Police stated that the Premises were not a problem premises as far as crime and disorder were concerned but appreciated that the premises were in the cumulative impact area where exceptional reasons had to be proven.

The Committee noted that the Applicant's intention to keep patrons on the premises until 01:30 and this would mean fewer people leaving the premises at any one time.

It was noted that when the Police were asked about the Applicant's intention to reduce capacity the Police responded that as there would be less people on the street at the proposed terminal hour which meant that people would be more vulnerable.

The Committee duly considered the evidence given by the Police in terms of drug dealings and street robberies that take place in the area which is a highly residential area, and which would increase with a later terminal hour.

The Committee did express concern regarding patrons queuing outside the premises and customers leaving the premises at the terminal hour which would lead to problems with dispersal in the West End causing public nuisance for local residents especially for those residents who live in such proximity to the premises.

The Committee noted that the Applicant had not applied for a time limited licence and questioned why they had not done so. The Applicant stated that should a time-limited premises licence be granted, the existing licence surrendered, when the new licence expired, there would be no Premises Licence in place.

The Committee noted that the Applicant proposal for a late request for a time limited licence. It was noted that as local residents and the Responsible Authorities were not given an opportunity to make representations on such proposal, therefore, it could not form part of the application.

The Committee welcomed the additional conditions that had been agreed with the Police regarding the incident log and the pre-booked arrangement for the basement area in the premises.

In terms of the policy considerations, the Committee had regard to Policy HRS1 which states **"Applications for hours within the core hours set out below in this policy will generally be granted, subject to not being contrary to other policies in the Statement of Licensing Policy (SLP)"**.

The Committee appreciated it has discretion when considering the merits of the application but took the view that granting the application would be contrary to other policies. The Committee had regard to all relevant policies under the SLP Policy PN1; the prevention of Public Nuisance.

The Committee felt that it needed to strike the right balance when considering the merits of the application and the evidence before it and did not arrive at refusing the application lightly having regard to the full set of circumstances of the case, the Home Office Guidance, the SLP and the promotion of the public nuisance licensing objective.

The Committee did consider whether the proposed conditions offered would mitigate the concerns of residents but was not fully persuaded by the arguments put forward by the Applicant that these would go to the heart of the problems associated with nuisance and exceptionality.

The Committee was of the view that exceptional reasons had not been provided. It sympathised with the Applicant that the new licence would be a lifeline for the business at this difficult time, but exceptionality must first and foremost be proven in accordance with the policy aims and objectives.

The Committee came to the overall conclusion that the granting of the new licence would have a negative impact on the cumulative impact area leading to the licensing objectives being undermined the public nuisance licensing objective.

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