

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

Thursday, 15 April 2021

Membership: Councillor Karen Scarborough (Chairman), Councillor Barbara Arzymanow, and Councillor Aicha Less

APPLICATION FOR A REVIEW OF PREMISE LICENCE – THE COW PUBLIC HOUSE, 89 WESTBOURNE PARK ROAD, LONDON W2 5Q [21/00981/LIREVP]

Applicant

Tom Conran Restaurants Limited

Summary of Application

This is an application for a Review of a Premise Licence known as The Cow Public House 89 Westbourne Park Road London W2 5QH ("The Premises") under the Licensing Act 2003 ("The Act"). The Premises operate as a Pub and are within the Bayswater Ward but not located in the *West End Cumulative Impact Zone*. There is a resident count of 63 within the vicinity. The Premises has had the benefit of a Premise Licence since 2005 and updated in 2016 (16/06783/LIPDPS). The Designated Premises Supervisor ("DPS") is Mr Hajrullah Gashi.

The Review application, made on behalf of the Licensing Authority, follow allegations, primarily, that during the current Covid-19 pandemic the licence holder did not take sufficient steps to minimise people congregating outside, or sufficiently enforce social distancing guidance, breached conditions on the licences (including Covid-19 related regulations applicable to licensed premises resulting in the Licence Holder being served with a Fixed Penalty Notice. This was later appealed but the original decision was upheld and the Applicant received a fine of £1,000.

The Premises has a history of noise complaints mainly relating to the playing of loud music and noisy patrons using the front forecourt area of the Premises, but the core of the more serious issues that led to the review application being instigated arose during the Covid-19 pandemic. The Applicant has agreed a number of proposed conditions with the respective parties in order to mitigate the concerns raised and these are specified below. The Responsible Authorities were not seeking to invite the Committee to suspend or revoke the Premises Licence and this was duly noted by the Committee.

The Committee in its determination of the matter considered the Agenda Pack and the Additional Information pack which contained a written submission Mr Gary Grant, Counsel for the Applicant, a witness statement from the Licence Holder together with a list of agreed conditions with the Responsible Authorities.

The Activities and Hours on the Premises Licence are as follows: -

Playing of Recorded Music

Unrestricted

Late Night Refreshment

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

Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit

Unrestricted

Sale by Retail of Alcohol (On and Off Sales)

Monday to Saturday: 10:00 to 00:00
Sunday: 12:00 to 23:30

Opening Hours

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

Summary Decision

The Committee welcomed the fact that the Premises would remain closed by the Applicant and re-open on the 17 May 2021 in line with Step 3 of the Government's road map where customers are permitted back inside of licensed premises to eat and drink once again.

The Committee was very disappointed to note that the DPS did not attend the hearing as he is an integral part of the business and on that basis should have been present, to provide evidence and answer questions, especially when it came to the day to day running of the Premises. The Committee did have the power to remove the DPS under the Act, however, this approach was not considered an appropriate step to take because the licensing authority considered him to be a competent person with a good understanding and knowledge of the licensing regime but the same could not be said of the members of staff, he managed which seemed to be the burning issue here.

The Committee recognised that going forward staff members would require proper training in the sale of alcohol and the promotion of the licensing objectives. This is to ensure there are no reoccurrence of similar incidents that lead to the review application by the Licensing Authority. The Committee was also advised that Mr Gashi was a long-standing member of staff who was popular and had a good relationship with patrons, and this was noted by the Committee.

The Committee in its determination of the matter concluded that the Applicant should receive a warning regarding the breach of the coronavirus regulations and considered that the imposition of conditions on the Premises Licence was the right course of action to take as oppose to any suspension or revocation as that would be disproportionate given the full set of circumstances of the case and what the Home Office Guidance says about best practice at Paragraphs 11.1-11.29 on Pages 89-94 when licensing authorities are dealing with a review of premises.

The Committee ensured that the Applicant was left in no doubt that the various incidents which took place over time at the Premises are frowned upon and taken very seriously by the Committee, particularly when a significant risk is posed to public safety and the undermining of both the public safety and public nuisance licensing objectives in terms of proper crowd control and social distancing because this has far wider implications for the community if this is not managed properly. However, in spite of this

the Committee was persuaded and reassured by the various undertakings given during the course of the hearing by the Applicant when it came to the proposed improved management practices planned for the Premises in the coming months. The Committee noted that the Licence Holder is to have as a minimum 3 personal licence holders on the Premises at any one time when alcohol is served.

The Committee decided that it should impose conditions which would deal with the problems associated with public nuisance at the front forecourt area and training of staff especially as these were issues that went to the heart of the matters complained about. The Committee did feel that on a positive note this was an opportunity for the licence to be updated with conditions that are considered robust, enforceable and will ultimately have the desired effect of promoting the licensing objectives.

The Committee decided that the Licensing Authority together with the Applicant had provided valid reasons as to why the proposed measures they both had advanced along with the Police and Environmental Health would promote the licensing objectives. The Committee decided also that Condition 18 would be removed from the licence and replaced with Condition 22 as specified in Condition 22 below. This means that the total number of patrons permitted to using the front forecourt should be limited to 12 persons seated at all times as this will reduce the problems associated with nuisance. Likewise, with Condition 14 on the premises licence relating to SIA staff which is to be replaced by Condition 9 below.

Having carefully considered the committee papers and the submissions made by all of the parties, both orally and in writing, **the Committee has decided**, after taking into account all of the individual circumstances of this case and the promotion of the four licensing objectives: -

1. That the Premises is to be Warned regarding its failure to manage the Premises efficiently and effectively particularly but not exclusively since the Covid-19 pandemic for incidents that have occurred at the Premises for the period July, August, November and December 2020 and non-compliance with conditions and noise complaints that undermined the promotion of the licensing objectives.
2. That the Premises is to remain closed until the 17 May 2021 as confirmed by the Applicant.
3. Subject to paragraph 2 above the Applicant is to produce a Management Plan prior to the anticipated re-opening date. A copy of the said Management Plan is to be provided to the Responsible Authorities before the re-opening of the Premises and certainly before any licensable activities can take place.
4. That the Licence is subject to any mandatory conditions.
5. That the Licence is subject to the following additional conditions to include any amendments or replacement to existing conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

CONDITIONS IMPOSED BY THE COMMITTEE AFTER A HEARING

- 6(a) The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team.
- (b) All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.

- (c) The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises and will include the external area immediately outside the premises entrance.
 - (d) All recordings shall be stored for a minimum period of 31 days with date and time stamping.
 - (e) Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.
6. 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 is 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.
 7. There shall be a personal licence holder on duty on the premises at all times when the premises are authorised to sell alcohol.
 8. On Thursday to Saturday from 18:00 hours until 30 minutes after the premises closes to the public a minimum of 2 SIA licensed door supervisors shall be on duty at the premises at all times whilst it is open for business. At all other times the number of SIA licensed door supervisors shall be deployed on a risk-assessed basis (with particular regard to ensuring appropriate social distancing during the Covid-19 pandemic).
 9. All staff engaged outside the entrance to the premises, shall wear high visibility jackets, vests or armbands.
 10. There shall be no admittance or re-admittance to the premises after (23.00) except for patrons permitted to temporarily leave the premises to smoke.
 11. All outside tables and chairs shall be rendered unusable by (23.00) Monday-Saturday and by (22:30) on Sunday and Bank Holidays.
 12. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.
 13. 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 a driving licence, passport or proof of age card with the PASS Hologram.
 14. 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, searching equipment or scanning equipment (g) any refusal of the sale of alcohol (h) any visit by a relevant authority or emergency service.
 15. The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.

16. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
17. After 23:00 hours, patrons permitted to temporarily leave and then re-enter the premises, e.g., to smoke, shall be limited to 6 persons at any one time.
18. After 23:00 hours, 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.
19. A noise limiter must be fitted to the musical amplification system and maintained in accordance with the following criteria: (a) the limiter must be set at a level determined by and to the satisfaction of an authorised Environmental Health Officer, so as to ensure that no noise nuisance is caused to local residents or businesses, (b) The operational panel of the noise limiter shall then be secured by key or password to the satisfaction of the authorised Environmental Health Officer and access shall only be by persons authorised by the Premises Licence holder, (c) The limiter shall not be altered without prior written agreement from the Environmental Health Consultation Team, (d) No alteration or modification to any existing sound system(s) should be affected without prior knowledge of the Environmental Health Consultation Team, and (e) No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.
20. The provision of regulated entertainment by way of recorded music shall end at 23:00hrs.
21. Consumption of alcohol outside the public house shall be restricted to the private forecourt to the front of the premises and limited to 12 people seated at all times.
22. After 23:00 hours on Monday to Saturday and 22:30 hours on Sundays the supply of alcohol at the premises shall only be to a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal.
23. To vary condition 9.1, Annex 1:
24. Save as indicated below, on Monday-Saturday alcohol may only be sold or supplied between 10:00-23:00 hours and on Sundays until 22:30 hours. Alcohol may be consumed for up to 30 minutes after the terminal hour
25. All staff responsible for selling alcohol shall receive regular training in the Licensing Act 2003 in terms of the licensing objectives, offences committed under the Act and conditions of the Premises Licence. Written records of staff training in the Act shall be retained and made available to the Responsible Authorities on demand. Staff shall receive refresher training in the Act of no more than 12 months.
26. The Licence Holder shall facilitate and agree a Management Plan for the premises in close consultation with the Responsible Authorities which shall include as a minimum detail relating to noise inside and outside of the premises, smoking, complaints, crowd management and dispersal of patrons and staff training. A completed copy of the Management Plan shall be provided to the Responsible Authorities and made available at the Premises on demand.

INFORMATIVE:

The licence holder is strongly encouraged to form and promote a live WhatsApp group with residents and businesses in order to facilitate regular bi-monthly meetings to discuss issues directly affecting them regarding the running and management of the Premises including any issues specifically connected to public nuisance.

The licence holder is advised for the need to keep Sundays and Bank holidays under review as the Committee agreed to remove the requirement for SIA on these days except for the Notting Hill Carnival.

If problems are experienced, then an application for a Review of the Premises licence can be made.

This is the Summary Decision reached by the Licensing Sub-Committee. The fully reasoned decision will be sent to all parties as soon as possible. The date for appealing the decision will not start until the full reasoned decision has been sent to the Parties.

**Licensing Sub-Committee
15 April 2021**