

# APPENDIX 1

## WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 2 ("The Committee")

Thursday, 8 October 2020

Membership: Councillor Tim Mitchell (Chairman), Councillor Barbara Arzymanow and Councillor Aicha Less

Officer Support: Legal Adviser: Vivienne Walker  
Policy Officer: Aaron Hardy  
Committee Officer: Toby Howes & Cameron MacLean  
Presenting Officer: Jessica Donovan

Parties Present: Mr. David Inzani, Poppleston Allen, Solicitors for the Applicant; Jonathan Arana-Morton, Company Founder and George Whitaker, Finance Director for the Applicant, Richard Brown, CAB Licensing Project for residents, Daisy Gadd for the Licensing Authority and Ayesha Bolton for the Environmental Health Service.

### APPLICATION FOR A NEW PREMISES LICENCE – CATSTEPS CAFÉ, 33 D'ARBLAY STREET LONDON W1F 8EU

#### FULL DECISION

##### Premises

Catsteps Café Limited  
T/A the Breakfast Club  
33 D'Arblay Street  
London  
W1F 8EU

##### Applicant

Catsteps Cafes Limited

##### Cumulative Impact Area

The Premises are within the West End 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 a family run café/bar with external tables and chairs.

##### Proposed Licensable Activities and Hours

**Sale by Retail of Alcohol (On and Off Sales)**

Monday to Saturday: 10:00 to 23:00 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.

### **Hours Premises are open to the Public**

Monday to Sunday: 09:00 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.

### **Representations Received**

- Environmental Health Service (Ayesha Bolton)
- Licensing Authority (Angela Seaward)
- Other Persons

### **Summary of issues raised by Objectors**

- Granting the application would have the likely effect of causing an increase in Public Nuisance and impact on Public Safety within the area.
- The operating hours applied for licensable activities fell outside Westminster's Core Hours and there was, therefore, a presumption against granting the application, although each case would be considered on its merits.
- The application was for On and Off Sales, and there was no condition before 20:00 hours potentially allowing alcohol to be a significant part of the operation, the Licensing Authority encouraged the Applicant to make further submissions on how the Premises would not add to the Cumulative Impact Area. In addition, how the conditions relating to the operation of the Premises as a restaurant would be applied to customers from 20:00 hours, preventing the premises, or a part thereof, from operating as a bar.

### **Policy Position**

- Policies CIP1, HRS1, 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.

## **SUBMISSIONS AND REASONS**

The Presenting Officer, Ms Donovan introduced the report to the Sub-Committee, noting that additional submissions had been made by the Applicant and that these had been circulated to Members of the Sub-Committee.

Members heard from Mr. Inzani, on behalf of the Applicant who stated: -

1. The Breakfast club was part of a well-known chain of 12 café bars with sites in London, Oxford and Brighton. The Premises in D'Arblay Street was the first to open in 2005.
2. A number of amendments had been made to the application, as follows:
  - The application to play recorded music had been withdrawn;

- In accordance with a request by the Licensing Authority, the plans had been re-submitted excluding the external area shown with the red line on the plan;
- The hours on Sunday had been amended to bring them in line with core hours.
- Conditions 11, 25 and 26 were replaced with Model Condition 66 which stated:
 

“The Premises shall only operate as a restaurant:” –

  - i) In which customers are shown to the table;
  - ii) Which provides 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;
  - iii) Which does not provide any takeaway service of food or drink for immediate consumption; and
  - iv) Where intoxicating liquor shall not be sold, supplied, or consumed on the Premises otherwise than to persons who are bona fides taking substantial table meals and provided always that the consumption of intoxicating liquor by such persons is ancillary to taking such meals.

Mr. Inzani explained that relaxing the requirement that the consumption of alcohol be ancillary to taking a table meal was intended to give the Applicant some flexibility in its trade which it was proposed, was needed at this time and would only apply until 20:00 hours and be time limited to correspond with the current Covid-19 restrictions.

Mr. Inzani stated that regarding the objections received in respect of the ventilation duct and nuisance caused by odours, in the fifteen years that the Applicant had been operating these premises, they had never been made aware of any concerns about such nuisance. The Applicant was not aware of any complaints having been received by the Environmental Health Service.

Mr. Inzani explained that the issues referred to with regard to refuse were historical and had been previously addressed. The Premises had a hygiene rating of 5.

It was noted that concerns were raised about the provision of toilet facilities at the premises. Mr. Inzani stated that there was a staff toilet located in the area restricted to staff and a further toilet for customers’ use in the basement area. The Environmental Health Service had recommended that there be a condition limiting customer capacity to 30, and the applicant had agreed to this condition.

Mr. Richard Brown, from CAB Licensing Project on behalf of Mr. Bulboaca, local resident and manager of Commercial Premises on D’Arblay Street, made specific reference to the nuisance caused by odours emanating from the Premises because of inadequate ventilation ductwork, customers queueing at the front of the Premises and the effect of obscuring the adjacent shop frontage, causing damage to decorative greenery and creating litter.

In response to questions raised by Members, Mr. Inzani stated that he was not aware of any plans to upgrade the duct extracting fumes from the premises, but the matter had been referred by the Environmental Health Service to Planning Services.

Ms. Ayesha Bolton, on behalf of Environmental Health Service stated that the Applicant had provided the requested information and had made significant amendments to the application, as set out above. In response, the Environmental Health Service had proposed the customer capacity.

Ms. Bolton stated as a consequence of the Applicant's agreement to the condition of limiting customer capacity to 30, the Environmental Health Service no longer had any objections to the application.

Ms. Bolton in response to a question by the Chairman of the Licensing Sub-Committee regarding the adequacy of having only one customer toilet when considering the additional seating outside. Ms. Bolton stated that the use of the outdoor seating area, would vary with the seasons and she was satisfied that one toilet and the condition restricting customer capacity to 30 was sufficient.

Ms. Gadd, on behalf of the Licensing Authority, stated that following mediation with the Applicant, the only matter of concern was the temporary proposal to exclude the requirement to order a substantial table meal when ordering alcohol before 8:00pm. The requirement for customers to be seated before being served reduced the possibility of vertical drinking taking place.

Ms. Gadd stated that because the Premises are located within the West End Cumulative Impact Area, the test to be applied, is that the granting of the application would not add to the cumulative impact in the area.

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 amended 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 and 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's explanation that the purpose of the application was to allow relaxation as to the premises' operation under COVID-19 restrictions;
2. The application is time limited until September 2021;
3. The capacity for the Premises is 30 people;
4. The number of additional conditions that have been added to the licence would promote licensing objectives;

The Licensing Sub-Committee having regards to the Applicant's submissions relating to the impact of the pandemic on the operation of the Premises and the fact that the application is time-limited, deemed these sufficient to provide an exception to the Council's Statement of Licensing Policy.

In conclusion, the Sub-Committee was satisfied that, in all the circumstances of the case, it was reasonable, 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 a Metropolitan Police Crime Prevention Officer. 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. Recordings shall be made available immediately upon the request of the Police or authorised officer throughout the preceding 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 to the public. This staff member must be able to show a Police or authorised council officer recent data or footage with the absolute minimum of delay when requested.
3. The supply of alcohol shall be by waiter or waitress service only.
4. Substantial food and suitable beverages other than intoxicating liquor shall be available during the whole of the permitted hours in all parts of the Premises where intoxicating liquor is sold or supplied.
5. All sales of alcohol for consumption off the Premises shall be in sealed containers only, and shall not be consumed on the Premises except that alcohol can be sold in open containers and consumed in any designated area for the use of table and chairs shown on the plan attached to the Premises Licence or where tables and chairs are permitted to be placed under the Highways Act 1980 or the Business and Planning Act 2020.
6. The capacity at the premises, at any one time, shall be 30 inside (excluding staff).
7. After 21:00 hours all external doors and windows to be kept closed except for immediate access and egress of persons.
8. No noise shall emanate from the Premises nor vibration be transmitted through the structure of the Premises which gives rise to a nuisance.
9. Clearly legible notices shall be displayed at all exits from the Premises requesting patrons to respect the needs of local residents and to leave the Premises and area quietly.
10. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and to leave the Premises and area quietly.
11. No rubbish, including bottles, shall be moved, removed or placed in outside areas between 2300 hours and 0800 hours.
12. The area immediately outside the premises, shall be swept and/or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.
13. All waste is to be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
14. 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.

15. 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.
16. There shall be no vertical drinking allowed on the premises.
17. All tables and chairs shall be removed from the outside area by 23.00 hours each day.
18. The sale and supply of alcohol for consumption off the Premises shall be restricted to sales in sealed containers, and to alcohol consumed by persons seated in an area for outside tables and chairs, and after 20:00 where persons are bona fide taking a substantial table meal there, where the consumption of alcohol by such persons is ancillary to a table meal, and where the supply of alcohol is by way of waiter / waitress service only.
19. The Premises shall only operate as a restaurant:
  - (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.

Except that up to and including 30 September 2021 point (iv) of this condition shall not apply until 20:00 hours.

Notwithstanding this condition customers are permitted to take from the Premises part consumed and resealed bottles of wine supplied ancillary to their meal.

20. No fumes, steam or odours shall be emitted from the licensed Premises so as to cause a nuisance to any persons living or carrying on business in the area where the Premises are situated.

**This is the full decision reached by the Licensing Sub-Committee. This decision takes immediate effect.**