

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

Thursday 17 June 2021

Membership: Councillor Karen Scarborough (Chairman), Councillor Heather Acton and Councillor Aicha Less

Officer Support: Legal Advisor: Vivienne Walker
 Policy Officer: Kerry Simpson
 Committee Officer: Cameron MacLean
 Presenting Officer: Kevin Jackaman

Application for a New Premises Licence in respect of Underbelly Festival Open Space in Centre Cavendish Square London W1G 9DB – 21/03706LIPN

FULL DECISION

Premises

Underbelly Festival, Open Space in Centre, Cavendish Square, London W1G 9DB

Applicant

Underbelly Limited

Cumulative Impact Area

N/A

Ward

West End

Summary of Application

This is an application for a new premises licence under the Licensing Act 2003 ("The Act") for the Underbelly Festival described as a live performance venue, a feast of fun and affordable live entertainment. The proposed Premises Licence will be time limited until 30 September 2021.

Proposed Licensable Activities and Hours

The Provision of Plays, Films, Live Music, Recorded Music, Performance of Dance and Anything of a similar description – (Indoors)

Monday to Wednesday: 10:00 to 22:00 hours
Thursday to Saturday: 10:00 to 23:30 hours
Sunday: 10:00 to 22:00 hours

Seasonal Variations: None

Sale by Retail of Alcohol – (On Sales)

Monday to Sunday: 10:00 to 23:00 hours

Seasonal Variations: None

Hours Premises are Open to the Public

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

Thursday to Saturday: 10:00 to 00:00 hours

Sunday: 10:00 to 23:30 hours

Representations Received

- Metropolitan Police Service (PC Adam Deweltz)
- Environmental Health Service (Anil Drayan)
- 3 Local Residents

Summary of Objections

- MPS objected on the basis that the application would undermine the licensing objectives in relation to the Prevention of Crime and Disorder.
- EHS made representations on the basis that the proposals may undermine the licensing objectives of Prevention of Public Nuisance, Public Safety and Protection of Children from Harm.
- Interested Parties expressed concerns about noise, pollution, littering and queues.

Policy Position

Policies HRS1 and CCSOS1 apply under the City Council's Statement of Licensing Policy. There is no policy presumption to refuse this application subject to the requirements of policies CD1, PS1, PN1, CH1 and SCZ1 being met.

SUBMISSIONS AND REASONS

Mr Kevin Jackaman, Senior Licensing Officer outlined the application. He explained that the application was for a time limited Premises Licence. The Applicant had applied for regulated entertainment and the retail of sale of alcohol. He advised that representations had been received from the Metropolitan Police Service (MPS), Environmental Health (EH) and three interested parties.

Mr Spiegler acting on behalf of the Applicant referred the Members of the Sub-Committee to the Operating Event Management Plan (OEMP) included in the Additional Information Pack that was before Members. He stated that he hoped that Members of the Sub-Committee would find the OEMP comprehensive and that it

reassured Members about the management of the Underbelly Festival (“the Festival”), as well as addressing the concerns of those parties that had made representations. He stated that the OEMP had and continued to be scrutinised by expert advisers in the licensing operational and safety planning group. The Applicant had agreed a licence condition which required the event to be operated in accordance with the procedure set out in the OEMP.

Mr Spiegler then described the operation of the Festival, noting that the application was for a time-limited Premises Licence for licensable activities from 1 July to 26 September 2021, which was consistent with the Planning Permission granted for the Festival. Mr Spiegler then introduced Mr Ed Bartlett, Co-Founder and Director of Underbelly, Mr Bartlett outlined the history of the Festival, which had become a London cultural flagship event with accessibility and affordability to live performance at the heart of its ambitions. He described the nature and variety of the performances which took place in the Spiegel tent Theatre.

Mr Bartlett then referred to the Applicant’s experience in organising events in sensitive areas in London and elsewhere in the UK, noting that, in the 11 years the Festival had taken place on the South Bank, it had done so without any complaints from local residents or stakeholders about noise or antisocial behaviour. He then detailed the consultations that had taken place with local residents, stakeholders and various authorities, including the Police, in preparation for holding the Festival for the first time at Cavendish Square, and the security measures that would be put in place.

In conclusion, Mr Bartlett noted that, access to events at the Festival would be ticketed, but that Cavendish Square would remain open to Members of the Public.

Mr Spiegler then expanded on the Applicant’s experience as an Events Organiser, the consultations that had taken place with the Responsible Authorities and the Licensing Operational and Safety Planning Group (LOSPG); and the proposed Premises Licence Conditions agreed with the various authorities, as set out in his submission in the Additional Information Pack that was before the Sub-Committee.

Mr Spiegler referred to the letter the Applicant had sent to local residents offering to meet with them to discuss any concerns, noting that the Residents that had made representations had not responded to the Applicant’s invitation. He then addressed the concerns of local residents, including concerns about noise, rubbish, queueing, the sale of alcohol, and the proximity of the Festival venue to residents, as set out in their representations.

Mr Spiegler addressed the Sub-Committee on policy considerations, noting that the Premises was outside the West End cumulative impacts zone. He stated that the proposed Premises Licence Conditions were commensurate with the Premises’ location in a Special Considerations Zone, as set out in the Council’s Statement of Licensing Policy, Policy SCZ1, Paragraph D48.

Mr Spiegler then addressed the Sub-Committee on the Council’s Cinemas, Cultural Venues, Live Sporting Premises & Outdoor Spaces Policy (CCSOS1), as set out in the Council’s Statement of Licensing Policy.

In response to Members’s questions, Mr Bartlett provided the following information:

- (a) He was looking forward to the opportunity to bring their flagship Underbelly festival to London, Cavendish Square;
- (b) They have two key ambitions, affordability and accessibility to live performance;

- (c) All shows take place inside the Spiegel tent Theatre and there will be no live outdoor entertainment within the Square;
- (d) The whole site will be designed, delivered and managed to a high quality.
- (e) They have 21 years' experience in providing events in sensitive city locations.
- (f) They have worked with the Police to agree CCTV, 24 hours stewarding and mandatory bag search.

PC Deweltz for the MPS who was joined by Mr Ben Turner, Counter Terrorism Security Adviser, stated that the Police had maintained its representation on the basis of the Promotion of the Licensing Objectives of the Prevention of Crime and Disorder, and Public Safety. The MPS were not opposed to the application being granted as they felt that it would be good for Westminster but did have some concerns which they wished to highlight to the Members of the Sub-Committee.

PC Deweltz went through the various concerns set out in the correspondence between the Metropolitan Police and the Applicant, which was reproduced in Appendix 2 [Pages 56 to 59] of the Report which was before the Sub-Committee. He then described the nature and character of the West End and the implications this had for the Police and Crime and Disorder.

Mr Turner gave a brief overview of the implications of the application in relation to counterterrorism, and the extent to which the Operating Event Management Plan (OEMP) addressed those implications.

Mr Turner then described the types of protective security measures that he would wish to see included in the OEMP, including managing access to Cavendish Square, the Festival, and to the Spiegel tent and suitable training for non-security management and staff members.

Mr Anil Drayan, on behalf of EH stated that he was confident the level of noise breakout from amplified music would not be a concern. He stated that his main concern breakout was the attraction of pedicabs within the area. He explained that he had discussions with the SIA security company and advised them to politely ask pedicabs to turn down any music they are playing and to report pedicab drivers to the Council's Noise Team with a view to the Council taking enforcement action.

In response to Members' questions, Mr Drayan stated that before the event opens, he would be in discussion with the persons operating the sound systems at the sound mixing desks. He would look to see what controls they have in place for measuring the 85 decibel levels.

Mr Richard Brown on behalf of several residents, explained that he had noted that the Spiegel tent had a capacity of 600 and that the overall capacity of the venue was, according to the Planning Permission, 2,000. Therefore, there would be 1,400 people who were not in the tent when the Premises was operating at its capacity. As no application had been made for regulated entertainment other than in the Spiegel tent, it was the activities of those persons who were not in the Spiegel tent that was of concern for Residents.

In response to Mr Brown's question Mr Spiegler stated that model condition not to cause a nuisance was not usually imposed on open space events. He stated it was a temporary festival that was only there for a limited amount of time. Due to the nature of the event, there was a risk on occasional times when there may be a sound test where it would be louder than usual. This was proactively dealt with under the OEMP and the Licensing Operational and Safety Planning Group meetings.

Conclusion

The Sub-Committee has a duty to consider the application on its individual merits and took into account all of the committee papers, supplementary submissions made by the Applicant and the oral evidence given by all parties during the hearing in its determination of the matter.

The Sub-Committee noted that the Applicant had positively and proactively engaged with the responsible authorities and residents. The Sub-Committee noted that this was a time limited application.

The Sub-Committee noted that the Applicant was an experienced operator and had run cultural entertainment for all ages in Westminster for over 10 years and there have been no complaints.

The Sub-Committee welcomed the Applicant's offer to operate events on some nights with reduced hours and the number of Informatives agreed by the Applicant.

Taken together, the Sub Committee were of the view that the application accorded with the relevant policy criteria and would promote the licensing objectives.

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 application and the promotion of the four licensing objectives:

1. **To grant permission for the Provision of Plays, Films, Live Music, Recorded Music, Performance of Dance and Anything of a similar description – (Indoors)** Monday to Wednesday 10:00 to 22:00 hours Thursday to Saturday 10:00 to 23:30 hours and Sunday 10:00 to 22:00 hours. **There are no seasonal variations.**
2. **To grant permission for the Sale by Retail of Alcohol (On Sales)** Monday to Sunday 10:00 to 23:00 hours. **There are no seasonal variations.**
3. **To grant permission for the Hours the Premises are Open to the Public** Monday to Wednesday 10:00 to 23:30 hours Thursday to Saturday 10:00 to 00:00 hours and Sunday 10:00 to 23:30 hours. **There are no seasonal variations.**
4. **To grant permission for a time limited Premises Licence** to authorise licensable activities between 1 July 2021 to 26 September 2021.
5. That the Premises Licence shall be time limited for the period 1 July 2021 to 26 September 2021 and the licensable activities so authorised shall be restricted to this period after which time this Licence shall cease and have no effect as specified in condition 68 below.
6. That the Licence is subject to any relevant mandatory conditions.
7. That the Licence is subject to the following additional conditions and informative imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

Conditions imposed by the Committee after a hearing

8. At least one SIA licensed door supervisor shall be on duty at each entrance and exit of the premises at all times whilst it is open for business.
9. The operational use of this licence shall be agreed through the Licensing, Operational and Safety Planning Group (LOSPG) process where:
 - i. The LOSPG shall be chaired by a representative of the City Council's City Promotions, Events & Filming Team (CPEF) and
 - ii. Membership of the LOSPG shall normally consist of invited representatives of the designated event organiser, the Metropolitan Police Service, Officers of the City Council from CPEF and the Environmental Health Consultation Team (EHCT), London Fire Brigade and any other appropriate and specialist advisor as required by the chairman of the LOSPG to achieve agreement and to meet the objectives of the Licensing Act.
10. Unless otherwise agreed, no later than 28 days prior to the event the Premises Licence holder must ensure an Event Management Plan is presented to the parties listed in the above conditions for their comments. The Event Management Plan shall include, as a minimum:
 - a. Emergency and Evacuation procedures;
 - b. Crowd management and Dispersal Policy;
 - c. A detailed plan showing site layout and emergency egress points;
 - d. A detailed plan showing CCTV locations installed by the Premises Licence Holder;
 - e. Risk Assessments;
 - f. A schedule detailing types and locations of emergency equipment;
 - g. Sanitary accommodation;
 - h. The capacity of fully enclosed locations where alcohol is sold;
 - i. A detailed Counter Terrorism risk assessment;
 - j. Security/Stewarding arrangements;
 - k. Search Policy.
11. So far as is reasonably practicable the Premises Licence Holder shall ensure that the event is run in accordance with the Event Management Plan.
12. There shall be at least one personal licence holder on site during operational hours. Details of the personal licence holder (including name and contact number) shall be displayed in a prominent position on site.
13. No alcohol shall be taken outside of the boundary of the licensable area.
14. Notices shall be prominently displayed at all exits (including the Spiegel tent) requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
15. 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.

16. A challenge 25 proof of age scheme for the sale of alcohol 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 age of the audience members to the Spiegeltent shall be appropriate to the performance.
18. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the premises by the Police or an authorised officer of the City Council at all times whilst the premises are open.
19. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry 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.
20. 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
 - (g) any refusal of the sale of alcohol
 - (h) any formal visit by a relevant authority or emergency service.
21. Any special effects or mechanical installations shall be arranged, operated and stored so as to minimise any risk to the safety of those using the premises. The following special effects will only be used on 10 days prior notice being given to the licensing authority where consent has not previously been given.
 - dry ice and cryogenic fog
 - smoke machines and fog generators
 - pyrotechnics including fireworks
 - firearms
 - lasers
 - explosives and highly flammable substances
 - real flame
 - strobe lighting.
22. No person shall give at the premises any exhibition, demonstration or performance of hypnotism, mesmerism or any similar act or process which produces or is intended to produce in any other person any form of induced sleep or trance in which susceptibility of the mind of that person to

suggestion or direction is increased or intended to be increased. NOTE: (1) This rule does not apply to exhibitions given under the provisions of Section 2(1A) and 5 of the Hypnotism Act 1952.

23. Licensable activities at events in the Spiegeltent shall only be provided to persons who are a ticket holder for that event.
24. The number of persons accommodated in the Spiegeltent (including staff) shall not exceed 600.
25. The licence holder shall ensure that any queuing for the Spiegeltent performances shall take place within the licensed area.
26. The safe capacity of the Square shall be continuously reviewed, and action taken if necessary, to ensure the capacity remains at a safe capacity.
27. All drinking vessels used in the venue shall be made from compostable material other than glass, except for wine or sparkling wine (including champagne) in the Spiegeltent. There shall be no glass allowed into the auditorium or external areas.
28. The approved arrangements at the premises, including means of escape provisions, emergency warning equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.
29. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.
30. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.
31. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
32. Curtains and hangings shall be arranged so as not to obstruct emergency safety signs or emergency equipment.
33. All fabrics, curtains, drapes and similar features including materials used in finishing and furnishing shall be either non-combustible or be durably or inherently flame-retarded fabric. Any fabrics used in escape routes (other than foyers), entertainment areas or function rooms, shall be non-combustible.
34. The certificates listed below shall be submitted to the Licensing Authority upon written request:
 - a. Any permanent or temporary emergency lighting battery or system
 - b. Any permanent or temporary electrical installation
 - c. Any permanent or temporary emergency warning system
35. There shall be no external entertainment beyond 22.00 hours.

36. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 07.00 hours on the following day.
37. No deliveries to the premises shall take place between 23.00 and 07.00 on the following day.
38. Flashing or particularly bright lights on or outside the premises shall not cause a nuisance to nearby properties (save insofar as they are necessary for the prevention of crime).
39. No fumes, steam or odours shall be emitted from the licensed area so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated.
40. A sufficient number of easily identifiable, readily accessible receptacles for refuse must be provided, including provisions for concessions. Arrangements must be made for regular collection. Public areas must be kept clear of refuse and other combustible waste prior to, and so far, as is reasonably practicable, during the licensed event.
41. A minimum of 28 days prior to the event a Noise Management Plan to promote the prevention of public nuisance shall be provided to Westminster City Council's Environmental Health Consultation Team for approval. The Noise Management Plan shall state the maximum permitted music noise level applicable at the nearest noise sensitive premises. Once approved in writing it shall be implemented by the Premises Licence Holder.
42. Residential properties and the relevant amenity group(s) in the immediate vicinity of Cavendish Square will be contacted as soon as reasonably practicable (and in any event no later than 28 days) prior to the Event advising them of the times of the Event and any sound check or rehearsal times and giving them a telephone number to contact in the event that they have any complaints.
43. Any generators, refrigerators or other machinery running overnight will be silenced, screened or sited so as not to be audible outside the boundary of the Gardens.
44. Electrical generators, where used, must be:
 - i. Suitably located clear of buildings, marquees and structures, and free from flammable materials.
 - ii. Enclosed to prevent unauthorised access.
 - iii. Able to provide power for the duration of the event.
 - iv. Backed up electrical generators are to be provided to power essential communications, lighting and safety systems in the event of primary generator failure.
45. The minimum number of toilet accommodation shall include:
14 Women's Cubicles
3 Men's Cubicles
10 Urinals.

46. Details of all marquees, tented structures and temporary structures should be provided including emergency exits and signage, fire warning and fire fighting equipment.
47. Full structural design details and calculations of all and any structures to be erected within the licensed area must be submitted to the Westminster City Council Building Control. A certificate from a competent person or engineer that a completed structure has been erected in accordance with the structural drawings and design specification must be available for inspection prior to a relevant structure being used during the licensed event.
48. All fabric, including curtains and drapes used on stage for tents and marquees, or plastic and weather sheeting, shall be inherently or durably flame retardant to the relevant British Standards. Certificates of compliance must be available upon request by an authorised officer of Westminster City Council and the London Fire Brigade.
49. Any moving flown equipment must contain a device or method whereby failure in the lifting system would not allow the load to fall. All hung scenery and equipment must be provided with a minimum of two securely fixed independent suspensions such that in the event of failure of one suspension the load shall be safely sustained.
50. The Premises Licence Holder must maintain a regular safety patrol at all times when the public are present in the licensed area to check for and guard against possible emergency hazards. The area underneath any stage and fixed seating areas are to be kept clear of flammable materials.
51. The Premises Licence Holder must ensure that competent persons are employed to assess the electrical requirements at the event and the compatibility of the electricity supply with the equipment to be used. Appropriate safety devices (such as 30mA Residual Current Devices at Source) must be used for electrical apparatus, particularly for any electrical equipment exposed to adverse conditions or electrical equipment to be used in association with hand held devices (e.g. microphones). The competent person must make a certificate of inspection of the electrical installation available for inspection.
52. All spare fuel, including LPG, must be kept and stored safely in accordance with relevant Health and Safety legislation and suitable safety signage and fire fighting equipment provided.
53. No licensable activities shall take place at the premises until the Licensing Authority are satisfied that the premises are constructed or altered in accordance with the appropriate provisions of the District Surveyor's Association – Technical Standards for Places of Entertainment and the reasonable requirements of Westminster Environmental Health Consultation Team, at which time this condition shall be removed from the licence by the licensing authority.
54. The noise levels within the performance venue shall be monitored and adjusted to ensure that they do not exceed 85dB(A) LAeq over any 15 minute period when measured at the mixing/control desk.

55. For the external entertainment there shall be no striptease or nudity, and all persons shall be decently attired at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue licence.
56. Regulated entertainment shall be restricted to the Spiegel tent.
57. The premises licence holder shall ensure that the management team register and successfully complete the nationally recognised counter terrorism training product referred to as ACT eLearning package or can demonstrate that the ACT eLearning product has been successfully completed within the preceding 12 months (before the start of the proposed event/open to the public) and that all staff employed by or at the premises, including contracted and 3rd party complete the "ACT eLearning" training prior to them being employed on the premises.
58. A copy of the premises Dispersal Policy will be available at the premises for inspection by a Police Officer and/or an authorised Officer of Westminster City Council.
59. The Premises Licence Holder shall ensure that alcohol is not allowed to be brought into the licensed area by members of the public.
60. The name and contact telephone number of the Designated Premises Supervisor shall be displayed in a prominent position on site, so that it is clearly visible.
61. A written search policy will be in place and security staff will be briefed on the provisions of such policy to be aware of their responsibilities and actions required by that policy. Such policy will include the procedure for searching prior to entry of customers into the licensed area of Cavendish Square, which will include randomised body searches and compulsory searches of all bags by hand to ensure that no alcohol is brought on site. Any customer refusing to permit to the search procedure will be refused entry into the licensed area of Cavendish Square. Any queues formed at the entry to the site shall be supervised by security staff to prevent disorder and anti-social behaviour.
62. The Premises Licence Holder shall ensure that:
 - (a) All licensed SIA door staff on duty at the event shall be equipped with Body Worn Video (BWV), capable of recording audio and video in any light condition as per the minimum requirements of the Westminster Police Licensing Team,
 - (b) All recordings shall be stored for a minimum period of 31 days with date and time stamping, and
 - (c) the viewing of BWV recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31-day period.
63. Beer, Lager or Cider shall not be served in any measure greater than a pint.
64. A minimum of 3 SIA licensed stewards shall be on duty at the premises at all times whilst it is open for business. When more than 1 of the site entrances

are open, a minimum of 4 SIA licensed stewards shall be on duty at the premises at all times whilst it is open for business. The Premises Licence Holder shall regularly risk assess the requirement for additional SIA licensed stewards to be on duty. Regular patrols within the licensed area of Cavendish Square will be conducted by those SIA licensed stewards on duty.

65. All SIA licensed door supervisors will wear high visibility jackets or vests.
66. 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.
67. 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.
68. No licensable activities shall take place at the Premises after 26 September 2021 for the avoidance of doubt.

INFORMATIVE

69. **The Sub-Committee welcomed the Applicants' willingness to work with the Licensing Operational and Safety Planning Group ("LOSPG") to ensure the smooth running of the various festival events to be held in Cavendish Square during the period of the licence that will help the promotion of the licensing objectives.**
70. **The Sub-Committee welcomed the Applicants offer to stagger the operations of the events on some nights with reduced hours to give some respite to residents in accordance with the terms of the Event Management Plan.**
71. **The Sub-Committee also welcomed the measures proposed by the Applicant in the Event Management Plan to address counter terrorism and its ongoing commitment to work with the Metropolitan Police Service in order to uphold the crime and disorder licensing objective.**
72. **The Applicant will ensure that appropriate measures are taken to discourage pedicabs operating within the vicinity of the premises late at night so as to prevent public nuisance.**

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

**Licensing Sub-Committee
17 June 2021**