

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

Thursday 3 June 2021

Membership: Councillor Tim Mitchell (Chairman) Councillor Jacqui Wilkinson

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Kerry Simpkin
Committee Officers: Cameron Maclean
Presenting Officer: Karyn Abbott

**Application for a New Premises Licence in respect of 56 Wardour Street
London W1D 4JG 21/01576/LIPN**

FULL DECISION

Premises

56 Wardour Street London W1D 4JG

Applicant

Wardour Street Trading Limited

Cumulative Impact Area?

West End

Ward

West End Ward

Proposed Licensable Activities and Hours

This application seeks the following licensable activities and operating hours: -

Live Music (Indoors)

Monday to Wednesday 23:00 to 01:30 hours
Thursday to Friday 23:00 to 02:30 hours
Saturday 23:00 to 02:30
Sunday 23:00 to 12:00 hours

Recorded Music (Indoors)

Monday to Wednesday 23:00 to 01:30 hours
Thursday to Friday 23:00 to 02:30 hours
Saturday 23:00 to 02:30
Sunday 23:00 to 12:00 hours

Late Night Refreshment (Indoors)

Monday to Wednesday 23:00 to 01:30 hours
Thursday to Friday 23:00 to 02:30 hours
Saturday 23:00 to 02:30
Sunday 23:00 to 12:00 hours

Retail Sale of Alcohol (On and Off Sales)

Monday to Wednesday 10:00 to 01:30 hours
Thursday to Saturday 10:00 to 02:30 hours
Sunday 10:00 to 12:00 hours

Hours Premises are Open to the Public

Monday to Wednesday 08:00 to 01:30 hours
Thursday to Saturday 08:00 to 02:30 hours
Sunday 08:00 to 12:00 hours

Seasonal Variation: None applied for relating to the above.

Representations Received

- Metropolitan Police Service (PC Cheryl Boon)
- Environmental Health Service (Maxwell Koduah)
- Licensing Authority (Kevin Jackaman)
- Soho Estates Ltd
- The Soho Society

Summary of Objections

- MPS noted that the venue is situated within the Cumulative Impact Area and it is their belief that if granted the application would undermine the Licensing Objectives in relation to The Prevention of Crime and disorder. The location of the premises is an area where historically Police resources have been in high demand, mainly due to high levels of intoxication and disorder in the early hours. It is felt that this application and the hours applied for would only contribute to an increase in crime and disorder.
- EHS made the following representations: 1. The hours requested to perform live music have the likely effect of causing an increase in Public Nuisance and within the West End Cumulative Impact area; 2. The hours requested to play recorded music have the likely effect of causing an increase in Public Nuisance and within the West End Cumulative Impact area; 3. The hours requested to provide late night refreshment have the likely effect of causing an increase in Public Nuisance and may affect Public Safety within the West End Cumulative Impact area; 4. The supply of alcohol and hours requested to supply alcohol have the likely effect of causing an increase in Public Nuisance and may affect Public Safety within the West End Cumulative Impact area.

- The Licensing Authority had concerns in relation to this application and how the premises would promote the four Licensing Objectives. The Licensing Authority noted that the premises are located within the West End Cumulative Impact Area and as such various policy points must be considered, namely CIP1 and RTN1. It was also noted that if there is no ancillary nature in respect of the shaded areas then the application will also need to be considered under Policy PB1.
- Soho Estates Ltd (the Landlord) made a representation against the grant of a premises licence, noting the Premises is in the middle of a cumulative impact area, the entity and operation is unknown to them and that the applicant has no title or interest in the Premises.
- The Soho Society objects to this application as it is currently presented, on the grounds of prevention of crime and disorder, prevention of public nuisance, public safety and cumulative impact in the West End Cumulative Impact Area.

Summary of Application

The Committee has determined an application for a Time Limited New Premises Licence under the Licensing Act 2003 (“The Act”). The Premises intends to operate as a restaurant and bar and is within both the West End Ward and West End Cumulative Impact Zone. The Special Consideration Zone does not apply.

The Premises currently has the benefit of a Premises Licence (20/07527/LIPDPS) which permits the following licensable activities and operating hours: -

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 view to profit: Unrestricted

Sale by Retail of Alcohol

Monday to Saturday 10:00 to 00:00 Sunday 10:00 to 23:30 Opening hours of the Premises: Monday to Saturday 08:00 to 00:30 Sunday 08:00 to 00:00

Policy Position

Under Policy HRS1, for hours outside the core hours will be considered on their merits, subject to other relevant policies, and with particular regard to the matters identified in Policy HRS1.

Under Policy CIP1, it is the Licensing Authority’s policy to refuse applications within the West End Cumulative Impact Zone for: pubs and bars, fast food premises, and music and dancing and similar entertainment, other than applications to:1. Vary the

hours within Core Hours under Policy HRS1, and/or 2. Vary the licence to reduce the overall capacity of the premises. Applications for other premises types within the West End Cumulative Impact Zones will be subject to other policies within this statement and must demonstrate that they will not add to cumulative impact.

Under Policy PB1, it is the Licensing Authority's policy to refuse applications within the West End Cumulative Impact Zone other than 1. Applications to vary the existing licence hours within the council's Core Hours Policy HRS1. 2. Applications that seek to vary the existing licence so as to reduce the overall capacity of the premises.

Under Policy RTN1, applications inside the West End Cumulative Impact Zone will generally be granted subject to: 1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1. 2. The hours for licensable activities are within the council's Core Hours Policy HRS1. 3. The applicant has demonstrated that they will not add to cumulative impact within the Cumulative Impact Zone. 4. The application and operation of the venue meeting the definition of a restaurant as per Clause C.

SUBMISSIONS AND REASONS

Ms Karyn Abbott, Senior Licensing Officer, outlined the application as detailed in the Committee Report. Representations had been received from Environmental Health, Metropolitan Police, the Licensing Authority and two interested parties. The Premises are within the West End Ward and the West End CIA.

Mr Luke Elford, for the applicant, explained that the applicant had applied for a time-limited premises licence. The suggested time-frame is 2 years but Mr Elford stated that the applicant was open to discussion as to the time of any licence. Mr Elford noted there was a slight discrepancy between the hours applied for and those in the committee papers – he explained that where it says 03:30 on Saturday in respect of live music, recorded music and late-night refreshment this is incorrect and should actually read 02:30 hours.

Mr Elford stated the applicant is entirely respectful of the SLP. He stated the applicant thought very carefully prior to making their application. He specifically drew the Sub Committee's attention to pages 35 – 106 of the supplemental agenda.

Mr Elford stated there were objections from the Police, Environmental Health, the Licensing Authority, from the Soho Society and Soho Estates. He submitted that these objections are entirely policy based – i.e., they relate to the way the application interacts with the policy and not that the Premises does cause or will cause any issues.

Mr Elford submitted that the starting point is that the Premises currently promotes the licensing objectives. He stated the question the Sub-Committee need to ask themselves first and foremost is "if the licence, or some form of the licence, is granted will the licensing objectives be undermined?". He submitted that they will not be undermined because the applicant has proposed a comprehensive suite of appropriate and proportionate conditions (page 39 of the supplemental agenda) to mitigate the concerns raised. Mr Elford stated the applicant is open to discussion as

to whether any of the conditions need to be finessed or changed – but stated the vast majority of them are model conditions.

Mr Elford explained there are some measures specific to the application. First, the application is time-limited. 2-years had been suggested because the applicant is not in a position to use the layout immediately. He explained there are layout changes which will take roughly 3 months to complete. The Applicant also will have to work out when they can shut the Premises to do these works. Second, the licence is to be specific to the applicant – the licence cannot be used by anyone else or any other operation.

Mr Elford submitted that precedent is not a relevant issue and each application is assessed on its own merits.

Mr Elford explained the proposed changes to the layout are intrinsically linked to what is being proposed in this application – if the applicant does not achieve the flexibility they are seeking in terms of hours and flexibility there is little point in the layout changes.

Mr Elford submitted the applicant is not proposing any meaningful difference in how the Premises is run currently. The request to extend the bar facility in the ground floor is because customers have asked for this and because the Premises has to turn away significant amount of business due to current conditions.

Mr Elford stated the applicant is mindful of the previous history of the Premises, stating there is clearly something wrong with the site as other people haven't been able to make it work. He stated that the applicant is just about making it work but needs some help. He stated the Applicant doesn't want to circumvent model restaurant condition MC66 nor create food-waste.

Mr Elford explained the increase in hours is more important than the ability for people to drink without food, but he stated it is important to have the same ability they do currently.

Mr Elford explained the customer profile tended to be older, members of the LGBTQ+ community, and either theatre-goers or employees.

Mr Elford submitted the Applicant was not seeking to increase profits at the expense of the licensing objectives.

In relation to hours, Mr Elford stated the Applicant has noticed the trend of people dining later rather than earlier.

Mr Elford stated entertainment is a very small part of what they do, they would like to have some entertainment, but it is primarily recorded music. It was confirmed that this would not be a DJ but rather a piano or a guitar player for example.

In relation to objections, Mr Elford stated there is a complete lack of evidence to support the allegations made. Mr Elford stated the photos from the al fresco dining were unrelated to the Premises and they have not benefitted from this.

In relation to cumulative impact, Mr Elford stated he had submitted a document that goes into great detail covering this aspect. He stated the applicant was under no illusion about the high hurdle cumulative impact sets but the applicant was prepared to meet that high hurdle and get over it. He accepted there is no silver bullet to defeat cumulative impact. He noted the Council's approach in relation to the new policy was to maintain the status quo for the time-being and re-look at things when the impact of Covid became clear. Mr Elford stated the impact of Covid was clear. He stated the Council have previously accepted Covid as an exception to their policy and he invited the Sub-Committee to do so again, but that the Applicant's argument is that this application taken altogether is more than the sum of its parts and that is how it gets over the hurdle of the cumulative impact policy.

Mr Elford concluded by explaining the applicant was happy to be flexible but needed this licence for the future of the business.

In response to questions from the Sub-Committee:

- (a) Mr Elford explained the business is a food-driven restaurant with a very small bar. He explained it is a nice, well-appointed premises with an excellent ambience and the ability for customers to eat and drink in Soho and to enjoy the surrounding area. He stated there was no change to this resulting from the application;
- (b) Mr Elford clarified that at present the Premises has a very small area where customers who don't want to eat can have a drink being immediately seated around the bar. The applicant wants to make that area bigger and more comfortable by increasing the size of the service counter. The applicant intended to knock into the staff-toilets and office in basement to create a larger dining area. The applicant would also like to designate part of the basement as they have with the ground-floor;
- (c) Mr Elford confirmed that the increase in hours was more important to the applicant than the extension to the bar and serving alcohol without food after a certain time although everything applied for was important to the applicant – at the least, the applicant needed what they currently have under the licence.

Mr Maxwell Koduah, addressed the Sub-Committee on behalf of Environmental Health and explained that currently the Premises is permitted late-night refreshment to 00:30 hours Monday to Saturday and 00:00 hours Sunday. The Premises is permitted to sell alcohol until 00:00 hours Monday to Saturday and 23:30 hours Sunday. Mr Koduah stated that the application was asking for an extension of 1 hour 30 minutes Monday to Wednesday late-night refreshment, an extension of 2 hours 30 minutes Thursday to Saturday late-night refreshment, and the same for the supply of alcohol. Mr Koduah advised that regulated entertainment is not currently restricted.

Mr Koduah stated there are conditions and safeguards on the current licence which may have contributed to the lack of complaints against the Premises. For example, condition 13 provides that –

“With the exception of the area hatched on the plans (Ref: PL-G-01 Rev A Ground Floor) the premises shall only operate as a restaurant (i) in which customers are shown to their table, (ii) 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 , (iii) which do not provide any take away 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 fide taking substantial table meals and provided always that the consumption of intoxicating liquor by such persons is ancillary to taking such meals.”

Mr Koduah explained that the hatched area is for up to 10 people within an overall capacity of 180. Mr Koduah stated the licence currently allows some little flexibility of bar operation alongside the restaurant but it is minimal compared to the overall scheme, noting the overall capacity of 180 and only about 10 being permitted to divert from the restaurant style operation and that has to cease at 23:00 hours.

Mr Koduah submitted the applicant wants an extension of hours as well as an erosion of some safeguards – precisely the ones around the Premises being run as a restaurant style.

Mr Koduah stated the changes are structural and permanent even though the licence sought is time-limited. He questioned what would happen at the end of 2 years, whether the Applicant would return to the previous layout or whether it is the first step in a permanent change.

Mr Koduah submitted no complaints needed to be understood in the context of the extant licence. The hours permitted are only slightly beyond core hours. There are also existing safeguards. Mr Koduah stated there is no evidence of issues, for example nuisance or safety concerns, because the Premises does not operate the hours that are being sought. Mr Koduah stated the concerns are not just those happening on the Premises, but also the combined nuisance and risk from other similar premises in the area where people have had alcohol to drink and are moving to the wider community. Mr Koduah stated that even if there are not complaints, this does not mean patrons from the Premises do not contribute to overall public nuisance concerns in the CIA and the Sub-Committee should be mindful of this.

Mr Koduah submitted an extension of up to 2 hours 30 minutes in the CIA presents public nuisance risks, not just to the immediate area but risks which could manifest themselves away from the Premises.

Mr Koduah stated it is very difficult for enforcement officers to have two different licences operating at the same time. He stated the proposed removal of the DPS on the current licence was welcome. However, the hours sought are in excess, of the core hours policy. Mr Koduah stated he thought they would present public nuisance risks and risks to public safety.

Mr Koduah stated that the applicant had said they could only agree conditions with EHS if EHS agreed to withdraw their representation, however Mr Koduah explained that he could not necessarily agree to the withdrawal of the representation given the hours sought. Accordingly, the conditions proposed by EHS had not been agreed by

the applicant. He stated if the Sub-Committee were minded to grant this application, the conditions proposed by EHS were intended to put some of the existing safeguards into the new licence. For example, requiring the non-restaurant consumption to stop at 23:00 hours which is consistent with the existing licence. Mr Koduah stated the reasoning for this is that EHS' experience indicates restaurant operations present fewer nuisance risk concerns than bar operations.

PC Cheryl Boon, on behalf of the Metropolitan Police addressed the Sub-Committee and explained the MPS maintained their representation on the prevention of crime and disorder. She stated the MPS are concerned that extending the hours of licensable activity could undermine the licensing objectives. PC Boon advised that the Premises is within the West End CIA.

PC Boon stated the Premises is located in a busy area of Soho where there is already a concentration of late-night venues in close proximity to the venue. She stated that this is a locality in which police resources pre-Covid were in high demand due to high levels of crime and disorder. She explained that Soho is a hotspot for robberies and violence against women in the early hours and this needed to be considered by the Sub-Committee.

PC Boon stated that Soho is saturated with late night premises. She submitted that allowing the Premises to supply alcohol until 02:30 hours could add to the cumulative impact of the area. PC Boon stated that the Police were concerned that this application would allow for 2 hours 30 minutes more drinking time, resulting in more intoxicated people in the area especially in the early hours. She stated this could lead to an increase in crime and disorder in the area and an increased demand on police resources.

PC Boon stated the applicant had proposed a set of conditions which are welcomed and address some of the concerns. However, the police still have reservations in relation to the 2-bar areas in the variation application. She stated it is appreciated the bar areas are proposed to be seated and waiter / waitress service only, however Police have proposed a cut-off time at 23:00 hours after which the bar areas will operate under restaurant constraints and drinking will be ancillary to a table meal. PC Boon explained this has been proposed as levels of intoxication are lower at food-less premises and police are called to food-led premises far less often than bar and pub led operated premises. The Police feel that if hours were restricted like this it would go some of the way to reducing crime and disorder in the CIA.

PC Boon stated the applicant and the MPS had discussed and agreed other conditions, including a dispersal plan and a risk assessment for SIA staff after the one SIA which is included in the proposed conditions. PC Boon stated the conditions agreed are a way to try and mitigate crime and disorder within the CIA, she stated there is no guarantee they will prevent any crime and disorder being linked to the Premises or its customers. She explained the concern is that customers may still become victims of crime due to the later hours applied for.

In terms of crime and the Premises, PC Boon stated that crime stats prior to lockdown in 2020 show some crimes which are not said to be the fault of the

Premises. In her view, the Premises is not a crime issue under the current licence conditions.

Ms Michelle Steward appearing on behalf of the, Licensing Authority addressed the Sub-Committee and explained the Licensing Authority considered the application and made the representation under Policies CIP1, RTN 1 and PB1.

Ms Steward stated the Premises intends to trade predominantly as a restaurant and have proposed Westminster's model restaurant condition. However, it is also noted there is a separate area where the consumption of alcohol will not be served with a meal. She explained that if alcohol in the shaded areas is not ancillary to food then the application will need to be considered under Policy PB1.

Ms Steward stated the applicant is required to demonstrate, in accordance with Policy CIP1, how the application will not add to cumulative impact in the West End CIA.

On this basis, the Licensing Authority has maintained its representation to allow the Sub Committee to determine the application and be satisfied that, if granted, the licence will not impact the area in accordance with CIP1.

Mr Richard Brown, representing the Soho Society addressed the Sub-Committee, and explained that the Soho Society's objection is largely policy-based in that the Soho Society's view this application is contrary to the various relevant policies and the reasons underlying them because of the evidence which informs that, chiefly due to the lateness of the hours sought.

Mr Brown stated he was unclear as to whether it was proposed the capacity of the Premises would increase – noting proposed condition 12 indicates capacity is 'TBC'.

Mr Brown stated the reasons given by the applicant for why they overcame the policy constraints, among them the financial impact of Covid. Mr Brown stated the Soho Society had submitted a document which addressed this which explained why the Soho Society did not consider the application overcame the policy constraints.

Mr Brown explained the Soho Society's view of how things will move forwards after Covid, based on recent experience, is that Soho returns to being extremely busy very quickly – that is why the photos had been submitted, simply to give background to this matter. Mr Brown suggested that great weight should be given to the Soho Society's views and that it was not appropriate to grant extensions of hours in these circumstances.

In terms of evidence, Mr Brown submitted that care needs to be taken not to reverse the burden of proof – noting the onus is on the applicant to demonstrate they either constitute a genuine exception or they will not add to cumulative impact (to the extent either are needed) and that in any event the licensing objectives will be promoted. Mr Brown stated the SLP and the cumulative impact assessment are weighty and well-researched documents – he does not believe either have been challenged, although did note the CIA evidence is 2017-2019.

Mr Brown stated paragraph D1, provides that –

“The 2020 Cumulative Impact Assessment provides the evidence base to support this policy. The Cumulative Impact Assessment identified, from the data collected between 2017 and 2019, that the West End was the only location within the city where cumulative impact was identifiable. The evidence collected from those three years supported further policy restriction on applications, as they would likely to add to cumulative impact. However, in March 2020 the COVID-19 pandemic took hold and through lockdowns, government restrictions and the requirement for social distancing the evening and night-time economy within Westminster changed dramatically. The COVID-19 pandemic started at the point when the Licensing Authority had begun its review of this policy.

The unprecedented situation of COVID-19 has meant that the Licensing Authority decided not to implement greater restrictions to other premises uses other than that already contained in the policy at the time. It also decided not to expand the West End Cumulative Impact Zone to encompass Zones 1 and 2 as detailed within the Cumulative Impact Assessment. However, as the city begins to recover from the pandemic during the life of this policy the Licensing Authority may review its policy approach and could, if footfall moves toward pre-March 2020 levels look to implement greater restrictions as a result of the findings from either the 2020 Cumulative Impact Assessment or a revised version.”

He submitted that this is a clear statement that this statement of no changes being made to the policy is in the context of stricter measures, which the evidence would indicate, but there is also nothing in the policy to indicate that Covid itself is an exception.

Mr Brown noted the underlying reasons for having the policy, set out at D4 which provides that –

“The West End Cumulative Impact Zone has been identified because the cumulative effect of the concentration of late night and drink led premises and/or night cafés has led to serious problems of disorder and/or public nuisance affecting residents, visitors and other businesses. The extent of crime and disorder and public nuisance in the West End Cumulative Impact Zone arises from the number of people there late at night; a considerable number of them being intoxicated. Public services, including police, health and emergency, transport, environmental services (cleansing and refuse services) are placed under chronic strain by existing levels of activity, as are civic amenities and the quality of residential life. The urban infrastructure cannot sustain any further growth in licensed premises that provide a significant risk of a variety of harmful outcomes. Over a period of three years (2017–2019) 45% of violent crimes, as well as over half of all robberies, thefts and drug offences in the city were recorded within the West End Cumulative Impact Zone. Additionally, 43% of ambulance call outs between that same period to the locations of licensed premises fell within this zone.”

Mr Brown submitted that, put simply, cumulative impact arises from the number of people in the CIA late at night. He submitted the evidence underpinning the

cumulative impact assessment has to be and is robust because of the changes to s. 5A of the Licensing Act 2003.

In relation to the individual elements of the application, Mr Brown submitted the bar use would require a genuine exception to policy. The restaurant use would need the applicant to demonstrate to the Sub-Committee that the hours will not add to cumulative impact which is difficult to do (as it is meant to be). Mr Brown noted F117, which provides that –

“When considering applications for the sale of alcohol after 12am where representations are made on the grounds of prevention of crime and disorder or public nuisance, the council will take into account the increased likelihood of crime and disorder and the greater disturbance from activities late at night.”

Mr Brown stated this reflects the basis in the Policy that cumulative impact becomes worse the later in the night one gets to, submitting that 02:30 hours is in any event a late terminal hour.

In all the circumstances, Mr Brown submitted that extending the hours is not the right thing to do in the current situation.

Mr David Gleeson, a Soho resident on the Soho Society’s licensing group addressed the Sub-Committee and began by stating the general view of the Soho Society can be found in their additional submission, dated 28 May 2021. He explained they are basically sympathetic to all businesses in Soho which have to recoup losses, however they do not think that simply allowing later hours is the way to go about this which will harm residential amenity in their views. Mr Gleeson stated he did not see how the applicant could not harm the licensing objectives as later hours would reduce residential amenity.

Mr Gleeson stated a survey the Soho Society had carried out demonstrated a lot of people were planning on leaving Soho due to al fresco dining which, in Mr Gleeson’s submission, proves that people are flocking to Soho.

Mr Gleeson explained the location was a primary reason behind their objection. Mr Gleeson stated access and egress from the Premises is impossible to meet lots of residential accommodation. He stated it is one of the most densely populated areas of Soho. Mr Brown stated the Premises is a honeypot venue which will draw people in.

Mr Gleeson stated the Premises has changed name 2 or 3 times over the last few years. Previously it was known as Jackson & Rye, a restaurant, it then became Martha’s which often had large events in the middle of the day.

Besides the residential properties in close vicinity, Mr Gleeson drew the Sub Committee’s attention to the night-time economy. He stated the immediate area around the Premises is probably the most densely saturated in terms of late-night licences – he advised there were about 9.

Mr Gleeson stated the figures on crime and violence can be seen on page 9 of the Soho Society's objection. The figures were obtained from the Soho neighbourhood police team and the recent cumulative impact assessment.

In response to issues arising during the course of the Hearing:

- (a) Mr Elford stated it is correct that the burden of proof is on the applicant to show that the application will not negatively impact cumulative impact that is being experienced in the area. He stated the extremely comprehensive suite of documents that had been submitted which, in his submission, demonstrated how this application does not offend policy and gets over that burden of proof;
- (b) Mr Elford submitted the reasoning why the application should be granted is set out point by point in a document before the Committee (pg. 46 supplemental agenda onwards), including why the application is an exception. He stated it goes through the various factors, starting with Covid-19, then the quality of the management of the Premises, the fact that the licence will be personal and that the licence is time-limited and cannot be extended, that the Premises would retain customers and keep them safe. Mr Elford stated the applicant had looked at the hours in the context of what is around the Premises – he stated the objectors cannot have it both ways in that the area is saturated and the Premises will draw people to the area. He stated there has been a net-loss of Premises within the CIA. He also stated that even if the Premises is granted the additional hours, the applicant does not make back what has been lost during Covid. It would not be in the applicant's interest to allow drinking to get out of hand;
- (c) Mr Elford explained the current capacity is 180 people although he did not think there has ever been that many people inside the Premises. He stated the applicant thinks the capacity is more like 100 on the ground floor and 40-50 in the basement. He explained the reason the capacity has not been specified, the applicant thinks the sensible thing to do is for officers to come in and assess and set capacity figures during sign-off. He stated there is no way the capacity will exceed 180 and the applicant thinks it will be much less, probably 140-150;
- (d) Mr Elford stated that if the layout changes are made, the applicant will need to update the plans on the existing premises licence which they would look to do shortly after. There would be a discussion to be had around the shaded areas – he said in the first instance would be to leave it on the ground floor so it marries up with the conditions. If they run into difficulties with the Council or neighbours, they would put the layout back to how it was;
- (e) In terms of condition, Mr Elford stated the proposed conditions at page 39 of the supplemental bundle. Agreement had been reached with Police regarding having an additional SIA supervisor following risk assessment and last-entry applying after 01:30 hours Thursday to Sunday, and that windows and external doors will be closed after 22:00 hours. In terms of what has been proposed but is not agreed, Mr Elford noted page 92 in respect of the Police – in particular the use of the grey areas over which the applicant felt they needed flexibility. In terms of what was not agreed with EHS, at page 96, Mr Elford noted one of the conditions was in the operating schedule proposed, one condition is not something that applies to the existing licence, one is the

last entry on a Thursday and the final is a restaurant condition throughout after 23:00 hours which Mr Elford had already made submissions on.

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 were grateful to all parties for their representations which were clear, helpfully built on points made in the papers before the committee, and within the time-limits imposed on each speaker.

The Sub Committee had to consider whether to grant a new premises licence for a restaurant and bar. The Premises currently has a licence which allows it to provide 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 view to profit unrestricted, and Sale by Retail of Alcohol Monday to Saturday 10:00 to 00:00 Sunday 10:00 to 23:30 with the opening hours of the Premises: Monday to Saturday 08:00 to 00:30 Sunday 08:00 to 00:00. That licence has a number of conditions attached to it which, in the view of the Sub Committee, contribute to ensuring that that licence promotes the licensing objectives.

The application before the Sub Committee differed from the existing licence on a number of bases. As described by the Applicant, there were two primary changes between the existing licence and the licence applied for. The first was hours. The application would extend the opening hours of the Premises by a number of hours and the provision of licensable activities alongside that. Late night refreshment, live music and recorded music would be allowed Monday to Wednesday 23:00 to 01:30 hours, Thursday to Friday 23:00 to 02:30 hours, Saturday 23:00 to 02:30 and Sunday 23:00 to 12:00 hours. The opening hours would be Monday to Wednesday 08:00 to 01:30 hours, Thursday to Saturday 08:00 to 02:30 hours, Sunday 08:00 to 12:00 hours. The second changes were proposed changes to the layout which included extensions to the bar, and alongside that changing the restriction on alcohol being ancillary to food.

By virtue of being in the West End CIA and by virtue of the matters applied for, the Sub Committee had to consider and apply, among other things, Policy CIP1 and Policy PB1. Under Policy CIP1, it is the Licensing Authority's policy to refuse applications within the West End Cumulative Impact Zone for: pubs and bars, fast food premises, and music and dancing and similar entertainment, other than applications to: 1. Vary the hours within Core Hours under Policy HRS1, and/or 2. Vary the licence to reduce the overall capacity of the premises. Applications for other premises types within the West End Cumulative Impact Zones will be subject to other policies within this statement and must demonstrate that they will not add to cumulative impact. Given this application was not to vary hours within the Core Hours nor to reduce capacity, the Applicant would have to demonstrate that the application will not add to cumulative impact to meet Policy CIP1. Under Policy PB1,

it is the Licensing Authority's policy to refuse applications within the West End Cumulative Impact Zone other than 1. Applications to vary the existing licence hours within the council's Core Hours Policy HRS1. 2. Applications that seek to vary the existing licence so as to reduce the overall capacity of the premises. Given the application was for neither of these, the Applicant would have to demonstrate exceptional circumstances in order for the licence to be granted.

The Sub Committee noted D12 of the SLP, which states that –

“D12. Applicants for premises uses that have a presumption to refuse will be expected to demonstrate an exception as to why their licence application should be permitted. It is not possible to give a full list of examples of when the council may treat an application as an exception. However, in considering whether a particular case is exceptional, the Licensing Authority will consider the reasons underlying the West End Cumulative Impact Zone special policy when considering applications”

And D16 which states that –

“D16. The Licensing Authority's policy, in relation to the West End Cumulative Impact Zone, is directed at the global and cumulative effects of licences on the area as a whole. Therefore, a case is most unlikely to be considered exceptional unless it is directed at the underlying reason for having the policy. Exceptions to the West End Cumulative Impact Zone policy to refuse certain types of applications must be for genuinely exceptional reasons.”

Before turning to whether the Applicant did demonstrate exceptional circumstances, the Sub Committee noted that during the course of the hearing, the Applicant had sought to describe the objections raised by the Responsible Authorities and Interested Parties as being “policy based” rather than evidence based. The Sub Committee did not consider this addressed the concerns raised by these parties. The Sub Committee must consider applications in accordance with the SLP. Furthermore, as noted during the course of the hearing, in this instance it was not sufficient for the Applicant to state that there is no evidence of issues being caused by the Premises, given the application would allow for much later operation for which there could not be evidence linked to the Premises yet.

In terms of exceptional circumstances, the applicant relied on their written submissions which had, in short, two elements. The first was that, when Covid restrictions are removed, Soho will not return to its previous state. The Sub Committee did not agree with the Applicant on this point. The Sub Committee considered that the little evidence available relating to Soho when restrictions were eased, as put before the Sub-Committee by the Soho Society, clearly indicated that Soho would return to being a popular and busy destination. The second element was a number of factors that the Applicant stated were “exceptional circumstances”.

For reference, these were: a. The quality of the management of the premises; b. That the licence will be personal to the premises licence holder; c. That licence will be time limited and is incapable of being extended without a new application being made; d. That the premises will be retaining customers in a safe and secure environment at a particularly sensitive hour rather than disgorging them onto the

street and onto other premises; e. That good operators should be supported by licensing authorities and should not be kept from improving upon their lot; f. That there has been a net loss of premises within the cumulative impact zone; g. That even if you grant the additional hours sought for two years the premises will still have lost over 2300 hours of trade; h. The type and style of the premises and how alcohol will be served and consumed by customers; i. Covid; j. The history of the site and the failed businesses that have occupied it; k. The small number of customers that will be permitted to consume alcohol without food and the backdrop against which that is set, including the reasons why that relaxation is sought; and l. The very specific customer profile relevant to this premises and the loss of other venues catering for similar customers.

As made clear in the SLP, there is no definitive list of what constitutes an “exceptional circumstance”. However, in considering whether a circumstance is in fact exceptional, regard will be had to the reasons underlying the West End CIA that are directed at the global and cumulative effects of licences in the area as a whole.

The Sub Committee noted D14 – D15, which state that –

“D14. 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. Moreover, licences are for premises and can be easily transferred to others who intend to operate within the scope of the licence and its conditions. Neither will the licensing authority consider the case to be exceptional merely because the capacity of the premises, or any proposed increase in capacity is small. The high number of premises within the West End Cumulative Impact Zone means that a small increase in capacity in each premises would lead to a significant increase overall within that area. It has been commonly argued that customers will be drawn from other premises and there will be no increase in people within the area. The experience of the council is that this is not the case. The massive increase in capacities in the past and, the continuing number of further applications and the observable night-time occupancy levels of premises serve to discredit the argument. Each incremental increase in capacity contributes in part to increasing the attraction of the area as a “honey pot” destination for night-life and to the cumulative problems created by such a high concentration of activity in the area.

D15. Any list of circumstances where exceptions may be granted is not definitive. One example might be a proposal to transfer an existing operation from one premises to another, where the size and location of the second premises is likely to cause less detrimental impact and will promote the licensing objectives, and where the existing operation would otherwise continue as before in the first premises. In order for this to be treated as a consideration justifying an exception to policy, the council will need to be satisfied that the necessary legal mechanisms are in place to ensure that the original premises licence will cease to be operable and cannot be transferred once surrendered. In considering whether there is likely to be less detrimental impact, the Licensing Authority will consider the actual operation of the premises which it is proposed should close, and it will take into account any future proposals which would affect the continued operation of those premises.”

Taking everything into account, it was the Sub Committee's view that the exceptional circumstances advanced by the applicant did not amount to exceptional circumstances as, in the Sub Committee's view, they did not go to the reasons underlying the West End CIA when having regard to the fact that even a small change in the West End CIA contribute to cumulative problems created by such a high concentration of activity in the area.

Turning to each reason offered in turn:

a. The quality of the management of the premises – the Sub Committee did not doubt the quality of the management of the Premises. However, as made clear by D14 *“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”*.

b. That the licence will be personal to the premises licence holder – the Sub Committee did not consider that this itself amounted to an exceptional circumstance given the nature of the licence applied for. Moreover, a licence cannot be tied to one operator as this would be in direct conflict with the transfer provisions contained under section 42 of the Act. The Sub Committee would expect any operator to run their Premises well and in accordance with the terms of the licence and the promotion of the licensing objectives. The fact of the matter is that the application would add to the cumulative impact of the area by adding another late night premises to the area overall.

c. That licence will be time limited and is incapable of being extended without a new application being made – as with the licence being personal, the Sub Committee did not consider that this itself amounted to an exceptional circumstance given the nature of the licence applied for. Whilst this would stop the Premises being run by any operator, who in any even the Sub Committee would expect to operate the Premises well and in accordance with the terms of the licence, this restriction would not change the fact that the application would add to the cumulative impact of the area by adding another late night premises to the area.

d. That the premises will be retaining customers in a safe and secure environment at a particularly sensitive hour rather than disgorging them onto the street and onto other premises – the Sub Committee did not consider this an exceptional circumstance. If granted, this licence would increase the overall late-night capacity in the CIA. Accordingly, the licence could result in a greater number of people being disgorged into the CIA later at night than at present. On this basis, this did not accord with the reasons underlying the CIA.

e. That good operators should be supported by licensing authorities and should not be kept from improving upon their lot – the Sub Committee again noted that this was expected and not an exceptional circumstance.

f. That there has been a net loss of premises within the cumulative impact zone – the Sub Committee have to consider each application on its own merits. The Sub Committee did not consider that this was exceptional.

g. That even if you grant the additional hours sought for two years the premises will still have lost over 2300 hours of trade – The Sub Committee did not consider this a matter relevant to the reasons underlying the West End CIA. The Sub Committee seek to support local businesses as far as they can whilst protecting residential amenity and supporting the licensing objectives. The unfortunate impact of Covid on the Premises was not, in the Sub Committee's view, a matter relevant to whether the licence would have an impact on cumulative impact in the area nor whether it was exceptional.

h. The type and style of the premises and how alcohol will be served and consumed by customers – the Sub Committee did not consider this exceptional given, if granted, the licence could result in more people in the CIA later at night consuming more alcohol. This did not therefore go to the reasons underlying the CIA.

i. Covid – In this case, the Sub Committee did not consider this a matter relevant to the reasons underlying the West End CIA. The Sub Committee seek to support local businesses as far as they can whilst protecting residential amenity and supporting the licensing objectives. The unfortunate impact of Covid on the Premises was not, in the Sub Committee's view, a matter relevant to whether the licence would have an impact on cumulative impact in the area nor whether it was exceptional although the Sub-Committee is wholly sympathetic to the effects Covid has had on local businesses within the City.

j. The history of the site and the failed businesses that have occupied it – again, the Sub Committee did not consider this a matter relevant to the reasons underlying the West End CIA. The Sub Committee seek to support local businesses as far as they can whilst protecting residential amenity and supporting the licensing objectives. The unfortunate impact of Covid on the Premises was not, in the Sub Committee's view, a matter relevant to whether the licence would have an impact on cumulative impact in the area nor whether it was exceptional.

k. The small number of customers that will be permitted to consume alcohol without food and the backdrop against which that is set, including the reasons why that relaxation is sought – the Sub Committee did not consider this a matter relevant to the reasons underlying the West End CIA. The Sub Committee seek to support local businesses as far as they can whilst protecting residential amenity and supporting the licensing objectives. The unfortunate impact of Covid on the Premises was not, in the Sub Committee's view, a matter relevant to whether the licence would have an impact on cumulative impact in the area nor whether it was exceptional. Even though the applicant stated that it would be a small number of customers, if granted the licence could result in more people in the CIA later at night consuming more alcohol. This did not therefore go to the reasons underlying the CIA.

l. The very specific customer profile relevant to this premises and the loss of other venues catering for similar customers – again, for all of the reasons stated, the Sub Committee did not consider this exceptional as this licence could result in more

people in the CIA later at night consuming more alcohol. This did not therefore go to the reasons underlying the CIA.

The Sub-Committee in its determination of the matter could not ignore the evidence given by the Police when it came to the issue of crime and disorder in the area for the later terminal hour when deciding whether to grant the Premise Licence. The Sub-Committee noted that allowing the Premises to supply alcohol until 02:30 hours could add to the cumulative impact of the area. Having carefully considered the Police evidence the Sub-Committee concluded that the application would allow for an additional 2 hours 30 minutes more drinking time, resulting in more intoxicated people in the area especially in the early hours. This would have the likely effect of an increase in crime and disorder in the area and an increased demand on Police resources which are already stretched. Therefore the Sub-Committee concluded that taking all of these factors into account the crime and disorder licensing objective would be undermined when looking at the global impact of the cumulative impact area especially when one of its key roles during the decision making process is to look at "prevention" when considering the causes of crime as per paragraph 2.1 on page 6 of the Home Office Guidance which states "*Licensing Authorities should look to the Police as the main source of advice on crime and disorder...*".

For all of these reasons, the Sub Committee concluded that the Applicant had not demonstrated exceptional circumstances as required by Policy PB1 and the promotion of the licensing objectives. Furthermore, the Sub Committee considered, in agreement with the Responsible Authorities and Interested Parties, that if granted the licence would have a net increase on cumulative impact on the area thereby not complying with Policy CIP1.

The Sub-Committee came to the overall conclusion that the additional hours would have a negative impact on the cumulative impact area leading to the licensing objectives being undermined which is not what the 2003 Act is designed to do.

Accordingly, the Sub Committee decided that the Applicant had *not* provided sufficient reasons as to why the granting of the application would promote the licensing objectives and therefore **refused** the application in all the circumstances of the case.

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

This Decision takes immediate effect.

The Licensing Sub-Committee

3 June 2021