

**Cumberland Food and Wine
11 Great Cumberland Place
London W1H 7LU**

APPLICANT'S SUBMISSIONS

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LONDON
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**Reference: TOM/CHE.39.3
Solicitors for the Applicant**

Introduction

1. This is an application for a variation of Premises Licence in relation to Cumberland Food and Wine, 11 Great Cumberland Place, London W1H 7LU (“**the Premises**”).
2. Cumberland Food and Wine is a convenience store located on the corner of Great Cumberland Place and Bryanston Street. By condition of the premises licence, no more than 15% of the sales area of the Premises can be used at any one time for the sale, exposure for sale or display of alcohol.



The Application

3. The application (“**the Application**”) is to:
 - a) vary the terminal hour for the sale of alcohol off the premises to midnight Monday to Saturday; and
 - b) remove redundant Environmental Health works conditions.

Background

4. The Premises previously benefited from a time limited provision, which permitted the sale of alcohol off the premises until midnight Monday to Saturday. This time limited provision commenced on 28 May 2020 and ceased on 27 May 2021.
5. This variation application was submitted on 23 March 2021 with the intention that it be determined without a break in continuity from 27 May 2021 onwards, however this has not been possible due to Covid delays. Temporary Events Notices have been used by the

Applicant to operate to the later hour on selected weeknights and weekends in the intervening period.

6. The application therefore seeks to allow the Premises to reinstate its temporary off sales provision to midnight, which has worked well throughout the time limited period, with the applicant unaware of any concerns being notified to them as a result of that, or the Temporary Events Notices that were thereafter utilised to the same hours.
7. The Premises have a very small late night refreshment offering. In terms of on sales, whilst the Premises are licensed for on sales and have a small private forecourt, the provision for on sales has not to date been utilised at the Premises.
8. The applicant has operated the Premises successfully and without incident. Whilst there has been a number of applications made in respect of the premises over the years, these have primarily been minor variations, many following recommendations by council officers, a number of which related to updating outdated conditions to the council's Model Conditions. The applicant has not changed its operation of the premises during its ownership and the application for determination does not reflect a departure from it.

Existing Conditions

9. The premises licence heavily restricts the types of alcohol that can be sold at the premises and the manner in which those sales can be made. By way of example:

No.	Condition
37	<i>There shall be no self service of spirits on the premises, save for spirit mixtures less than 5.5% ABV.</i>
38	<i>No super-strength beer, lagers, ciders or spirit mixtures of 5.5% ABV (alcohol by volume) or above shall be sold at the premises, except for premium beers and ciders supplied in glass bottles.</i>
39	<i>All tills shall automatically prompt staff to ask for age verification identification when presented with an alcohol sale.</i>

These conditions, along with safeguarding conditions such as bi-annual staff training for all cashiers in alcohol laws and challenging ID, (condition 21 & 22) Challenge 25 scheme (condition 41) and a record of refusals (condition 40) create a foundation upon which the sale of alcohol is made and licensing objectives promoted.

REPRESENTATIONS

(i) The Marylebone Association

10. The applicant considers it important to respond to some of the comments made in the Marylebone Association's representation. As indicated at paragraph 8 above, the applicant rejects the criticism levelled at it in relation to the number of licensing applications the applicant has made. The 4 most recent licensing applications made were as follows:

- 10.1 April 2020 – original time limited extension of hours - granted.
- 10.2 September 2020 - pavement licence under the Business & Planning Act 2020 – granted but not used.
- 10.3 October 2020 – 24 hour application – withdrawn.
- 10.4 March 2021 – this application to extend the temporary extension of hours.

The applicant does not accept the implication of “tactics” levelled by the Marylebone Association regarding the number of applications made. The applicant contends that majority of these applications are not substantive - fundamentally the sale of alcohol has remained consistent at the Premises. It is noteworthy that most of the applications made by the applicant have been granted – either under delegated authority or by the Licensing Sub-Committee. This reflects the minor nature of the applications made, the majority of which historically have been minor variations.

11. Furthermore, the applicant does not accept that there should be any concern regarding the timing of the application made during the Covid 19 pandemic. It remains the case that all residents and local business are informed of the application, with site notices and statutory advertising in a locally circulated newspaper. Indeed, during lockdown the residents were more likely to be in the area and have seen the statutory notices in place at the Premises than in “normal” times.

12. In terms of the nearby residential buildings, including the flats above, the applicant has never received a single complaint or a concern raised in respect of any element of its trading, and specifically not in relation to the hour of trading for alcohol over the last year. Nor has the Premises received a complaint from the Agents who represent the residents from the flat above, nor complaints recorded against the Premises at Westminster City Council, or directed to the Premises from the local police.

13. Specific policy issues are dealt with in the Policy section below.

(ii) Cumberland Court Tenant's Association and (iii) Concierge

14. The applicant is surprised to receive an objection to its application from the Tenant's Association and Concierge given that it has never received any details of any issues arising from the Premises previously from either party. Again, intimations of "tactics" are made in the Tenant's Association representation, which the applicant has addressed at paragraphs 8 and 10 above.
15. It is curious that it has taken this application to trigger the concerns now raised, when the Managing Agent, and presumably Concierge, are and has always been aware of the Premises existence as a business and has never once contacted the applicant – either directly or indirectly via the council. The applicant robustly denies the issues now being placed at the door of the Premises. Moreover, it is surprising that if there had been a number of complaints from residents, either on long or short term lettings that such concerns were not followed up with correspondence. The Applicant accepts that it may be the case that the Managing Agent or Concierge were not aware of the applicant's contact details and we are happy to provide these and those of the Designated Premises Supervisor. Furthermore, the Applicant would welcome a direct dialogue with the Managing Agent and Concierge or the residents/concierge/nominated person.
16. In terms of the reference to an obligation to obtain the Landlord's consent prior to planning changes, this is not a planning application, nor has there been any concern raised by the Landlord to any prior licensing application made.
17. The applicant does not accept, nor has any evidence been produced that there has been substantial amounts of noise pollution, particularly resulting from the Premises. Certainly, the applicant is not aware of any complaints made to the Environmental Health Officer, nor any investigation having been carried out by them or any third party on behalf of the Landlord's agents.
18. Whilst the applicant does not accept there to be substantial amounts of noise generally, it does accept that when there are large public events in central London the area can be quite busy due to its close proximity to Hyde Park. However, this is not related to the Premises; the Premises are not the cause of any public nuisance.

Police

19. Historically the Applicant has always liaised with the police licensing team at the council. The Applicant is more than happy to have an ongoing line of communication with the local

officers on the beat and assist and act on their recommendations – which would clearly be to the Applicant’s benefit too.

20. The Applicant appreciates the concern raised by the officer, but would content that such issues cannot and should not be levelled at the door of the applicant. As set out above, the existing licence has a number of conditions that tightly condition the types of alcohol that can be sold (%ABV), how it can be displayed and offered for sale and the requirement to remove/restrict customer access to alcohol outside of alcohol sales hours (condition 11). Along with CCTV, such conditions act as a deterrent to deviant and criminal behaviour.
21. Notwithstanding this, applicant is happy to do all it can to support the police and implement recommendations where appropriate.

Environmental Health

22. No objections were made by the Environmental Health Consultation Team to the applicant’s recent TEN applications, permitting trade to the same hour as is sought in the application. The Applicant would hope this to be indicative of the day-to-day operation of the Premises and lack of concerns specifically to the Premises.
23. Specific policy issues arising from the location of the Premises in the Edgware Road special consideration zone is detailed at paragraph 26 below. Existing safeguarding elements for the protection of children are set out at paragraph 9 above.

SECTION 182 GUIDANCE

24. Paragraph 10.15 of the government’s Section 182 Guidance (noted at Westminster’s Statement of Licensing Policy (“**Policy**”) paragraph F63) states: *“Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.”*
25. To support that fundamental position:
- 25.1 The Premises seek the ability to sell alcohol to midnight only, with **the Premises itself remaining open to trade Monday to Sunday from 08:00 to 05:00 on the morning after.**
 - 25.2 The Application is time limited to September 2022;
 - 25.3 The applicant has operated from May 2020 to May 2021 without issue or concern;

25.4 From June 2021 to date the applicant has operated to the extended hour on selected weekends and week nights utilising its TENs allowance without issue or concern.

POLICY

(a) Special Consideration Zones Policy SCZ1

26. The premises are not situated in a cumulative impact area. Whilst the premises is not located on the Edgware Road, it does fall within the Edgware Road Special Consideration Zone. The local issues for consideration by the applicant are set out below, with reference to licence conditions addressing these local issues. The full wording of the conditions are contained on the exiting licence

SCZ1 Local Issue (Edgware Road)	Comment/ Condition	Premises Licence condition number
Serious violent crimes at night	<ul style="list-style-type: none"> • CCTV • Nature of premises (convenience store) • Limited area for alcohol display (15% sales area) 	26 / 27 N/A 20
Incidents relating to ambulance call outs at night to the locations of licensed premises for intoxication, injury related to intoxication and/or assault.	<ul style="list-style-type: none"> • CCTV • Training of cashiers re attempts of underage purchases • Till prompts • Challenge 25 • No self service of spirits • No super-strength beers, lagers, ciders or spirit mixtures • Limited area for alcohol display (15% sales area) 	26 / 27 22 39 41 37 38 20
Drug dealing at night	<ul style="list-style-type: none"> • CCTV • Keeping pavement clean • Hours for the removal of external furniture 	26 / 27 33 32
Robberies at night	<ul style="list-style-type: none"> • CCTV • Alcohol removed from trading area outside of permitted alcohol hours • Limited area for alcohol display (15% sales area) 	26 / 27 11 20
Theft incidents at night	<ul style="list-style-type: none"> • See box above 	As above
Noise nuisance at night	<ul style="list-style-type: none"> • CCTV • Noise generated not to give rise to nuisance • Quiet notices • Timings for movement of rubbish and waste 	26 / 27 31 13 / 14 35 / 35

(b) Core Hours – Policy HRS1

Whilst the application for off sales is beyond Core Hours, it is **within the hours the Premises already operate as a convenience store** and paragraph 24 above is repeated.

"B. Applications for hours outside the core hours ... will be considered on their merits, subject to other relevant policies and with particular regard to..."

HRS1 Factors	Specifics of Application addressing these factors
(1) The demonstration of compliance in the requirements of policies CD1, PS1, PN1 and CH1 associated with the likelihood of the effect of the grant of a licence for later or earlier hours on crime and disorder, public safety, public nuisance & the protection of children from harm.	See existing licence conditions and commentary in this proposal.
(2) If the application is located within a Special Consideration Zone they have demonstrated that they have taken account of the issues identified in that area and provided adequate mitigation.	See para 26
(3) Whether there is residential accommodation in the proximity of the premises that would be likely to be adversely affected by premises being open or carrying out operations at the hours proposed.	Mixed use, with residential above.
(4) The proposed hours of the licensable activities and when customers will be permitted to remain on the premises.	Off sales to cease at midnight, premises remain open til 5am.
(5) The proposed hours when any music, including incidental music, will be played.	N/A
(6) The hours when customers will be allowed to take food or drink outside the premises or be within open areas which form part of the premises.	Off sales to cease at midnight.
(7) The existing hours of licensable activities and the past operation of the premises (if any) and hours of licensable premises in the vicinity.	LNR to 5am Off sales to midnight from 28 May 2020 for 1 year and TENs thereafter
(8) Whether customers and staff have adequate access to public transport when	Excellent transport links

arriving at and leaving the premises, especially at night.	
(9) The capacity of the premises.	
(10) The type of use, recognising that some venues are more likely to impact the licensing objectives than others [...]	Convenience store
(11) The Licensing Authority will take into account the active measures proposed for a 'winding down' period including arrangements for people to be collected from the premises to travel home safely.	N/A – premises operate 08:00 to 05:00
(12) Conditions on hours may be attached that require that the supply of alcohol for consumption on the premises ceases a suitable period of time before customers are required to leave the premises	Premises operate 08:00 to 05:00
(13) [...]	N/A
(14) Specific days for non-standard hours should be identified and justified as part of the application to allow responsible authorities and interested parties to evaluate the impact that these licensable activities may have, and to plan accordingly [...]	N/A

(c) Prevention of Public Nuisance – Policy PN1

Applicants will be expected to have included measures in their Operating Schedules that make adequate provisions to limit noise and vibration, eating, drinking and smoking outside their premises and other environmental impacts by:

PN1 Factors	Specifics of Application addressing these factors
Restricting the generation of noise within the premises and from activities associate with the premises in the vicinity, or from an open-air site.	<i>No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance. (Con 31)</i>
Limiting the escape of noise from the premises or open-air site.	<i>A notice shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly. (Con 13)</i>

	<i>If there is a designated smoking area, a notice shall be prominently displayed there requesting patrons to respect the needs of local residents and use the area quietly. (Con 14)</i>
Restrict noise emissions to below levels that could affect people in the vicinity going about their business, at work and when at home both while relaxing and while sleeping.	Noise levels are checked
Minimising and controlling noise from customers arriving at the premises, or open-air site outside it and departing from it including noise and other nuisance caused by customers' transportation and how dispersal is managed.	Convenience Store – not destination venue
Minimising and controlling noise from staff, contractors and suppliers and their activities.	See conditions 34 (presenting waste for collection) and 35 (movement of rubbish in outside areas)
Minimising and controlling noise from vehicles associated with and providing services to the premises or open-air site and their customers (including delivery companies).	There are no issues in relation to noise from vehicles associated with and providing services to these premises – no such issues raised in representations.
Identifying whether people standing or sitting outside premises are likely to cause obstruction or other nuisance.	External area not utilised. Time limit on clearance of tables and chairs (con 32)
Identifying whether the premises are under or near to residential accommodation.	Refer to Report
Limiting the hours of the sale of alcohol in open containers or food for consumption outside the premises.	<i>All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.</i> Condition 18 External area not utilised, however condition 32 requires removal of furniture by 23:30 Monday to Thursday; 00:00 hours Friday and Saturday and 23:00 hours Sunday

<p>Introducing measures to make sure that customers move away from outside premises when such sales cease.</p>	<p>CCTV coverage and lighting</p>
<p>Implementing measures to collect drinking vessels and crockery, cutlery and litter.</p>	<p>Conditioned on licence (condition 33)</p>
<p>Limiting the extent and location of areas proposed to be set aside for the consumption of food, alcoholic drink and for smoking.</p>	<p>Refer to submitted plans.</p>
<p>Identify the measures proposed for the management of people leaving the premises to smoke and for their readmission; including managing readmissions in relation to any queuing for admission and to measures to ensure that security procedures apply equally to admissions and readmissions.</p>	<p>N/A</p>
<p>Identifying whether there is a need for door supervisors to prevent or to control customers congregating in outdoor areas to smoke, consume food or drink (whether supplied from the premises or not), between certain hours or at all times. In addition, there may be particular issues of crime and disorder with regard to outside activities.</p>	<p>N/A</p>
<p>Identify whether queuing is likely, and the steps proposed to prevent queuing or, if some queuing is inevitable, to divert queues away from residential properties and entrances of neighbouring premises, and to manage the queue to prevent disturbance or obstruction.</p>	<p>Queuing in accordance with social distancing, monitored and managed by staff.</p>
<p>Identify whether there are adequate measures to prevent:</p> <ul style="list-style-type: none"> • Litter, smells, fumes, dust, tobacco or • other smoke, or other emissions. • Street fouling. • Light pollution. <p>Arising from the proposed licensable activity that may cause disturbance to people in the vicinity.</p>	<p>Existing conditions and operation appropriate deal.</p>
<p>Identify whether the proposed licensable activities will be likely to cause nuisance by congesting the pavement or the roadway, and so impeding reasonable access (including the access required to provide essential services</p>	<p>Proposal will not impact.</p>

such as refuse collection and street cleaning).	
Whether other measures to prevent nuisance such as the use of CCTV or the employment of registered door supervisors are appropriate.	CCTV in place and conditioned, SIA not necessary for the proposal.
Whether the proposals would lead to the need for increased refuse storage or waste collection.	No resulting increase likely.
Whether measures would be undertaken to prevent nuisance caused by the storage, handling and collection of refuse and recyclable materials.	No change to existing arrangements.
Whether the sale of take-away food is proposed, and the measures planned to prevent littering in the vicinity and to clear up any litter that occurs.	Conditioned on licence (condition 33)
Whether late night premises are likely to generate litter. Premises may need to make provision for patrols to clear up litter, taking into consideration the hours of street sweeping.	Conditioned on licence (condition 33)

27. The perceived problems that were historically associated with Marble Arch in particular, the Applicant has found have been substantially reduced due to the ongoing redevelopment and regeneration of the area, and attraction of a more diverse demographic including:

- Cumberland Hotel, now the Hard Rock
- Marble Arch Place, Almacatar’s mixed use development
- The Marble Arch Mount, tourist attraction

28. The Application sits well in the area and the Premises themselves operate from 08:00 to 05:00 Monday to Sunday. The **Off Sales of Alcohol Policy OS1** and policy limit to core hours is justified in the Licensing Policy by particular concerns with street drinkers and underage drinkers (policy paragraph F72). The existing premises licence is heavily conditioned to deal with these issues as set out above.

(d) Prevention of Crime & Disorder – Policy CD1

29. If granted, this application would not make a significant contribution to levels of crime and disorder. The existing premises licence contains appropriate and robust management measures to prevent crime and disorder.

30. The layout, lighting and fittings of the premises have been designed so as to minimise conflict and opportunities of crime and disorder. This was actioned in close consultation with the City Council and Metropolitan Police crime prevention officer.
31. Adequate procedures are already in place and conditioned on the existing licence to check the ages of young people who appear under 25 to ensure that alcohol is not sold to them, with bi-annual staff training and Challenge 25 implemented.
32. CCTV is conditioned and has been installed throughout the premises both in front and back-of-house. This has been checked and approved on numerous occasions by both the City inspectors and the Metropolitan Police service.

(e) Public Safety – Policy PS1

33. This licensing objective has not been raised by any of the objectors. All of the usual risk assessments, management procedures and certificates are available to the relevant responsible authority and to the licensing authority on request.

(f) Protection of Children from Harm – Policy CH1

34. All cashiers are trained in the legalities of under aged sales and challenging for ID. This is conditioned by the premises licence and takes place twice a year. Challenge 25 is implemented at the Premises.
35. No concerns have ever been raised by the police, any responsible authority or any other source regarding a concern for children at the premises.

Conclusion

36. This is a well-managed and longstanding Premises with existing licence conditions that appropriately deal with the types of alcohol that can be sold at the premises and how such alcohol can be displayed. The Premises has required age verification mechanisms in place such as till prompts as well as mandatory staff training and the operation of the Challenge 25 scheme to ensure the promotion of the Licensing Objectives. These elements deal with particular local issues identified in relation to the Edgware Road SCZ.
37. Whilst the application has received representations, the applicant is confident that the issues raised (i) cannot be placed at the door of the applicant; and (ii) are not issues that the variation sought will impact.

38. The Premises' opening hours under its licence are 08:00 to 05:00 Monday to Sunday and it can offer a 24/7 operation without licensable activities. Government guidance, as noted in the Policy, states that such premises *"should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours."* The Applicant contends that there are such reasons attributable to the Premises to justify a refusal of the hours sought.
39. The Applicant seeks a time limited extension to its premises licence to authorise the sale of alcohol off the Premises Monday to Sunday until midnight. Unusually, the Premises have operated off sales to this later hour for the preceding year without comment or concern under its previous time limited extension and thereafter with TENs. This application is for a further one-year period. These circumstances in itself are exceptional and, given there have been no historic problems at the Premises and the Committee should be confident in granting the requested extension for the additional year.

16 September 2021