

**9 Kingly Street
London W1B 5PH**

SUMMARY OF PROPOSALS

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LONDON
WC2H 9EP**

**Reference: AT/LIO.1.1
Solicitors for the Applicant**

Introduction

1. Shaftesbury AV Limited (“**Shaftesbury**”) is the freehold owner of the premises at 9 Kingly Street, which operated most recently as ‘The Court’, a bar albeit with membership conditions. The premises has also previously operated as a striptease venue. The intention is to operate the premises as an up-market bar, with earlier operating hours, following the recent grant of planning permission.
2. Shaftesbury is a responsible landlord and majority stakeholder in Carnaby, with a unique and bespoke policy of fostering and maintaining local culture, and the local economy. All Shaftesbury’s tenants are carefully vetted before taking occupation of any of its properties, and then monitored via stringent leasehold covenants and obligations. Indeed, Shaftesbury has been instrumental in turning Kingly Court and Kingly Street into a destination for experiential, casual dining and leisure concepts, attracting a more upmarket crowd.
3. Moreover, Shaftesbury closely manages the Carnaby estate to promote security and safeguarding for all of its tenants and their customers, including via:
 - 3.1 24/7 estate security, comprising security patrols by CSAS qualified personel and an extensive CCTV network;
 - 3.2 membership of the Safer West End Business Crime Reduction Partnership;
 - 3.3 a dedicated estate management team, with close and regular contact with principals and on-site staff;
 - 3.4 tenant radio links to the police and estate security, together with organised lines of communication for notification of emergencies and to share information between tenants, managing agents, the responsible authorities and estate security; and
 - 3.5 promotion of safe places, to support those who may be vulnerable as a result of intoxication or other issues associated with the night-time economy.
4. An Operational Management / Dispersal Plan is submitted confirming these and other arrangements.

The proposed variation

Part A

5. Following pre-application advice (reference 22/10842/PREAPM), the variation seeks to:
 - 5.1 increase the capacity to 220 (from 150);
 - 5.2 increase the permitted hours on Saturdays to 01:00 (from 00:00 for all activities), and add licensable activities on Sundays until 23.00 (from an existing 22.30 cut-off for alcohol);
 - 5.3 adjust the layout of the premises in accordance with a revised plan, including changes to fixed seating, an increase in WC provision and the addition of a secondary means of escape; and
 - 5.4 remove conditions 10 to 12 (relating to the Rules of Management for Places of Public Entertainment, which concerned the old licensing regime); remove conditions 20 and 21 (concerning membership); remove conditions 13 to 17 and 22 (concerning various operational aspects); **and replace them with a suite of modern and appropriate model conditions**, as well as an updated condition 18 regarding CCTV.

Part B

6. **Should the application be granted in accordance with Part A**, the hours for licensable activities on **Monday to Friday** will be **reduced to 01:00 (from 03:00, or 03:30 in the case of late night refreshment)**, with the premises to close by **01:30** (as compared to **03:30** under the current licence).
7. The net effect of these changes is a significant overall reduction in alcohol hours beyond core hours of 680 hours every week if the application is granted,¹ meaning that there will be substantially less capacity for late-night drinking overall in the Cumulative Impact Area (the "West End CIZ").

Planning permission

8. Planning permission to change the use of the premises from a club (Sui Generis) to a bar / drinking establishment (Sui Generis) was granted under delegated authority on 26 April 2023 (ref: 23/00990/FULL).
9. The planning application confirms that the permission sought would *"enable a new operator to come in and occupy the property which will enliven and add to the West Ends night-time economy and will provide a use which is more inclusive and provides greater activation to the street scene"*.

¹ Calculated by multiplying the changes in hours beyond core hours on the different days by the capacity during those times.

Representations

10. There have been representations from the responsible authorities and the Soho Society:

10.1 The Police:

- a. express a concern regarding the increase in capacity and the removal of the condition requiring table service after 23:00; and
- b. note that current levels of alcohol related crime are higher than when the 2020 Cumulative Impact Assessment (the “**2020 CIA**”) was undertaken, **with peak times for crime being 00:00 to 04:00 Friday to Saturday**; however,
- c. they “*accept that the impact of the increase in licensable activities on a Saturday to 01:00 and the addition of licensable activities on Sundays until 23:00 will likely be mitigated by the offered reduction in licensable activities on a Monday to Friday [emphasis added].*”

10.2 The Licensing Authority note the premises are within the West End CIZ. They acknowledge that hours for Monday to Friday will be reduced, but invite the applicant to provide submissions as to how the increase in hours on Saturday and Sunday, and the increase in capacity, will not add to cumulative impact. These submissions are below.

10.3 Environmental Health express a concern that the proposals are likely to increase the risk of public nuisance and may impact on public safety.

10.4 The Soho Society express a concern that the premises are in the West End CIZ, that “*granting any **new licences** (emphasis added) in the area will have an impact on the licensing objectives*” and that “*residents already suffer from high levels of noise and disturbance*”, citing various survey data and crime statistics.

Policy

Cumulative Impact Policy CIP1

11. Policy CIP1 is only a (rebuttable) presumption that the Licensing Authority should refuse applications for certain types of premises in the West End CIZ, *except* for variations within core hours **or to reduce the overall capacity of the premises.**

12. In addition to the exception in CIP1 (at paragraph B), Paragraph D18 also provides an exception:

“The council will consider [...] whether offers to reduce capacities, actually do effectively address the underlying reasons for a policy on cumulative impact. There would have to be substantial reductions in relation to the capacity at which premises had actually been operating. Any proposals for later hours which offer reducing the capacity will have to be

shown to lead to a reduction in cumulative impact and represent **genuine reductions in the actual number of people using the premises at its peak times and late at night** and not on days or at times when the premises are less busy. The later the hours sought, the more significant the reduction in capacity would have to be [emphasis added].”

13. The policy of course also rightly recognises it may be overridden in “*exceptional circumstances*”², and it is not possible to give a “*definitive*” list of circumstances when such exception should be made.³ Indeed, the Authority must “*always consider the individual circumstances of the application; even where an application is made for a proposal that is apparently contrary to policy*”.⁴

The premises use policies

14. As noted by the Licensing Authority, the premises are intended to be operated as a bar, keeping it within policy PB1. Consistent with CIP1, PB1.B and C are clear that applications seeking to vary an existing licence so as to reduce the overall capacity of the premises will generally be granted, even when within the West End CIZ. **This application in effect decreases the capacity late at night overall as it reduces the hours, thus reducing the number of people leaving the premises after 1am.**
15. Notwithstanding the members condition, since the premises were already a proprietary bar in the eyes of the policy, the proposed variation does not amount to a change of use for licensing purposes, notwithstanding the removal of the lax membership as Policy QUC1 makes clear that: “*Qualifying Clubs should not be confused with proprietary clubs, which are clubs run commercially by individuals, partnerships or businesses for the purposes of profit, these will be considered under the Public House and Bars Policy PB1* [emphasis added]”. In other words, proprietary clubs and bars are in the same Policy classification.

What is the policy rationale?

16. The overarching rationale for CIP1 is that “*the cumulative impact of the concentration of late night and drink led premises and/or night cafés has led to problems of disorder and/or nuisance affecting residents, visitors and other businesses.*”⁵
17. The policy elaborates on this by explaining that: “*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.*”⁶ This number will in fact be substantially reduced overall beyond core hours if the application is granted, as further

² As acknowledged by the policy at D11.

³ At D15.

⁴ See D11 and D12 in the policy, as well 14.44 in the revised guidance under section 182. As the High Court noted in *R (JD Wetherspoon) v Guildford Borough Council* [2006] EWHC 815 (Admin) (at 73): “*a reversed burden of proof does not preclude consideration of the merits of the application*”.

⁵ At D4.

⁶ At D4

explained below.

The exceptional circumstances of the application

18. Where an exception is required for the increase in capacity and (at weekends) hours, the exceptional circumstances here are four-fold:

(1) Rebalancing hours at the weekend

19. At the weekend, the variation amounts to a rebalancing of hours from Friday (reduced by 2 hours) across Saturday and Sunday (increased by only 1.5 hours in total). This more even distribution of hours over the weekend will promote the licensing objectives, by taking capacity away at the time of the week (on Friday) with the most incidents relevant to cumulative impact:

19.1 The 2020 CIA⁷ (which forms the basis for CIP1) found that robberies and serious violent crime both peak at 3am in the West End CIZ.⁸

19.2 The 2020 CIA analysis also showed that the window of 01:00 to 03:00 on Friday night / Saturday morning had the highest concentration of incidents relating to drugs, robbery and violence against the person in the week in the West End CIZ.⁹

19.3 The data for March 2022 – March 2023 included in the Police's representation similarly shows the window of 02:00-03:00 on Friday night / Saturday morning to have the highest concentration of incidents relating to violence against the person, sexual assault and robbery.¹⁰

19.4 So, by instituting a reallocation of hours *away* from this window on Friday, the proposed variation will alleviate pressure on the Police at a time when they are under the most strain dealing with serious incidents in the area.

19.5 A straight comparison of the incident numbers at the times during which licensed hours are changing over the weekend shows this very clearly:

⁷ Available [here](#).

⁸ At page 11 and 92.

⁹ See column 6 of the second table on page 91 of the 2020 CIA.

¹⁰ Alongside the window of 01:00-02:00 on Saturday night / Sunday morning.

<u>Number of drug, robbery and violence against the person incidents (2020 CIA data)</u>		<u>Number of violence against the person, sexual assault and robbery incidents (Police data for March 2022 – March 2023)</u>	
Friday 01:00-03:00	Sat 00:00-01:00 & Sun 22:30-23:00¹¹	Friday 01:00-03:00	Sat 00:00-01:00 & Sun 22:30-23:00¹²
315	149	187	113
Difference in incident numbers = 166		Difference in incident numbers = 74	

19.6 On any view, therefore, the two hour reduction on Friday at the very least more than “cancels out” the combined increase of just one and a half hours on Saturday and Sunday and decreases cumulative impact.

19.7 The Police acknowledge and accept (at paragraph 3 of their representation) that the reduction in hours across the week offsets the increase in hours on Saturday and Sunday. But the analysis above in fact shows that the reduction in hours on Friday night alone more than offsets the increase.

(2) Reducing hours during the week

20. *Over and above* this straightforward (and beneficial) reallocation at the weekend, the reduction in bar use from 03:00 to 01:00 Monday to Thursday amounts to a pure net gain from a cumulative impact perspective:

20.1 The significance of Monday to Thursday for the licensed trade (and cumulative impact) in Soho is apparent from the fact that overall incident levels during the week in fact vastly exceed those on Saturday and Sunday combined. (An analysis of the data in the 2020 CIA, the Police representation and The Soho Society representation illustrating this point is included in the Appendix.)

20.2 To use the policy language at D18, the reduction in hours will unequivocally amount to “*genuine reductions in the actual number of people using the premises at its peak time and late at night*” warranting an exception.

¹¹ Incidents in the window 22:00-23:00 divided by 2 and rounded up.

¹² Incidents in the window 22:00-23:00 divided by 2 and rounded up.

20.3 This is so even taking account of the moderate increase in permitted venue capacity while it is open – as shown by the calculations showing a net reduction in alcohol hours (weighted by capacity) beyond core hours of 680 hours every week if the variation is granted.

20.4 That is, the reduction in hours during the week is so significant that it more than offsets the combined effect of (i) the slight increase in capacity; and (ii) the marginal increase in hours on Saturday and Sunday.

(3) The suite of model conditions

21. The new suite of model conditions (together with the revised plans, and a comprehensive dispersal policy) complement this reduction in late-night drinking capacity, and more than offset the effect of the conditions being removed:

21.1 The new requirements in relation to a Challenge 21 / 25 proof of age scheme; an alcohol refusal log; an incident log; loudspeaker positioning; CCTV; late-night rubbish and delivery; and late-night off-sales will all significantly bolster the licensing objectives.

21.2 These will be all reinforced by the comprehensive Dispersal Policy included alongside the application, which covers the orderly management of dispersal at night together with controls in relation to smoking, safeguarding, estate security, deliveries, collections and servicing.

21.3 The removal of the “music and dancing” ancillary condition will allow more flexibility, as it is not intended that the premises will be “dance-led” (to the extent it even was previously), thus reducing the use in MD2 terms.

(4) The locality and the landlord

22. The net reduction in late-night drinking capacity across the week would be sufficient on its own to constitute an exception anywhere in the West End CIZ, with any landlord.

23. But the Committee can take even more comfort from the fact that the new operation will be subject to the rigorous vetting, safety and security net provided by Shaftesbury across the Carnaby estate, which has been shown to be so effective in curating a sophisticated tenant mix, promoting safeguarding and keeping local incident levels low.

24. The significance of Shaftesbury’s impact as both a landlord and estate manager for the area is well illustrated by the incident “heat maps” of robbery and violence against the person included in Appendix 1 in the representation from the Police. All four of the maps demonstrate a pronounced and drastic hollowing out of incident levels on the eastern side of Soho, encompassing Kingly Street and Carnaby more broadly.

Conclusions on policy and the merits

25. In summary, this application gives rise to substantial net benefits to the licensing objectives, with the rationalisation of alcohol hours to 1am throughout the week amounting to a significant reduction in overall late night-drinking capacity in the West End CIZ - alongside a modernised suite of conditions and plans, and within a comparatively low-risk area that is closely managed by an experienced and responsible landlord.
26. This result is explicitly supported by CIP1 (at paragraph B), and D18 is clear that “*genuine reductions*” of this nature can and do amount to exceptional circumstances.

Thomas & Thomas Partners

03 May 2023

Appendix 1 – the significance of weekday trading in Soho

1. The significance of Monday to Thursday for the licensed trade (and cumulative impact) in Soho is apparent from the figures in the 2020 CIA, which show that crime in the window *6am Monday morning to 6am Friday morning* (for which the variation reduces hours) actually greatly exceeded the amount of crime in the window *6am Saturday morning to 6am Monday morning* (for which the variation marginally increases hours) - by a factor of 65.07%.¹³
2. The same comparison using the Police's data for March 2022 – March 2023 shows that aggregate crime during the week exceeds crime on Saturday and Sunday by a factor of 23.30%.
3. If one extends the window for comparison to include Friday night (i.e. instead running from *6am Monday morning to 6am on Saturday morning*), this difference increases to 135.58% using the data in the 2020 CIA,¹⁴ and to 87.06% using the Police's data for 2022-2023.
4. Even The Soho Society's self-selected survey data with just 87 respondents (which must be treated with caution, given that there are thousands of local residents in Soho) shows that 61% of respondents complain of having their sleep disturbed three or more nights of the week, with 24% complaining of issues seven nights a week. That is, the proposed reductions in hours Monday – Friday will be real and significant for the majority of The Soho Society's cited respondents.

¹³ Based on the figures shown in the second table on page 91 of the 2020 CIA – relating to drugs, robbery and violence against the person.

¹⁴ Again, based on the figures in the second table on page 91 of the 2020 CIA.