



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (6)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (6)** Committee held on **Thursday 7th December, 2017**, Room 3.1, 3rd Floor, 5 Strand, London, WC2 5HR.

Members Present: Councillors Melvyn Caplan, Susie Burbridge and Shamim Talukder

1 MEMBERSHIP

There were no changes to the membership.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 BE HEALTH CHINESE MEDICAL CENTRE LTD, 98 SHAFTESBURY AVENUE, W1

LICENSING SUB-COMMITTEE No. 6

Thursday 7th December 2017

Membership: Councillor Melvyn Caplan (Chairman), Councillor Susie Burbridge and Councillor Shamim Talukder

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Tristan Fieldsend

Presenting Officer: Daisy Gadd

Representations: Westminster City Council City Inspectors

Present: Mr Francis Keegan (City Inspectors Team Manager), Mr Nigel Carter (Agent, representing the Licence Holder) and Dr Bi (Licence Holder)

**Be Health Chinese Medical Centre, 98 Shaftesbury Avenue, London, W1D 5EQ
("The Premises")
16/09470/LIMSTR**

A request was received from the City Inspectors to revoke the special treatment premises licence for Be Health Chinese Medical Centre Ltd, 98 Shaftesbury Avenue, London, W1D 5EQ. On 21 September 2017 the licence holder was successfully prosecuted by the Council in the City of London Magistrates Court for breaching a condition on the licence regarding touting. The licence holder was fined £750 and was ordered to pay costs of £1,500. Following the successful prosecution, the City Inspectors Team Manager requested that the Licensing Sub-Committee hear the request to revoke the special treatment licence.

Decision:

The Sub-Committee carefully considered all of the material received from the parties involved. The Sub-Committee also heard submissions and evidence at the hearing prior to Members retiring to reach a decision.

Mr Keegan, the City Inspectors Team Manager, confirmed that the company holding the licence also operated three other venues in Westminster. The issue of touting from the Premises in question had been to court on 21 September 2017 where the licence holder had been successfully prosecuted. The licence holder was responsible for compliance with the conditions on the licence however there had been several other instances where they had been breached. The Sub-Committee therefore had to make a decision on whether it was satisfied for the licence holder to continue to hold a special treatments licence. Mr Keegan stressed that he had no confidence in the company or the licence holder in ensuring that no further breaches of the conditions took place.

Mr Carter, representing the licence holder, confirmed that Dr Bi accepted that touting had taken place by her staff but there were mitigating and extenuating circumstances. Following the incident in question Dr Bi believed that her solicitor was in contact with the relevant authorities, unfortunately this was not the case, she had been badly let down by her solicitor who if they had submitted a response would have resulted in the case not going to court. Subsequently Dr Bi was prosecuted and fined.

Mr Carter explained that Dr Bi had held four special treatment licences since 2005. During this time none had been refused and no prosecutions had taken place demonstrating over an extended period of time that Dr Bi could be considered a fit and proper person. When Dr Bi was made aware of a staff member touting from the Premises she would have disciplined the staff member but the Sub-Committee was advised that the City Inspectors did not advise her who the member of staff was. Following the incident, a staff notice sheet was introduced making staff aware of the requirements of the licence conditions. All staff were required to sign it when they first joined the company and every six months thereafter. Since the breach no further breaches had occurred over the last twelve months and all the conditions on the licence had been fully complied with. Dr Bi had learned from the experience and the measures put in place would ensure it never happened again.

The Sub-Committee had two options, either to revoke the licence or to allow it to continue. Mr Carter was of the opinion that revoking it would be disproportionate as the licence holder had addressed the breach detailed and introduced due diligence

measures. These had worked as no further touting had taken place from the Premises since the incident and it therefore posed no threat to health and safety. Dr Bi was aware that any repeat occurrence of the breach would result in her losing her special treatment licence. Mr Carter suggested that if the licence was revoked Dr Bi could still operate under exempt body legislation.

The Sub-Committee stressed that the licence holder was completely responsible for ensuring any conditions on the licence were not breached and putting forward an argument that the licence holder's solicitor was to blame was not satisfactory. Therefore, the Sub-Committee asked what evidence could be provided which gave it confidence that no further breaches would occur in the future. Mr Carter highlighted that Dr Bi had demonstrated over the last twelve months that all four of her venues could be operated without any breaches in the conditions. Following the incident due diligence had been undertaken and appropriate measures had now been introduced. Finally, Mr Carter would be visiting the Premises on a regular basis to conduct staff training and ensure there were no further breaches. Dr Bi admitted that a member of her staff had touted during the incident in question but the measures brought in by Mr Carter would ensure that it would not occur in the future.

Mr Keegan explained that he had dealt with Dr Bi over numerous years and he had no confidence in her ability to manage the Premises in an appropriate manner.

The Sub-Committee carefully considered the application and all the submissions and evidence provided before it. Dissatisfaction was expressed that the failure of the licence holder's solicitor to contact the relevant authorities had been used as a mitigating measure. The licence holder was 100% responsible with regards to the licence and it was unacceptable for blame as to why the licence holder was prosecuted to be proportioned elsewhere. However, the Sub-Committee decided not to revoke the licence as the licence holder had implemented appropriate measures to ensure any further instances of touting would not occur in the future. It had also been demonstrated over the last twelve months that the Premises could be operated successfully without any breaches of conditions. The licence holder was reminded however that the future conduct of the Premises had to be exemplary from now on. The seriousness of the incident was noted and the licence holder was notified that all four of her Premises would be closely monitored by the City Inspectors. The Sub-Committee was clear that any recurrence in the breach of conditions would be highly likely to result in the licence being revoked.

4 TEMPER, 5 MERCER WALK, WC2

LICENSING SUB-COMMITTEE No. 6

Thursday 7th November 2017

Membership: Councillor Melvyn Caplan (Chairman), Councillor Susie Burbridge and Councillor Shamim Talukder

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Tristan Fieldsend

Presenting Officer: Daisy Gadd

Relevant Representations: The Licensing Authority, The Ching Court Association, the Covent Garden Community Association and three local residents.

Present: Mr Craig Bayliss (Solicitor, representing the Applicant), Ms Samantha Lee (Director of the Applicant company), Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project – representing The Ching Court Association, the Covent Garden Community Association and a residential objector), Ms Amanda Rigby (The Ching Court Association), Ms Jackie Havers (local resident) and Mr David Sycamore (The Licensing Authority).

Temper, 5 Mercers Walk, London, W2 (“The Premises”) 17/11396/LIPN	
1.	<p>Late Night Refreshment - Indoors</p> <p>Monday to Thursday: 23:00 to 23:30 Friday to Saturday: 23:00 to 00:00</p> <p>Seasonal Variations/Non-Standard Timings:</p> <p>From 23:00 on new Year’s Eve until 05:00 on new Year’s Day.</p>
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee considered an application by Casper & Cole Limited for a new premises licence in respect of temper, 5 Mercers Walk, London, W2.</p> <p>The Licensing Officer provided an outline of the application to the Sub-Committee and confirmed that the Metropolitan Police had withdrawn their representation following the agreement of conditions with the applicant.</p> <p>Mr Bayliss explained that the applicant already had another Temper premises operating from Broadwick Street in Westminster which was also situated within a Cumulative Impact Area (CIA). This Premises had operated very successfully at this location with residents living directly above it reporting no issues. The application before the Sub-Committee was very similar, it was located on a new development and the applicant had invested approximately £1.5 million in upgrading the Premises. It was highlighted by Mr Bayliss how the application was compliant with Westminster City Council’s Statement of Licensing Policy (SLP). The Premises would only sell alcohol for consumption during core hours, the full restaurant model condition would be attached to the licence to provide reassurance it would not become a drink-led Premises and no fast food would be available at any time. Residents had expressed concern over the use of the external area however this would be restricted to twenty covers with the tables and chairs being rendered unusable by 22:00 hours. Staff would inform</p>

customers at 21:00 that the external area had to be vacated by 22:00 hours. These restrictions on this area were not currently conditioned but the applicant was happy for a condition specifying this to be placed on the licence.

In response to a question from the Sub-Committee Ms Lee detailed how there would be a capacity of 20 customers outside on the private forecourt and 144 inside split across two floors, 92 upstairs and 52 down stairs. Dispersal of customers would be managed in the same manner as the Broadwick Street premises where staff greeted customers in a reception area and following their meal ensured they left in a quiet manner. Prominent signs would also be displayed reminding customers to not make excessive noise when leaving. A resident representation had requested a condition requiring the management to use their best endeavours to ensure dispersal occurred via Langley Street and the applicant was happy for this condition to be added to the licence. Ms Lee explained how the Premises was not a pub and as such dispersal was much more staggered. The Sub-Committee was assured that the Premises had a vested interest in ensuring local residents were not disturbed by its customers.

The Sub-Committee and Mr Bayliss discussed in detail the fact the planning permission for the Premises had granted hours less than what was proposed in the licensing application. In response, Mr Bayliss produced a planning case (*Miah v Secretary of State for the Environment and Hillingdon LBC [1986] JPL 756*) which he asserted was authority for the proposition that customers could remain on the premises after closing hours so as to allow them time to finish their meals provided the premises did not allow new customers to enter the premises once they were closed. The Council's Legal Adviser confirmed that the Miah case solely related to planning law and had no bearing on the determination of this application. He confirmed that the Sub-Committee was fully aware that the decision under consideration had to be taken on licensing and not planning grounds.

The Sub-Committee recognised the concerns raised by residents over the use of the external tables and chairs and queried if they could be brought inside from 22:00 hours. Ms Lee explained that they would be rendered unusable by 22:00 but could not be brought inside until the Premises had closed due to a lack of space. In response to further questions Mr Bayliss confirmed that conditions preventing deliveries and collections taking place at the Premises between 23:00 and 08:00 could be added to the licence as well as an additional condition requiring all windows and doors to be closed by 21:00.

Mr Sycamore, representing the Licensing Authority, was satisfied that most of the concerns over the application had been dealt with. The Premises would only sell alcohol within the specified core hours and off sales would be limited to the external tables and chairs area. However, the applicant still had to demonstrate that allowing the additional customers to consume alcohol within a CIA would not add to cumulative impact in the area.

Mr Brown from the Westminster Citizens Advice Bureau, representing The Ching Court Association, The Covent Garden Community Association and one local residential objector, addressed the Sub-Committee. Mr Brown explained that the residents had no objection with the operator but instead were concerned with

what impact the Premises would have on residents due to its close proximity to them. The Premises was a new development in a CIA and the dispersal of customers was the key issue. The hours granted under the planning regime were considered important as they were clear on what time they felt it was appropriate for the Premises to close. The high sided nature of the development did cause sounds to echo and this would be exacerbated by customers leaving late at night. The capacity of 144 was noted but it was felt it would actually be higher than this due to customer churn throughout the evening. It was felt rendering the external tables and chairs unusable by 21:00 would be more appropriate as Mercer Street was relatively quiet where ambient noise dropped off significantly after 22:00 hours.

Mr Brown recognised that the hours requested were within core hours however due to the nature of the area the residents were requesting that this be slightly reduced. PN1 of the Council's SLP recognised that in areas where Premises were in close proximity to residents' stricter conditions would apply. If the Sub-Committee was minded to grant core hours however then residents would like the additional conditions proposed by them to be attached to the licence to limit the Premises impact on the area.

Ms Havers, a local resident, was of the opinion that granting the application to the hours requested would cause a noise disturbance. It was hoped dispersal of customers would occur via Langley Street and concern was also raised that removing any external tables and chairs late at night was likely to create noise issues.

Ms Rigby, representing the Ching Court Association, addressed the Sub-Committee. She highlighted how the nature of Mercers Walk exacerbated any noise made within it which could often be heard even when their windows were closed. This was a particular problem as many of the local residents had families with young children. Residential properties were located above the Premises however it was suggested that these were not used by residents but instead used by guest workers. Permitting the application would increase cumulative impact in the area and no activities should take place at the Premises after 23:00 hours. The Premises was large and it could not be compared to the Broadwick Street premises as Mercers Walk was considerably quieter. Theatres were located nearby and permitting the hours would attract customers late at night. The external tables and chairs were a concern and it was requested that these be brought inside from 21:00 to ensure there was no noise disturbance late at night. Finally, the Sub-Committee's attention was drawn to the fact the hours permitted by the planning permission were less than those proposed in the licensing application.

The Sub-Committee asked the applicant if they would accept the conditions proposed by the residents and also how the application would not add to cumulative impact in the area? Mr Bayliss confirmed that the applicant was willing to accept the conditions relating to closing the Mercer Street door after 23:00 except in an emergency and trying to ensure no dispersal took place via Langley Street. However, a condition requiring a last entry time to be imposed was not accepted as the Premises was a restaurant not a pub and such a condition would therefore be inappropriate. In terms of cumulative impact, the

Premises would not add to this for three reasons. Firstly, no licensable activities would take place at the Premises until the capacity had been determined by Environmental Health. Secondly, the Premises at Broadwick Street had residents living directly above it and the same dispersal policy there had worked successfully resulting in no issues arising. Thirdly, the application was policy compliant. It would operate to core hours, the Policy regarded restaurants as having less impact than pubs or bars and the model restaurant condition would be added to the licence. These reasons meant that the Premises was not likely to add to the cumulative impact in the area.

Mr Brown noted that the proposed capacity condition did not actually specify the capacity and the Sub-Committee was requested to ensure it was no more than 144 persons. With regards to the proposed last entry condition it was acknowledged that whilst it was unusual for a restaurant it would provide residents with reassurance.

Following a question from the Council's Policy Adviser Mr Bayliss confirmed that the full restaurant condition was intended to be used in the external tables and chairs area. As such the Policy Adviser advised that condition 10 which concerned off sales of alcohol could be removed from the licence. The applicant was satisfied for it to be removed as it simplified the licence.

After considering all the evidence, the Sub-Committee agreed to grant the application without any prejudice to the planning permission outlined. It was acknowledged that the Premises was located within a CIA, however the fact it was a restaurant which would operate with a full restaurant condition provided reassurance it would not become a drink-led Premises. The Council's SLP also recognised that restaurants could be considered to have less impact than bars or pubs. The hours requested were within core hours and with a condition restricting the capacity of the Premises the Sub-Committee was of the opinion that it would not add to cumulative impact in the area. It was considered that permitting the use of the external area until 22:00 was appropriate. The bringing in of the tables and chairs was considered a potential source of noise disturbance by the Sub-Committee and a condition would be placed on the licence to try to ensure this would be prevented. However, if residents felt that their use, or the bringing in of them, was causing significant disturbance they could always instigate review proceedings.

The Sub-Committee considered the conditions proposed appropriate and proportionate and with additional conditions imposed would ensure that the licensing objectives were upheld. Dispersal was of concern and therefore conditions were added to the licence ensuring the door on Mercer Street was closed after 23:00 and requiring the applicant to use their best endeavours to ensure customers were dispersed via Langley Street. Restrictions on when deliveries and collections could take place were also imposed to provide further reassurance to residents that any disruption would be minimised. It was also noted that the applicant was satisfied for the provision of off sales to be removed from the licence. Due to the nature of the Premises however the Sub-Committee did not consider it appropriate to introduce a last entry time condition. Having heard all the evidence, the Sub-Committee was satisfied that the Premises would uphold and promote the licensing objectives and as such agreed to grant

	the application accordingly.
2.	<p>Sale by retail of Alcohol – On and Off Sales</p> <p>Monday to Thursday: 10:00 to 23:30 Friday to Saturday: 10:00 to 00:00 Sunday: 12:00 to 22:30</p> <p>Seasonal Variations/Non-Standard Timings:</p> <p>From the start time for the sale of alcohol on new Year’s Eve until the terminal hour for the sale of alcohol on new Year’s Day.</p>
	<p>Amendments to application advised at hearing:</p> <p>The applicant confirmed that the provision of off sales was withdrawn.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the application (see reasons for decision in Section 1).</p>
3.	<p>Hours Premises Are Open to the Public</p> <p>Monday to Thursday: 10:00 to 23:30 Friday to Saturday: 10:00 to 00:00 Sunday: 10:00 to 22:30</p> <p>Seasonal Variations/Non-Standard Timings:</p> <p>From the opening hours for the premises on new Year’s Eve until the closing hour for the premises on new Year’s Day. It was noted that this was not part of the application but was implicit from the application that had been made for extended hours for the sale of alcohol on new Year’s Eve and New Year’s Day.</p>
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the application (see reasons for decision in Section 1).</p>

Conditions attached to the Licence
<u>Mandatory Conditions</u>
1. No supply of alcohol may be made at a time when there is no designated

premises supervisor in respect of this licence.

2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.

3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.

4. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

(d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;

(e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to

produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—

- (a) a holographic mark, or
- (b) an ultraviolet feature.

7. The responsible person must ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—

- (i) beer or cider: ½ pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
- (iii) still wine in a glass: 125 ml;

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

A responsible person in relation to a licensed premises means the holder of the premise licence in respect of the premises, the designated premises supervisor (if any) or any individual aged 18 or over who is authorised by either the licence holder or designated premises supervisor. For premises with a club premises certificate, any member or officer of the club present on the premises in a capacity that which enables him to prevent the supply of alcohol.

8(i) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

8(ii) For the purposes of the condition set out in paragraph 8(i) above –

(a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;

(b) "permitted price" is the price found by applying the formula - $P = D + (D \times V)$

Where -

- (i) P is the permitted price,
- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
- (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence –

- (i) the holder of the premises licence,
- (ii) the designated premises supervisor (if any) in respect of such a licence, or
- (iii) the personal licence holder who makes or authorises a supply of alcohol under

such a licence;

(d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

8(iii). Where the permitted price given by Paragraph 8(ii)(b) above would (apart from this paragraph) not be a whole number of pennies, the price given by that subparagraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

8(iv). (1) Sub-paragraph 8(iv)(2) below applies where the permitted price given by Paragraph 8(ii)(b) above on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Conditions Consistent with the Operating Schedule

9. The premises (including the external seating area) shall only operate as a restaurant:

- i) in which customers are shown to their table,
- ii) where the supply of alcohol is by waiter or waitress service only,
- iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery,
- iv) which do not provide any take away service of food or drinks for immediate consumption,
- v) which do not provide any take away service of food or drink after 23:00, and
- vi) where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

11. The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.

12. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is

open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.

13. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.

14. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall not be permitted to take drinks or glass containers with them.

15. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.

16. A Challenge 21 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.

17. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.

18. No licensable activities shall take at the premises until the capacity of the premises has been determined by the Environmental Health Consultation Team and the licensing authority has replaced this condition on the licence with a condition detailing the capacity so determined. The capacity will not exceed 150 inside the premises building and 20 outside.

19. No licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.

20. Before the Premises open to the public, the plans as provided with the application will be checked by the Environmental Health Consultation Team to ensure they are an accurate reflection of the Premises constructed and this condition has been removed from the Licence. Where the Premises layout has changed from the plans provided during the course of construction a variation application may be required.

21. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police. It must be completed within 24 hours of the incident and will record the following:

(a) all crimes reported to the venue

- (b) all ejections of patrons
- (c) any complaints received concerning crime and disorder
- (d) any incidents of disorder
- (e) all seizures of drugs or offensive weapons
- (f) any faults in the CCTV system
- (g) any refusal of the sale of alcohol
- (h) any visit by a relevant authority or emergency service.

25. After 23:00 the door closest to Mercer Street will be used only as an emergency exit and customers will be asked to use only the door onto the public realm area to enter and leave the premises.

26. Management will use their best endeavours to ensure dispersal via Langley Street.

27. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance (including the bringing in of tables and chairs into the building).

28. All windows and external doors shall be kept closed after 21:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.

29. All outside tables and chairs shall be rendered unusable by 22.00 each day.

30. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 08.00 hours on the following day.

31. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 08.00 on the following day.

32. No deliveries to the premises shall take place between 23.00 and 08.00 on the following day.

**5 REIGN (FORMERLY KNOWN AS RAH RAH ROOMS), 215-217
PICCADILLY, W1**

LICENSING SUB-COMMITTEE No. 6

Thursday 7th December 2017

Membership: Councillor Melvyn Caplan (Chairman), Councillor Susie Burbridge and Councillor Shamim Talukder.

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Tristan Fieldsend

Presenting Officer: Daisy Gadd

Relevant Representations: One Local Resident.

Present: Mr Philip Kolvin QC (Representing the Applicant), Ms Lana Tricker (Solicitor, representing the Applicant Company), Mr Scott Chester (Company Director, Applicant Company), Mr John Common (Designated Premises Supervisor, Applicant Company) and Mr David Diaz (General Manager, Applicant Company).

<p>Reign (Formerly known as Rah Rah Rooms), 215-217 Piccadilly, W1 (“The Premises”) 17/11198/LIPV</p>					
<p>1. Conditions being varied, added or removed</p>					
	<table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 50%;">Condition 55</th> <th style="width: 50%;">Proposed Variation</th> </tr> </thead> <tbody> <tr> <td> <p>There shall be no entry or re-entry (excluding persons from the smoking area) to the premises after 00:30 or such time as agreed in writing by the Westminster Police Licensing Unit (and a copy of any agreement to be held at reception).</p> </td> <td> <p>There shall be no entry or re-entry (excluding persons from the smoking area) to the premises after 01:30 or such time as agreed in writing by the Westminster Police Licensing Unit (and a copy of any agreement to be held at reception).</p> </td> </tr> </tbody> </table>	Condition 55	Proposed Variation	<p>There shall be no entry or re-entry (excluding persons from the smoking area) to the premises after 00:30 or such time as agreed in writing by the Westminster Police Licensing Unit (and a copy of any agreement to be held at reception).</p>	<p>There shall be no entry or re-entry (excluding persons from the smoking area) to the premises after 01:30 or such time as agreed in writing by the Westminster Police Licensing Unit (and a copy of any agreement to be held at reception).</p>
Condition 55	Proposed Variation				
<p>There shall be no entry or re-entry (excluding persons from the smoking area) to the premises after 00:30 or such time as agreed in writing by the Westminster Police Licensing Unit (and a copy of any agreement to be held at reception).</p>	<p>There shall be no entry or re-entry (excluding persons from the smoking area) to the premises after 01:30 or such time as agreed in writing by the Westminster Police Licensing Unit (and a copy of any agreement to be held at reception).</p>				
	<p>Amendments to application advised at hearing:</p> <p>None.</p>				
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee considered an application by Strongarm Holdings Ltd for a variation of a premises licence in respect of Reign, 215-217 Piccadilly, London, W1J 9HF.</p> <p>The Licensing Officer provided an outline of the application to the Sub-Committee and confirmed that the Metropolitan Police had withdrawn their representation following discussions with the applicant.</p> <p>Mr Kolvin, representing the applicant, explained that the applicant had submitted a similar application in August 2017 which sought to vary condition 55 to extend the last entry time to 01:30 hours. At that time the Sub-Committee had refused the variation to condition 55 as it wanted the Premises to demonstrate first that it was a responsible operator who could successfully promote the licensing objectives. Two Temporary Event Notices (TENs) had also come before the Sub-Committee in October 2017 due to a fault with the Premises ID scanner. The two TENs had requested a last entry time of 01:30 and the Sub-Committee had granted these as it recognised the well-run nature of the Premises and the</p>				

fact it had joined Westminster City Council's Best Bar None scheme. Since the applicant had been operating the Premises a total of twenty-one TENs had now been allowed to proceed with a last entry time of 01:30. During their operation no complaints had been received from local residents, no responsible authorities had objected to the events and no evidence had been provided that it would undermine the licensing objectives.

Mr Kolvin highlighted that the one residential representation received was from a resident based in Eagle Place. Eagle Place was located further down the street from the Premises and there was no evidence that any noise experienced by the resident was created from customers of the Premises. Efforts had been made to contact the resident on several occasions but these had proven unsuccessful. The applicant was aware of the importance of maintaining good relations with local residents.

In response to a question from the Sub-Committee Mr Chester confirmed that there had been an incident with the Premises ID scanner during an operation of a TEN. It was a system fault which had been subsequently detected at other Premises and as a result the applicant had implemented more intense, thorough manual ID checks.

The Licensing Sub-Committee had regard to the written submissions from the local resident and the oral and written submissions of the applicant, including a detailed additional statement. After careful consideration the Sub-Committee agreed to grant the application. The applicant had been provided with an opportunity to prove it could effectively operate a last entry time to the Premises of 01:30 whilst promoting the licensing objectives which it had subsequently done. The Sub-Committee was of the opinion that as a total of twenty-one TENs had been operated successfully with a last entry time of 01:30 this provided sufficient evidence of the well-run operation in place. It was recognised that no representations had been received from the responsible authorities and there was no evidence of any nuisance or crime and disorder arising from the Premises. The applicant had demonstrated their ability for the condition to be relaxed and it was therefore considered on balance that it was reasonable, appropriate and proportionate to amend condition 55.

Conditions attached to the Licence

Mandatory Conditions

1. No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.

4. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
- (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible

person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—

- (a) a holographic mark, or
- (b) an ultraviolet feature.

7. The responsible person must ensure that—

- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml;
- (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
- (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

A responsible person in relation to a licensed premises means the holder of the premise licence in respect of the premises, the designated premises supervisor (if any) or any individual aged 18 or over who is authorised by either the licence holder or designated premises supervisor. For premises with a club premises certificate, any member or officer of the club present on the premises in a capacity that which enables him to prevent the supply of alcohol.

8(i) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

8(ii) For the purposes of the condition set out in paragraph 8(i) above -

- (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
- (b) "permitted price" is the price found by applying the formula -

$$P = D + (D \times V)$$

Where -

- (i) P is the permitted price,

- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -
- (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

8(iii). Where the permitted price given by Paragraph 8(ii)(b) above would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

- 8(iv). (1) Sub-paragraph 8(iv)(2) below applies where the permitted price given by Paragraph 8(ii)(b) above on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

9. All persons guarding premises against unauthorised access or occupation or against outbreaks of disorder or against damage (door supervisors) must be licensed by the Security Industry Authority.

Additional Conditions

10. From 21:00 until 30 minutes after close of business, a minimum of 2 SIA licensed door staff to be stationed at the entrance on Piccadilly whose tasks will include:

- o Reminding customers that this is a residential area and to respect the needs of neighbours
- o To maintain an orderly queue where necessary
- o To ask customers leaving the premises to do so quickly and quietly.

11. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
12. The number of persons accommodated at any one time (excluding staff) shall not exceed the following: Mezzanine- 140 persons; Basement Auditorium – 300 persons. Maximum capacity of 400 persons on the premises at any one time. A minimum of 50 seats will be provided in the mezzanine area and a minimum of 250 seats will be provided in the basement auditorium.
13. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
14. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police. It must be completed within 24 hours of the incident and will record the following:
 - (a) all crimes reported to the venue
 - (b) all ejections of patrons
 - (c) any complaints received concerning crime and disorder
 - (d) any incidents of disorder
 - (e) all seizures of drugs or offensive weapons
 - (f) any faults in the CCTV system, searching equipment or scanning equipment
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.
15. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.
16. After 23.00hrs all security employed at the premises shall wear high viz jackets or tabards.
17. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall not be permitted to take drinks or glass containers with them.
18. In the event that a serious assault is committed on the premises (or appears to have been committed) the management will immediately ensure that: (a) The Police (and where appropriate, the London Ambulance Service) are called without delay, using emergency telephone number 999; (b) All measures that are reasonably practicable are taken to apprehend any suspects pending the arrival of the Police; (c) As is reasonably practicable, the crime scene is

preserved so as to enable a full forensic investigation to be carried out by the Police; and (d) Such other measures are taken (as appropriate) to fully protect the safety of all persons present on the premises." 'Serious assault' includes (but is not limited to) any assault in which emergency medical treatment is required and any assault in which a weapon is used.

19. No children under the age of 16 shall be permitted on the premises after 21:00 hours.
20. No children under the age of 14 shall be admitted on the premises.
21. There shall be no striptease or nudity, and all persons shall be decently attired at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue licence.
22. The highway in the vicinity of the premises shall be swept at regular intervals and also at the close of business. Litter and sweepings collected shall be stored in accordance with the approved refuse storage arrangement.
23. No unauthorised advertisements of any kind shall be inscribed or affixed upon the surface of the highway, or upon any building, structure, works, street furniture, tree or any other property, or is distributed to the public, that advertises or promotes the establishment, its premises or any of its events, facilities, goods and services.
24. No payment shall be made by or on behalf of the premises for distribution of flyers or tickets within public areas in the Licensing District of Westminster.
25. A daily log is to be maintained to ensure that any capacity limit set for the various floors and the overall capacity of the premises is recorded hourly and can be properly monitored. Information regarding the capacity will be given to an authorised officer or Police Officer on request.
26. Alcohol may not be sold or supplied to persons admitted after 23:00 other than to:
 - (a) Persons taking a table meal; or
 - (b) Persons who have paid a minimum admission fee of at least £20 for performance based entertainment (not to be credited against consumables)
 - (c) Persons who have paid a minimum annual membership fee of at least £450 payable in advance for music, dancing and entertainment (not to be credited against consumables) and up to a maximum of 4 bona fide guests. A list of all people who have paid an annual membership fee and their guests will be held at reception for inspection by relevant authority; or
 - (d) Persons given free membership and their bona fide guests where there has been an interval of at least 48 hours between application for membership. A list of all persons who have free membership will be held at reception for inspection by the relevant authority; or
 - (e) Persons who are bona fide guests of the license holder or management, a list of whom shall be kept at reception for inspection by the relevant authorities; or

- (f) Artistes and persons employed by the premises; or
- (g) persons attending at private function; the function organiser's name and address to be kept at reception for inspection by the relevant authorities.

27. Substantial food and non-intoxicating beverages, including water, shall be available throughout the permitted hours in all parts of the premises where intoxicating liquor is sold and supplied for consumption on the premises.
28. The sale and consumption of alcohol must be ancillary to the use of the premises for patrons attending performance based entertainment.
29. No payment shall be made by or on behalf of the licensees to any persons bringing customers into the premises.
30. A noise limiter located in a separate and remote lockable cabinet from the volume control must be fitted to the musical amplification system set at a level determined by and to the satisfaction of an authorised officer of the Environmental Health Service's Community Protection Department so as to ensure that no noise nuisance is caused to local residents or businesses. The operational panel of the noise limiter shall then be secured to the satisfaction of officers from the Environmental Health Service. The keys securing the noise limiter cabinet shall be held by the applicant only, and shall not be accessed by any other person. The limiter shall not be altered without prior agreement with the Environmental Health Service.
31. No alteration or modification to any existing sound system(s) should be effected without prior knowledge of an authorised Officer of the Environmental Health Service.
32. Any additional sound generating equipment shall not be used on the premises without being routed through the sound limiter device.
33. All entrance doors to be kept closed except for people's immediate access and egress.
34. No speakers shall be located in the entrance area.
35. All refuse will be paid, properly presented and placed on the street 30 minutes before any agreed collection time. Every endeavour will be made to prevent refuse being left on the street for more than 2.5 hours.
36. No bottles will be moved, removed or placed in outside areas between 23:00 and 08:00.
37. No persons shall give at the premises any exhibition, demonstration or performance of hypnotism, mesmerism or any similar act or process which produces or is intended to produce in any other person any form of induced sleep or trance in which susceptibility of the mind of that person to suggestion or direction is increased or intended to be increased.

NOTE: This rule does not apply to exhibitions given under the provisions of

Section 2(1A) and 5 of the Hypnotism Act 1952.

38. The approved arrangements at the premises, including means of escape provisions, fire warning and fire fighting equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.
39. The certificates listed below shall be submitted to the Licensing Authority annually:
 - (a) Any emergency lighting battery or system
 - (b) Any electrical installation
 - (c) Any fire alarm system.
40. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.
41. All exit doors shall be available at all times without the use of a key, code, card or similar means.
42. All fire doors shall be maintained effectively self-closing and not half open other than by an approved device.
43. Fire doors to ducts, service shafts and cupboards shall be kept locked shut.
44. The edges of the treads and steps and stairways shall be maintained so as to be conspicuous.
45. Only hanging, curtains, upholstery and temporary decorations, complying with the relevant British Standard shall be used. Where necessary these shall be periodically tested for flame resistance and re-treated as necessary.
46. Curtains and hangings shall be arranged so as not to obstruct fire safety signs, fire extinguishers or other fire fighting equipment.
47. Staff with specific responsibilities in the event of fire or other emergency, together with deputies, shall receive training and written instruction appropriate to their role.
48. Any special effects or mechanical installations shall be arranged and sorted so as to minimise any risk to the safety of those using the premises. The following special effects will only be used on 10 days prior notice being given to the Licensing Authority where consent has not previously been given:
 - dry ice and cryogenic fog
 - smoke machines and generators
 - pyrotechnics and fog generators
 - firearms
 - lasers
 - explosives and highly flammable substances

- real flame
- strobe lighting.

49. Flashing or particularly bright lights on or outside the premises will not be permitted to cause a nuisance to nearby properties (save insofar as they are necessary for the prevention or crime).
50. After 21:00, at least one Personal License Holder shall be on duty on the premises while alcohol is being sold or supplied.
51. A minimum of two SIA staff shall be deployed with Body Worn Video, capable of recording audio and video in any light condition. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31-day period.
52. There shall be an electronic search arch installed at the premises and every patron entering or re-entering the premises when in use under this licence (including from the smoking area) shall pass through the search arch with searching supplemented by the use of two functional metal detecting wands. Patrons shall be searched by an SIA-trained member of staff and monitored and recorded by the premises CCTV system.
- 53 (a) All customers entering the premises shall have their ID scanned on entry, save for when a biometric scanning system is in place (when fingerprint scanning will be required for all customers who have previously shown identification at the premises). The details recorded shall include a live facial image capture of the customer and capture the photographic identification produced. The details recorded by the ID scanner system shall be made available to the Police and the local authority upon request.
 - (b) The above requirement (a) is subject to the following exception, namely that a maximum number of 20 guests per night may be admitted at the Managers discretion without necessarily being ID scanned and recorded. A legible record (the Signing in Sheet) of these guests' names shall be retained on the premises for inspection by the licensing authority and Police for a period of 31 days. The name of manager authorising the admission will also be recorded by that manager. Guests shall be required to produce some form of ID such as a bank card (or emailed electronic photo I D) and an ID scan entry with a live photo shall be created.
 - (c) Notwithstanding (a) and (b) above, patrons who are attending a pre-booked corporate event at the premises do not need to have their ID scanned on entry and instead a written guest list shall be held at reception for the event, and will be retained for 28 days after the event for inspection by the police and responsible authorities upon request.
54. All drinking containers used within the premises shall be polycarbonate. All glass bottles to be decanted into polycarbonate glassware or polycarbonate glassware carafes, with the exception of champagne and bottles of spirits of a minimum size of 70cl, supplied by waiter/waitress service to tables. Staff will

clear all empty champagne and spirit bottles from the tables promptly. Customers will not be permitted to self-serve or remove bottles from the tables. Customers will not be permitted to drink directly from champagne or spirit bottles.

Notwithstanding this condition, with the written agreement of the Westminster Police Licensing Team, a copy of which will be held at the premises reception, glass drinking vessels may be used for private or pre-booked events within the lounge/club area.

55. There shall be no entry or re-entry (excluding persons from the smoking area) to the premises after 01:30 or such time as agreed in writing by the Westminster Police Licensing Unit (and a copy of any agreement to be held at reception).
56. Risk reduction training inclusive of crime scene preservation shall be carried out by 2 February 2017 and refresher training every 6 months thereafter.
57. A minimum of one SIA licensed door supervisor to twenty-five customers shall be on duty at the premises whenever it is open for business.
58. Impartial unannounced compliance visits shall take place at the premises on a monthly basis. A written record of each visit shall be kept at the premises and produced for immediate inspection by a police officer or authorised officer of the licensing authority.
59. The premises shall provide a cloakroom and all coats and outdoor jackets shall be placed in the cloakroom by handing them to an attendant who shall be constantly on duty at the cloakroom during the whole time that the premises are open.
60. There shall be live, real-time CCTV monitoring of the premises at all times the premises is open for business except when the premises is being used exclusively for a private pre-booked event.
61. There shall be a dedicated search captain employed at the premises to supervise the searching of customers at all times when the premises are open.
62.
 - a. No licensable activities shall take place on lower level 2 (basement auditorium) and in the toilet area and DJ booth on lower level 1 (mezzanine) of the premises until these areas of the premises have been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.
 - b. No licensable activities shall take place in the trading room/bar on lower level 1 (mezzanine) of the premises until this area of the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.
 - c. Prior to the licence taking effect, the plans as deposited will be checked by the Environmental Health Consultation Team to ensure they are accurate reflection

of the premises constructed. Where the premises layout has changed during the course of construction new plans shall be provided to the LFEPA, Environmental Health Consultation Team, the Police and the Licensing Authority.

6 THE CLIFTON, 96 CLIFTON HILL, NW8

LICENSING SUB-COMMITTEE No. 6

Thursday 7th December 2017

Membership: Councillor Melvyn Caplan (Chairman), Councillor Susie Burbridge and Councillor Shamim Talukder

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Tristan Fieldsend

Presenting Officer: Heidi Lawrance

Representations: Clifton Hill Residents Group, Environmental Health, six local residents supporting the review and sixty-one letters in support of the Premises.

Present: Mr Niall McCann (Solicitor, Representing the Licensee), Mr Ben Robson, Mr Ed Robson and Mr Adam Gostyn (Licence Holders), Cllr Lindsey Hall (Representing Mr Schumacher), Mrs Antonia Moussaieff, Mr Sacha Moussaieff and Mr Richard Slater (Local Residents supporting the Premises), Mr Andrew Woods (Solicitor Representing the Applicants), Mr Aron, Ms Hinda Abou, and Mr Amir Nadal (Local Residents supporting the Review) and Mr Anil Drayan (Environmental Health).

The Clifton, 96 Clifton Hill, London, NW8 0JT ("The Premises") 17/11411/LIREVP

An application was submitted by the Clifton Hill Residents Group for a review of the premises on 11 October 2017 on the grounds of Prevention of Crime and Disorder and Prevention of Public Nuisance. Their concerns related to noise emanating from the outside areas, in particular the Beer Garden and patrons congregating on the low wall and noise escaping from the conservatory to the rear of the Premises. The Environmental Health Service initially supported the review application in regards to the Prevention of Crime and Disorder and Prevention of Public Nuisance licensing objectives.

Decision:

The Sub-Committee carefully considered all of the material received from the parties involved. The Sub-Committee also heard submissions and evidence at the hearing prior to Members retiring to reach a decision.

Mr Woods, representing the applicants, highlighted how twelve local residents had submitted statements detailing nuisance emanating from the Premises which they experienced on a regular basis when in their own homes. In response they had prepared log books as requested by Westminster City Council (WCC) and the Sub-Committee was asked to accept the evidence provided by the witnesses.

Mr Woods drew the Sub-Committee's attention to the map submitted Mr Nadal which detailed the nearby residences to the Premises. Apart from the property opposite all the residences located in the immediate vicinity of the Premises where those supporting the review and this was relevant in terms of the alleged nuisance. It was acknowledged that the nuisance experienced from the outside areas was intermittent, did not occur every night and was not related to the Premises internal areas. The nuisance when it occurred however did disturb residents and intruded into their lives. By way of example, he said that a nuisance being caused at 20.00 hours might have stopped by 20.15 hours. The disturbance experienced was not that associated with a nightclub for example but one which could affect some nearby residents but not others located further down the street.

Mr Woods confirmed that the Clifton Hills Residents Group was not an official, elected residents' association but simply the name given to the group of residents who had brought the review. The Group did not want the pub to close or the hours permitted for the internal use of the Premises to change. However, there was concern that the licence holders had been informed of issues arising by residents which they had failed to address. Attempts had been made to meet with the owners but no response had been received. The residents wanted the Premises to abide by the conditions on the licence and address issues identified as they arose. The huge amount of evidence provided by residents to show how conditions were being breached and the various issues continuously arising were very detailed and should therefore carry weight. If the Sub-Committee was prepared to accept the basis of the residents' submissions, then appropriate action should be taken.

The Sub-Committee was asked by Mr Woods to consider the location of the pub and its location in a very residential area. Environmental Health (EH) had visited the Premises on 9 June 2018 following reports of excessive noise. The EH officer who attended reported that the noise was not excessive but did expect it to disturb residents who lived approximately twenty metres from it. The pub had been located on the street for a long time and problems had been experienced with the previous operators. A review was not brought at that time but it was now considered appropriate due to issues concerning the outside area and the lack of management of customers in this area. It was admitted that some of the reported breaches of conditions were not the most serious but it was the repetitive nature of these breaches which caused disturbance and subsequently concern. It was recognised that the Premises now had a member of staff located in the beer garden area on Friday evenings and this had resulted in a recent improvement.

Mr Woods addressed several representations made in support of the Premises. There had been suggestions that the review was linked to increasing local house prices but this was refuted. References were also made to the industrial unit behind the Premises but this was also not linked to the review. Concern was also expressed about some of the evidence supplied and the overly defensive nature by the Premises and its supporters to a lot of the evidence presented. Residents had

unsuccessfully reached out to the St John's Wood Society and local Councillors to attempt to highlight the issues arising and felt aggrieved that they had decided to support the Premises without having a conversation with them.

Mr Woods explained how other pubs located nearby in close proximity to residents were prohibited from using their outside areas after 19:00 hours. Every time residents raised issues over this area with the licence owners they were treated cordially. However, any promises made to address the issues were never fulfilled. The Clifton Hill Residents Group was therefore requesting that consideration be given to prohibiting the use of the outside area after 20:30 hours following which any tables and chairs would be rendered unusable. They also requested that all customers using the outside area should be seated and the maximum number of smokers limited to five customers. It was proposed that customers should also remain within the designated area highlighted on the Premises plan as this would prevent drinking on the nearby side streets. It was essential that there was management of the outside area at all times and a condition could be added to the licence ensuring security staff were located there every Thursday, Friday and Saturday at specified times. Another additional condition was also requested which related to the conservatory area. One resident in particular was affected by the noise generated from this area and had suggested that numerous calls had been made to EH regarding this disturbance.

Mr Aron, a local resident supporting the review, addressed the Sub-Committee. It was explained that he lived in close proximity to the Premises and he wanted to peacefully co-exist with it. Disturbance was experienced from the outside area on a regular basis and he was of the opinion that the issues he had raised had not been heard or acted upon by the licence holder. Local residents wanted to enjoy their homes but with the noise experienced it was proving impossible leading Mr Aron to live in the back of his house, particularly on Friday evenings.

Ms Abou, a local resident supporting the review, explained that the process had been initiated not because they wanted the Premises licence revoked but simply to make the street more peaceful. Attempts had been made to meet with the licence holders and negotiate a compromise however this had not occurred. It was acknowledged that allegations had been made by both sides which had divided the street but the Clifton Hill Resident's Group was only wanting an understanding and response to their concerns. Mrs Aron submitted that the Group had contacted the St John's Wood Society and local Councillors to invite them to their home to understand the noise issues but none as yet had replied.

Mr Drayan, representing EH, stated that the application had originally been supported in regards to the Prevention of Crime and Disorder and Prevention of Public Nuisance licensing objectives. Their representation had been maintained due to the volume of evidence provided by residents and to allow EH to provide independent advice to all parties. EH recognised that both residents and the pub had historical reasons to be in the location. The Premises had to be mindful of the area it was situated within and could not operate with impunity. However, residents also had to expect some noise as it was not feasible for a pub to operate without any. With regards to noise generated from internal areas EH would expect the licence holders to undertake mitigation measures to prevent this. However, it was not possible to prevent noise generated from a beer garden from escaping even when this only

constituted levels associated with normal conversation. Mr Drayan confirmed that no forms of nuisance had been reported by the Council's City Inspectors and as such he could no longer support the application.

Mr McCann, representing the licence holders, acknowledged that the operation of the beer garden was the most contentious part of the application but drew the Sub-Committee's attention to the sixty-seven representations received supporting the Premises and its management. Mr Nadal's map which detailed the proximity of residents to the Premises was discussed and it was suggested that many residents living nearby had not reported any disturbance. EH had visited the Premises on numerous occasions, overtly and covertly, and had not reported any disturbance or breaches of conditions. They had even visited during a Lord's Test Match and had commented on the professional operation in place. Mr McCann was of the opinion that EH's records should be regarded as the most comprehensive evidence available to the Sub-Committee.

With regards to some of the suggestions made in the representations Mr McCann did not think it was appropriate to place a capacity limit on the beer garden or require all customers to be seated. The pub was not one where customers spilled on to the street and if customers wanted to stand they should be allowed to. It had also been suggested that the outside area be supervised seven days a week but this was financially prohibitive to the licence holders. It was acknowledged that early on a couple of breaches to the conditions had occurred regarding deliveries. Subsequently strict adherence to the conditions was now enforced with delivery companies and this could no longer be considered an area of concern. It was highlighted that a commercial kitchen operating behind the Premises also received deliveries and this may have led to some confusion with residents. If breaches of the conditions were occurring, though, Westminster City Council would prosecute the Premises and the Sub-Committee was reminded no signs of any prosecution had ever taken place. It was also suggested a door supervisor be employed but this was a pub that did not even operate to core hours. One had been employed in the summer but this had ceased due to a lack of work for them. Concern had been expressed over customers smoking outside of the licenced area. The Sub-Committee was assured that the Premises did not encourage this but after 22:00 hours the side road was the designated smoking area. With regards to the proposal that a fence be installed on the low side walls it was explained heavy duty plants had been installed there which prevented customers from sitting on it. Finally, in terms of the conservatory it had been in place many years. The Premises had no regulated entertainment provision and any further noise mitigation measures would cost approximately £40,000 which was financially prohibitive.

Mr McCann advised that the licence holders had engaged with residents with significant levels of dialogue taking place. The Premises had compromised in response to concerns raised but placing further restrictions on the beer garden's hours would have a devastating financial impact on the operation. It was hoped further talks with the residents would take place but attempts to turn the pub into a library were not realistic.

Mr McCann highlighted to the Sub-Committee how the pub had existed at its current location for four centuries. It operated within core hours and since the licence holders had taken over the licence more restrictive conditions had been placed on it. No

breaches of the conditions had taken place, aside from the delivery condition discussed earlier, and no evidence of instances of disturbance or breaches of conditions had been reported by the Council. The majority of local residents supported the Premises and therefore the only appropriate action to take was to take no further steps and place no extra conditions on the licence.

Mrs Moussaieff, a local resident supporting the Premises, addressed the Sub-Committee. She confirmed that she had lived on the street for sixteen years. She stated that the applicants were her friends but felt that they were listening for nuisance to prove their case. Noise disturbance had been experienced from the previous operation but no licence review proceedings had been instigated. It was suggested that problems had arisen as the Premises had been closed for three years' and residents had become used to it being very quiet. The Clifton Hill Residents Group wanted to place restrictions on the beer garden but this could have the effect of causing further issues by forcing customers out onto the street to smoke for example. The management were effective in reducing noise from the outside area and had always been very respectful in their dealings with local residents.

Councillor Hall, representing Mr Schumacher a local resident, addressed the Sub-Committee and confirmed that her and Mr Schumacher had worked closely together to make the Premises an asset of community value. Councillor Hall described the location of the side road in relation to the Premises. This road provided access to the industrial site at the rear which companies based there used for deliveries. Therefore, it was important to ensure that any noise and disturbance experienced from these deliveries was not unfairly attributed to the Premises. The current licence was heavily conditioned and the fact the Premises operated within core hours meant that it helped protect local residents. Pubs were a feature of residential life and adding further restrictions on to the licence would have severe financial repercussions for the Premises.

Mr Moussaieff, a local resident supporting the Premises, next addressed the Sub-Committee. He was a long term resident of the street and had seen the pub operate under many guises during which he had never known it to be so quiet. The clientele was mainly aged over forty and were very respectful. A meeting had been organised between the Clifton Hill Residents Group and the licence holders and it was accepted that issues had arisen between both parties. In conclusion the Premises operation was better than what had been there previously and if it was to survive it would be inappropriate to attach further conditions on to the licence.

Mr Slater, a local resident supporting the Premises, explained that he had lived on the street for over thirty years. Under previous operations the pub had been a source of noise disturbance but this was not the case with the current operators. It was submitted that any noise could only be heard directly outside the Premises and any nuisance or disturbance experienced had reduced significantly since the current operators had taken over the Premises.

Mr Nadal, a local resident supporting the review, explained to the Sub-Committee that the log book of evidence he had submitted was accurate and provided evidence of the disturbance experienced by residents. This included numerous entries in the log book detailing deliveries taking place outside of the permitted hours. With regards to deliveries it was questioned if the industrial units at the rear of the Premises did

contain a commercial kitchen. Mr Nadal realised that living in London was a noisy experience and it wasn't expected for the pub to be a library however even when the windows of the Premises were closed significant, continuous disturbance was still experienced. Over sixty residents had submitted representations supporting the Premises however they did not live in such close proximity to it as those who had brought about the review proceedings. Finally, it had been suggested that imposing conditions on the licence would have a financially detrimental effect on the business but the Sub-Committee should not take into account commercial reasons when making their decision.

Mr Woods drew the Sub-Committee's attention to the direct evidence submitted by the Clifton Hill Residents Group which showed that they were disturbed by noise emanating from the outside area and it was expected for this area to be supervised by staff. With regards to the representation from EH he had been unaware that they were not in support of the application despite the report stating the opposite. The residents had taken the Council's advice and logged every incident occurring to compile a significant body of evidence as requested. There was nothing more the residents could do to prove the levels of disturbance the Premises was currently generating and the Sub-Committee was asked to accept the evidence provided.

Mr McCann explained that he would expect to see evidence of fighting, shouting and smashed glasses/bottles proving the level of disturbance suggested. Instead there was no evidence to show any of this behaviour was happening and there was no evidence to prove the Premises was causing disturbance or breaching its conditions. The Premises was being continuously monitored by residents however their perception was different to the reality of the situation. The Sub-Committee had to weigh up what was reasonable and Mr McCann stressed that the numerous conditions on the licence were currently sufficient. The licence holders would continue to listen and engage with local residents to ensure any concerns they may have were addressed. EH had no records of any nuisance or disturbance being created by the beer garden and this should be given sufficient weight by the Sub-Committee.

The Sub-Committee carefully considered the application and all the submissions and evidence provided before it. It was acknowledged that the applicant was not seeking a revocation of the licence but was requesting further conditions be placed on the licence to restrict the use of the outside area. Having heard all the evidence, the Sub-Committee was clear that some residents were experiencing a degree of disturbance from the Premises. The significant amount of evidence accrued by those residents detailed the numerous issues they had experienced and this could not be disputed. There had also obviously been breaches of conditions on the licence over time especially with regards to deliveries. The Sub-Committee had heard from the licence holders that it would not be appropriate to add further conditions to the licence because they would financially harm the Premises. The Sub-Committee wanted to make it very clear to the Premises that commercial considerations did not provide the right to create any sort of unacceptable disturbance to local residents. Nobody had the right to act with impunity and the licence holder needed to undertake a lot more work to address concerns raised by residents and ensure they were rectified within a suitable timeframe. The Sub-Committee noted the licence holders' assurances that no further breaches of the conditions would occur in the future. The licence holder was advised that EH would be closely monitoring the Premises to ensure that this

was the case.

The Sub-Committee was of the opinion however that it would not be appropriate to add extra conditions on to the licence at this point in time. It was considered that the review application had highlighted the legitimate concerns of the residents bringing the review application and hoped that the review process would enable all the parties to fully engage with each other so as to ensure that the commercial interests of the operator could be achieved without that undermining the licensing objectives. A lot of the evidence provided by the residents highlighted unacceptable issues arising from the Premises though and the licence holder was reminded of the importance of ensuring the Premises operated in an appropriate way. They were expected to operate from now on in the way they had described and they could expect another review application if they failed to do this. Ultimately the important factor was about management and the need to control the Premises, especially the outside area, in a way which did not disturb residents. All parties were encouraged to ensure there was open dialogue between them. The importance of communication was stressed to all parties and the Sub-Committee expected this to be undertaken without any issues.

In conclusion the Sub-Committee was concerned over the numerous instances of disturbance occurring and agreed it was unacceptable in such a residential area. The licence holder had assured the Sub-Committee that any breaches of the conditions would not occur in the future and residents' concerns would be addressed in a timelier fashion. The weight of evidence provided by residents was noted. The fact that many local residents did not have any issues with the operation of the Clifton was obviously acknowledged as was the fact that Environmental Health had not themselves witnessed anything that gave them much cause for concern. However, that did not mean that the views of the other residents who had brought the review should be given less weight. The fact that Environmental Health had not witnessed any public nuisance might well have reflected the situation as described by Mr Woods when he stated that the nuisance was intermittent in nature and did not occur every day.

It was hoped constructive dialogue between all parties would take place in in order to ensure that an acceptable compromise could be achieved that would be in everyone's interest. The Sub-Committee therefore did not feel it was proportionate on this occasion to add any further conditions on to the licence but expected the licence holder to fully comply with the current conditions and to manage the external areas of the premises so as to avoid causing a public nuisance to the local residents. It was hoped that such an approach would assist in promoting the licensing objectives and avoid the need for the residents to bring a further review. The Licensing Sub-Committee also wanted to indicate that any further review would not automatically be regarded as a repetitive review if the residents felt that the licence holder was not adhering to the approach being recommended in this decision.

The Meeting ended at 4.06 pm

CHAIRMAN: _____

DATE _____