



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (5)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (5)** Committee held on **Thursday 15th February, 2018**, Room 3.1, 3rd Floor, 5 Strand, London, WC2 5HR.

Members Present: Councillors Peter Freeman (Chairman), Heather Acton and Shamim Talukder

1 MEMBERSHIP

There were no changes to the Membership.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 LE BAB, 4 MERCER WALK, WC2

LICENSING SUB-COMMITTEE No. 5

Thursday 15 February 2018

Membership: Councillor Peter Freeman (Chairman), Councillor Heather Acton and Councillor Shamim Talukder

Legal Adviser: Horatio Chance
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon
Presenting Officer: Yolanda Wade

Relevant Representations: Environmental Health, Licensing Authority and 16 x residents/residents' associations.

Present: Ms Bo-Eun Jung (Counsel, representing the Applicant), Ms Liza Inzani (Solicitor, on behalf of the Applicant), Mr Edward Brunet (Director and Co-Founder of Applicant Company), Mr Stephen Tozer (Co-Founder of Applicant Company), Mr Ian Watson (Environmental Health), Mr David Sycamore (Licensing Authority), Mr David Kaner (Covent Garden Community Association, representing 4 residents), Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project, on behalf of

Covent Garden Community Association), Ms Amanda Rigby (Ching Court Association) and Ms J Havers (local resident).

Le Bab, 4 Mercer Walk, WC2 17/14879/LIPN ("The Premises")	
1.	Late Night Refreshment (Indoors and Outdoors)
	Monday to Thursday: 23:00 to 23:30 Friday to Saturday: 23:00 to 00:00
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report):

The Sub-Committee heard from Ms Jung, representing the Applicant. She stated that Le Bab was not a typical kebab premises. It elevated kebab cuisine to fine dining. The menu had been designed by a Michelin trained chef and was accompanied by a drinks menu including fine wine, cocktails and craft beers.

Ms Jung drew the Sub-Committee's attention to the Applicant having operated a similar premises in Kingly Court since January 2016. It had been operated in a similar fashion except that at the Mercer Walk premises there would be the addition of a Chef's Table. The Chef's Table would enable up to 10 people to book a 7 course tasting menu. The Chef would explain each dish as it is being cooked. The price for the food was around £75 and additional wines from around £45. Ms Jung added there were no reported issues at the Kingly Court premises.

Ms Jung explained that Le Bab was one of eight retail units in a new development. It operated on the ground floor and basement areas of the Premises. There was no outside seating area. The sole entrance and exit was on to Mercer Walk. There was a public piazza which linked Mercer Walk with Langley Street.

Ms Jung spoke of a robust management policy having been put in place by the landlord, The Mercers' Company. She requested that a letter from the landlord which referred to their security arrangements was permitted to be seen and considered by the Sub-Committee. It had not been circulated earlier because it had been received after the deadline set out in the Council's Rules of Procedure and the requirements of the Licensing Act 2003 (Hearings) Regulations 2005 ("The Regulations"). The Sub-Committee, having received legal advice, asked the objectors whether they were content for the late evidence to be submitted. The objectors were content for this to take place. On that basis the Sub-Committee exercised its discretion under the regulations and allowed for the presentation of such late.

Ms Jung set out the main points from the letter from The Mercers' Company. Their tenants include Jamie's, Temper and Hawksmoor. It stated that they welcomed the current operator. They employ two security guards, who are on duty 24 hours a day. One of the security guards monitors the CCTV (18 cameras at street level) and the other patrols the estate. Between 19:00 and 01:00 hours the patrolling security guard would supervise patrons leaving the restaurant.

Ms Jung wished to emphasise that the application was for a restaurant and that the Council's model restaurant condition, MC66, had been agreed by the Applicant in the event the application was granted. It would not turn into a drinking establishment in the future. She commented that the hours applied for in terms of licensable activities in the general restaurant area were in keeping with the Council's Core Hours policy. The opening hours sought were half an hour beyond Core Hours. The Applicant was seeking this in order that up to 10 customers in the Chef's Table area were given an additional 30 minutes to eat and drink up and then leave the Premises. It was submitted that those particular

customers were paying for a “VIP” experience and the Applicant did not want these customers to be rushed away from that experience. They would not be supplied with additional food or drink outside Core Hours. Ms Jung added that up to 10 people could book separately and all be starting their meals at different times. She expressed the view that the additional 10 people would not add to cumulative impact in the West End Cumulative Impact Area because they were so few in number, Le Bab is a restaurant and there were stringent conditions being proposed.

Ms Jung advised that the Applicant had had very helpful discussions with the objectors, notably Mr Kaner. The Sub-Committee noted that there had been three outstanding issues between the Applicant and Mr Kaner who was representing a number of residents. These were the operating hours, restrictions on the closing of windows and doors and a last entry time. Ms Jung informed the Sub-Committee that the Applicant was now willing to agree to the objector’s request that the windows and doors would close at 21:00 each evening. This would be consistent with the condition attached to the premises licence for Temper, 5 Mercer Walk in December 2017. Ms Jung questioned whether a last entry time as requested by the objectors was appropriate for a restaurant. However, she provided the information that last orders in the kitchen were at 22:30 and said that if the Sub-Committee was minded to add such a condition, 22:30 would be acceptable to the Applicant.

In terms of the opening hours, Ms Jung expressed the view that the security, the dispersal policy and the conditions were sufficient to justify granting those proposed by the Applicant. Only background music would be played and doors and windows would be closed by 21:00. There was no outside seating area and customers going outside to smoke or departing from the Premises would be encouraged to use the Piazza rather than Mercer Street.

Ms Jung stated that the pre-application advice from Environmental Health was that the capacity would be limited to 60 on each floor which would include the Chef’s Table but not the staff.

Ms Jung referred to proposed conditions, including that no noise would be permitted to emanate from the Premises. In order to prevent queuing at the Premises, customers would arrive and give their telephone numbers to staff and about 15 minutes prior to their table being ready they would be telephoned or receive a text message. It was therefore anticipated that there would be no queuing (allaying fears of nuisance) but if this did take place a proposed condition required the Applicant to ensure that it was orderly and supervised by staff.

Ms Jung explained that all commercial waste had to be kept in a dedicated area in the basement area of the Premises. This was brought up to the ground floor about half an hour before collection which would take place in the Piazza. Deliveries would be made between 07:00 and 10:00 each day.

The Sub-Committee heard from Mr Watson on behalf of Environmental Health. He referred to Le Bab at Kingly Court which has a maximum capacity of 40. The maximum capacity at Mercer Walk was expected to be 120. This would be

subject to a final inspection. Mr Watson advised that there was a theatre kitchen and small bar proposed on the ground floor where customers were able to wait. He made the point that the Council's policy does allow for alcohol to be consumed by customers who have booked tables. The Applicant was offering the option of informing customers when their table was ready in order to avoid queuing.

Mr Watson asked for clarification on the location of the Chef's Table as it was not indicated on the plans. Ms Jung responded that it would be located in the basement.

Mr Watson commented on residents' concerns in relation to public nuisance. He said at the moment windows were not openable but the Applicant was looking at applying for the relevant planning consent. He supported the suggested closure of doors and windows at 21:00 even though there was no regulated entertainment proposed. This was because there would be up to 60 people on the ground floor in a busy restaurant who would be able to cause nuisance in a residential area.

In terms of dispersal, Mr Watson stated that he was aware that Mercer Street is very residential in nature. Langley Street also has residents living there although is more of a commercial street. Directly opposite Mercer Walk is Finsbury Place which has a new residential development. Mr Watson welcomed the Applicant's dispersal policy. It would be necessary for dispersal to be properly managed so that customers went to Langley Street in order to access Covent Garden underground station.

Mr Watson made the point that he was not aware of any Core Hours restaurant application having a last entry time condition on the premises licence and he was not requesting that this condition be imposed. There was no outside area and drinks could not be taken outside which Mr Watson believed would minimise the potential for public nuisance. He referred to the Applicant's arrangement that commercial waste would be kept in a dedicated area in the basement area of the Premises. This would be collected by The Mercers' Company from the Piazza with access from Langley Street.

Mr Watson was of the view that the conditions addressed many of the issues relating to the potential for public nuisance. He stated that in terms of the dispersal policy, the 120 capacity compared with Temper which was directly opposite, had been granted Core Hours in December 2017 and had a capacity of 150.

The Sub-Committee heard from Mr Sycamore on behalf of the Licensing Authority. He welcomed that the Applicant had agreed the Council's model restaurant condition, MC66. However, he was of the view that the Applicant still needed to demonstrate how the application would not add to cumulative impact. Mr Sycamore made the point that the extra half hour sought for the opening hours in order to accommodate customers in the Chef's Table area would take the application outside of the Council's Core Hours policy. He was of the view that operationally the extra 10 people by definition alone in this basement area could create some issues if some people were being permitted to stay whilst

others were being asked to leave. He recommended that the Chef's Table was granted Core Hours to less the impact. Mr Sycamore had concerns that whilst the current operator might choose to close the kitchen at 22:30 this might change with another operator if the premises licence was transferred. The Sub-Committee noted this statement but realises that it has, to treat each application on its individual merits based on the facts before it.

Mr Sycamore believed that there were some measures being offered by the Applicant that would potentially go some way to alleviating cumulative impact. These included the written dispersal policy, the additional security being offered by the landlords and the proposed queuing system that would help promote the licensing objectives.

The Sub-Committee was addressed by local residents, objecting to the application. Mr Kaner, on behalf of Covent Garden Community Association ('CGCA') and representing four residents, commented that the immediate vicinity of the Premises is not a typical Soho/central Covent Garden area. It was submitted that it was very residential in nature and character and there was very little late night activity in the locality. Le Bab faced on to Mercer Street (although the entrance was on Mercer Walk) and Mercer Street had one licensed premises which had been closed for the last 2 years. There were three traditional retail shops facing the street. Mercer Street was however almost entirely residential. It was stated that once Cambridge Theatre closed, Mercer Street was particularly peaceful. Mr Kaner stressed that Kingly Court was a very different environment for a licensed premises than the proposed location of the new Le Bab.

Mr Kaner stated that what was important was what the premises licence would actually permit not how the Applicant would choose to operate it as the premises licence could be transferred at some stage in the future.

Mr Kaner referred to the Council's Planning Committee having limited restaurant use to 23:00 to protect the environment of people living in neighbouring properties. This he added had been accepted by the developer.

Mr Kaner confirmed that following discussions with the Applicant the outstanding issue was the hours of operation. The Applicant had made the case that the general restaurant area should operate to Core Hours. Mr Kaner requested that the closing time was 23:00. He believed that the question for the Sub-Committee was whether in allowing the Premises to remain open after 23:00 the application was likely to give rise to public nuisance either from the operation of the Premises or from the cumulative impact in the West End Cumulative Impact Area. Mr Kaner said that it was his view and the view of those he represented that it would do both. The potential for nuisance that created the concern was customers on the Premises as the doors open and close or from people either arriving or leaving the restaurant. This was particularly after 22:30 to 23:00 when the area became quiet and peaceful.

Mr Kaner advised that the design of the Mercer's Walk development where the entrance and exit of Le Bab would be located was a very hard surface and reflected sound easily. This meant that noise, even from people standing

outside the Premises and talking, could be heard from some distance away. People arriving or leaving the Premises along Mercer Street and Shelton Street would cause a noise which would disturb people given the low level of background noise in the area. People talking loudly as they walk along the street had more impact at midnight than at 22:00 hours. There was less background noise and more residents were likely to be asleep. There were less concerns about Langley Street which was why the dispersal policy towards Langley Street was appreciated. However, the Applicant could not guarantee that all patrons would disperse towards Langley Street.

Mr Kaner believed it was a matter for the Sub-Committee whether the conditions offered by the Applicant were adequate to prevent the nuisance caused by people dispersing. The Applicant was offering best endeavours to direct customers to Langley Street and the landlord employed a security guard to supervise patrons leaving the Premises. Mr Kaner took the view that this might reduce the amount of nuisance because most customers would leave via Langley Street. It did not however guarantee it. Being woken up in the night was disruptive for residents. If the premises closed after 23:00 it would cause more nuisance in the area.

Mr Kaner addressed the Sub-Committee on the Temper application heard by the Sub-Committee in December 2017 which had been granted for a larger capacity to Core Hours. He explained that Temper was a very different premises and rested on different facts. This was particularly due to the fact that the entrance at Temper faces Langley Street whilst the entrance for Le Bab faces Mercer Walk. Encouraging customers to disperse via Langley Street was therefore much easier at Temper than Le Bab. Any noise from Temper was likely to travel to Langley Street. Any noise near the entrance at Le Bab was much more likely to be directed towards Mercer Street.

Mr Kaner made the point that even if the Sub-Committee had already taken the view that Temper did not add to cumulative impact it did not follow that adding another Premises of a similar size in the area would not add to it. The requirement of the Council's policy was that the Applicant needed to demonstrate that the application would not add to cumulative impact.

Mr Kaner confirmed that he was seeking a last entry time condition for the Premises if it was decided by the Sub-Committee to grant an application beyond 23:00. He was less concerned about the additional 30 minutes for up to 10 people in the Chef's Table area as it was much easier for the Premises to manage the dispersal of this number than a larger number from the general restaurant area.

The Sub-Committee heard from Ms Havers. She lived in a flat in Mercer Street. She was very concerned that if a significant amount of people were leaving Le Bab she would be woken up. It was currently a very quiet area after 23:00 due to that part being residential. She was hopeful that the application would not be granted beyond 23:00 and that customers would disperse via Langley Street.

Ms Rigby spoke on behalf of The Ching Court Association. The Association represented more than 20 dwellings, many of whom housed families with

children. She was very concerned at the prospect of introducing a very late night leisure element to the area which would change it significantly. The granting of the Temper premises licence had caused concern but at least Temper faced on to Langley Street and people could go directly to Covent Garden underground station. People leaving Le Bab would enter Mercer Walk which was a very short distance from Mercer Street. Ms Rigby concurred with fellow residents that there was little late night activity after 22:30 hours. She stated that Mercer Street is narrow with very high buildings and noise echoed a great deal. Noise also echoed from The Piazza which could be heard in Mercer Street. Ms Rigby did not believe it was appropriate for The Piazza to be a vibrant area after 23:00 due to the adverse impact on residents.

The Sub-Committee asked the Applicant a number of questions. Further information was requested on the operation of the Chef's Table. Ms Jung explained that the Chef's Table would involve private dining in the sense that customers there would be located in a separate room from other diners. The diners in the Chef's Table would not be seen by other customers in the restaurant. Mr Brunet clarified that dining at the Chef's Table was by reservation only in contrast to the rest of the restaurant where it was possible to have either walk-in diners or bookings. There were two dedicated chefs for this area. The Applicant would also not be accepting bookings for the maximum number of 10 people.

The Sub-Committee asked Mr Brunet whether he planned to have deliveries of food or drink from the Premises. He replied that this was being explored. It would be a miniscule part of the operation, similar to Kingly Court. Ms Jung referred to the Applicant having agreed a condition that it would use reasonable endeavours to ensure that delivery drivers do not congregate in the vicinity of the Premises, obstruct the highway or cause nuisance outside the Premises. The use of bicycles for deliveries would be encouraged.

The Sub-Committee asked the Applicant questions on dispersal from the Premises. Mr Brunet responded that Langley Street was the easiest and shortest route to Covent Garden underground station. The Applicant could not be expected to manage a person walking along the road using a mobile phone late in the evening. The Applicant was committed to doing its utmost to encourage customers to leave quietly and respect local residents' needs. This would feature in staff training. Ms Jung added that in addition to a security guard being employed to patrol the area, there would be a member of staff at the door liaising with customers as they left in order to prevent any nuisance being caused to residents.

The Sub-Committee also heard from Mr Brown on behalf of CGCA. He referred to paragraph 2.4.26 of the Council's Statement of Licensing Policy ("SLP"). This set out that one of the ways of addressing cumulative impact was with planning policies. The terminal hour for the Premises decided by the Council's Planning Committee was 23:00 and this Mr Brown believed was a material consideration. He added that planning permission was not binding on licensing decisions and vice versa but 23:00 had been granted as a terminal hour by the Planning Committee for a reason in mind.

Mr Wroe provided advice on the Council's model restaurant condition, MC66. This was that the aspect of the Applicant's application for off sales was inconsistent with the Applicant agreeing MC66, in particular part (vi) that the premises shall only operate as a restaurant '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'. Mr Brunet clarified that off sales were being applied for in the rare event that customers wished to purchase fine and rare wines.

Mr Wroe advised that if MC66 was to be relaxed as was suggested by the Applicant, it would be contrary to the policy on restaurants, what had been agreed with the Responsible Authorities and residents and potentially have influenced whether representations had been submitted or not, which would give rise to the consultation process having to be repeated because of the slight relaxation referred to above. Ms Jung responded that the Applicant had originally applied for off sales. She also requested clarification on the paragraph setting out that notwithstanding the stipulations as to how the Premises would only operate as a restaurant, 'customers are permitted to take from the Premises part consumed and resealed bottles of wine supplied ancillary to their meal'. Mr Wroe stated that it was a matter for the Sub-Committee but it was clear that the Applicant's intended off sales were not in keeping with providing 'part consumed and resealed bottles of wine supplied ancillary to their meal'.

In response to the Sub-Committee's question about the intended opening hours on New Year's Eve into New Year's Day, Mr Brunet and Ms Jung said they would be prepared to restrict the hours of operation then to more standard hours.

Ms Jung was given the opportunity to provide a closing submission. She stated that the Applicant had been reasonable and proactive in discussing matters with the objectors and had made concessions. She made the point that the Sub-Committee had a duty to be fair, consistent and apply the Policy. This she believed justified granting Core Hours for the general restaurant area. Ms Jung referred to Temper being granted Core Hours in December 2017, having a similar operation although Temper had an outside area which was not the case with the application at Le Bab.

Ms Jung made the point that Langley Street was no more than 10 metres away. Customers would be encouraged to disperse via Langley Street.

Ms Jung also requested that an additional 30 minutes was permitted beyond Core Hours for the Chef's Table on the basis that this had not been objected to by local residents.

Ms Jung expressed the view that the planning permission terminal hour was not a matter for the Sub-Committee to take into consideration. She said that there were conditions on the premises licence which should satisfy the Sub-Committee that the licensing objectives were being promoted and cumulative impact was not being added to.

Mr Kaner wished to bring to the Sub-Committee's attention that whilst Covent Garden is the nearest underground station from Mercer Walk, there would be customers who would want to walk to Leicester Square or Tottenham Court Road and the quickest route to these stations is via Mercer Street. He did not believe there should be a reliance on customers all wanting to use Covent Garden station.

Ms Rigby mentioned that it was her clear understanding that when the Temper application had been granted it had been taken into account by the Sub-Committee that the door on to Mercer Walk would be closed at 23:00. She remarked that it would be inconsistent to allow Le Bab to have its door open on to Mercer Walk after 23:00.

The Sub-Committee in reaching a decision considered that it was appropriate to balance the operation of the business against the potential for public nuisance. The concerns relating to public nuisance had clearly been expressed by residents in the strongest terms and their representatives which could not be ignored by the Sub-Committee. The Sub-Committee acknowledged that Le Bab was located in a quiet residential area and was keen to protect residents from public nuisance/noise.

The Sub-Committee in its determination of the matter, having regard to the promotion of the licensing objectives and the Home Office Guidance issued under s.182 of the Licensing Act 2003 decided to restrict the general operation of the restaurant to 23:00 Monday to Thursday, 23:30 on Friday and Saturday and 22:30 on Sunday in terms of the opening hours to the public and for on-sales. Off sales were not granted as the Sub-Committee did not consider that this was in keeping with the Council's model restaurant condition, MC66 and the operation of a restaurant in the West End Cumulative Impact Area. The Sub-Committee did not consider that it was appropriate to attach a last entry condition at the restaurant due to the nature of the Premises.

The Sub-Committee was prepared to grant the limited operation of the Chef's Table to Core Hours (23:30 Monday to Thursday, midnight on Friday and Saturday and 22:30 on Sunday). The Sub-Committee wished to acknowledge that the Applicant had made efforts to meet residents' concerns. These included closing windows and doors at 21:00. The Sub-Committee thanked residents for attending the hearing.

The Sub-Committee noted the measures taken by the Applicant and landlord to limit the adverse impact of dispersal and this was factored in to the hours permitted for the general restaurant area and the Chef's Table. The Sub-Committee also noted that the Council's policy for restaurants in the designated cumulative impact areas is that 'applications will be granted subject to other policies in this Statement and subject to the relevant criteria in Policies CD1, PS1, PN1 and CH1, provided it can be demonstrated that they will not add to cumulative impact in the Cumulative Impact Areas'. In this instance the locality was particularly residential and quiet later in the evening so that the Sub-Committee considered that there would be public nuisance if customers were able to leave at 23:30 Monday to Thursday and midnight on Friday and Saturday (an exception was made for customers at the Chef's Table which all parties had

accepted could be more easily managed due to the maximum number of ten customers who were unlikely to all leave at the same time). The Sub-Committee had heard evidence from residents that noise echoed from Mercers Walk to Mercer Street. The Applicant could direct customers towards Langley Street but there was the potential for customers also to wish to leave via other routes, including as suggested by Mr Kaner, via Mercer Street to Leicester Square or Tottenham Court Road.

The Sub-Committee also considered that the Applicant had placed emphasis on the Sub-Committee's decision to grant Core Hours for Temper in December 2017 but that the closing of the door on to Mercers Walk at 23:00 as part of the decision (as referred to by Ms Rigby) was relevant.

In making its decision the Sub-Committee recognises that the Guidance recommends that the Licensing Authority should avoid setting fixed and artificially early closing hours and that licensing hours should not inhibit the development of business and the night-time economy. This has to be balanced against the needs of residents through the promotion of the licensing objectives. However, in this case it was felt appropriate and proportionate that the hours applied for should be restricted to Core hours as expressed above, based on the views of residents in relation to the prevention of public nuisance and the residential nature of the area in close proximity to the Premises.

The Sub-Committee is entitled to and has taken into account local knowledge in reaching its decision. It is also recognised that other legislative procedures may be inadequate to overcome the concerns raised by those who have made representations.

The Sub-Committee in its determination of the matter felt that it was right and proper to scrutinise the application given the weight of opposition by residents on the grounds of public nuisance and the strict requirements contained within the wording of the above policies.

It is therefore the role of the Sub-Committee to ensure that the licensing objectives are promoted and with this consideration in mind and has therefore based its decision on this very factor in accordance with section 4 of the Licensing Act 2003 and all relevant parts of the Home Office Guidance (as amended).

The Sub-Committee were persuaded that the operator would run his business well and were confident that the proposed dispersal policy and added security measures would be fully implemented that would ultimately promote the licensing objectives from a management perspective. The conditions referred to in this Decision will help achieve this.

It was agreed that the plans would be amended by the Applicant and then supplied to the Licensing Service to reflect the inclusion of the Chef's Table in the basement.

For the reasons given above the Sub-Committee considers that the conditions imposed on the Premises Licence are appropriate and proportionate to promote the licensing objectives.

2.	Sale by retail of alcohol (On and Off)
	<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>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 23:00 Monday to Thursday, 23:30 on Friday and Saturday and 22:30 on Sunday for on-sales in the general restaurant area.</p> <p>The Sub-Committee was prepared to grant the limited operation of the Chef's Table to Core Hours (23:30 Monday to Thursday, midnight on Friday and Saturday and 22:30 on Sunday).</p> <p>Off sales were not granted as the Sub-Committee did not consider that this was in keeping with the Council's model restaurant condition, MC66 and the operation of a restaurant in the West End Cumulative Impact Area.</p>
3.	Hours premises are open to the public
	<p>Monday to Thursday: 10:00 to 00:00 Friday to Saturday: 10:00 to 00:30 Sunday: 10:00 to 23:00</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 decided to restrict the general operation of the restaurant to 23:00 Monday to Thursday, 23:30 on Friday and Saturday and 22:30 on Sunday in terms of the opening hours to the public.</p> <p>The Sub-Committee was prepared to grant the limited operation of the Chef's Table to Core Hours (23:30 Monday to Thursday, midnight on Friday and Saturday and 22:30 on Sunday).</p>
4.	Seasonal variations / Non-standard timings

	<p><u>Late Night Refreshment (Indoors and Outdoors), Sale by retail of alcohol (On and Off) and Hours premises are open to the public</u></p> <p>New Year's Eve all activities are permitted throughout the night until the start of the permitted hours 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>Granted, subject to conditions as set out below.</p>

Conditions attached to the Licence	
<u>Mandatory Conditions</u>	
<ol style="list-style-type: none"> 1. 2. 3. 4. 	<p>No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.</p> <p>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.</p> <p>Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.</p> <p>(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.</p> <p>(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—</p> <p>(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;</p> <p>(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</p>

- (ii) supply alcohol), or
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.

Additional Conditions

9. The premises 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 drink 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.

Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.

10. There shall be no sales of hot food or hot drink for consumption 'Off' the premises after 23.00 hours.

11. The maximum number of persons permitted in the premises at any one time (excluding staff) shall not exceed:-

Ground floor (x)

Basement (x)

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 preceding 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 are open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
14. 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.
15. Where the provision of food and/or drink includes delivery to the customer, the licence holder shall ensure that specific procedures are in place and that the activity does not cause nuisance at or near to the premises.
16. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
17. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
18. 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.
19. 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.
20. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.
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, which will record the following:
 - (a) all crimes reported to the venue
 - (b) all ejections of patrons
 - (c) any complaints received concerning crime and disorder

- (d) any incidents of disorder
- (e) all seizures of drugs or offensive weapons
- (g) any refusal of the sale of alcohol
- (h) any visit by a relevant authority or emergency service.

22. 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.
23. 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.
24. Before the premises open to the public, the plans as deposited will be checked by the Environmental Health Consultation Team to ensure they are an accurate reflection of the premises constructed. Where the premises layout has changed during the course of construction new plans shall be provided to the Environmental Health Consultation Team and the Licensing Authority.
25. A written dispersal policy shall be retained at the premises and made available for inspection by authorised officers upon request. It will include the requirement that staff will actively encourage customers to disperse via Langley Street rather than mercer Street in order to minimise the disturbance to residents.
26. All staff shall be trained in the implementation of the dispersal policy.
27. The licence holder shall use reasonable endeavours to ensure that:-
 - a) delivery drivers do not congregate in the vicinity of the premises, obstruct the highway or cause nuisance outside the premises;
 - b) the use of bicycles for deliveries is to be encouraged.
28. The licence holder will operate a virtual queuing system to encourage customers waiting for a table to leave the immediate area of the premises. The licence holder will ensure that any queue to enter the premises which, despite this, forms outside the premises is orderly and supervised by staff so as to ensure that there is no public nuisance or obstruction to the public highway.
29. A direct telephone number for the manager at the premises shall be made publicly available at all times the premises is open. This telephone number is to be made available to residents in the vicinity and circulated to the local residents association.
30. All waste will be managed in accordance with the landlord's requirements.
31. All deliveries shall be made between 07:00 hours to 10:00 hours Monday to Sunday and will take place within the public realm area.

32. All windows and external doors shall be kept closed after 21:00 hours except for the immediate access and egress of persons.
33. Customers shall be required to vacate the premises at 23:00 Monday to Thursday inclusive, at 23:30 Friday and Saturday and at 22:30 on Sunday save for those customers in the private dining area marked “chef’s table” as indicated on the licensing layout drawing, up to a maximum of 10 persons at any one time (excluding staff).

4 BOXCAR BUTCHERS LTD, 7A WYNDHAM PLACE, W1

LICENSING SUB-COMMITTEE No. 5

Thursday 15 February 2018

Membership: Councillor Peter Freeman (Chairman), Councillor Heather Acton and Councillor Shamim Talukder

Legal Adviser: Horatio Chance
 Policy Adviser: Chris Wroe
 Committee Officer: Jonathan Deacon
 Presenting Officer: Yolanda Wade

Relevant Representations: 6 x residents.

Present: Mr Niall McCann (Solicitor, representing the Applicant), Mr Ricky Williams (Managing Director and Proposed Designated Premises Supervisor), Mr Ian Watson (Environmental Health), Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project, representing Mr John Fyfe), Mr John Fyfe, Mr John Barham, Mr Tony Frazer-Price and Ms Gwendoline Murray (local residents).

Boxcar Butchers Ltd, 7A Wyndham Place, W1 17/14687/LIPN (“The Premises”)	
1.	Late Night Refreshment (Indoors)
	Friday to Saturday: 23:00 to 23:30
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report):

The Sub-Committee heard from Mr McCann, representing the Applicant. He stated that the provisional name for the Premises would be Boxcar Visions. The concept was that the Premises would be a delicatessen with a limited number of seats for consumption of food and drink inside the Premises and in the outside area. The alcohol offer would comprise wine and Craft beer and the food would include cheese, bread, sandwiches, salads. The Premises has an A1 planning use so there was a restriction in terms of what food could be prepared on site. It was stated that no primary cooking would be permitted on the Premises.

Mr McCann advised the Sub-Committee that the outside area in Crawford Street is part of the demise of the Premises. It was not public highway. The Sub-Committee was advised that a property licence with conditions had been agreed between Portman Estate, the landlord and the Applicant to use this area. Inside the Premises there was a range of produce on a large table, including charcuterie. There would be shelves for provisions including milk, tea, coffee and eggs. There would be seating and stools on the ground floor. A decision was yet to be made as to whether there would be a table and two stools/chairs underneath the stairs in the basement.

Mr McCann referred to the representations received in relation to the application. Proposed conditions in the event the Sub-Committee was minded to grant the application had been agreed with the Metropolitan Police and they had subsequently withdrawn their representation. Proposed conditions had also been agreed with Environmental Health save for one condition that outside of the operating hours alcohol should be secured in a locked store room or behind locked grilles. This had now been replaced with a condition agreed between the Applicant and Environmental Health that 'all tills shall automatically prompt staff to refuse an alcohol sale outside the hours permitted for the supply of alcohol'. Mr McCann added that the tills at the delicatessen were programmed so that they did not permit the Applicant to sell alcohol outside of the permitted hours.

In terms of the residents' representations, Mr McCann identified that one of the key concerns was the hours of operation. He explained that the reason the Applicant had applied for Core Hours was to have the scope to cater for customers in the event the Premises was popular during the evening. It was possible that customers would only visit the Premises to have a tea or coffee or a glass of wine with their lunch and that there would be some demand immediately after working hours. If that was the case the Applicant would look at closing the Premises at 18:30 hours. Mr McCann added that there were other premises in the vicinity that operated until Core Hours.

Mr McCann stated that the other area of contention for residents was the use of the outside area in Crawford Street. He made the point that whilst this was deemed to be part of the demise and that a tables and chairs licence was not required, this would not result in the Applicant abusing their privilege in terms of how the outside area was used. If the licence holder did not meet the terms of the property licence agreed with the landlord for the outside area, the latter could terminate the licence. Mr McCann expressed the view that it was far easier to terminate the licence arrangement than it was to terminate the lease.

The Applicant had agreed proposed conditions for the outside area with Environmental Health in the event the Sub-Committee was minded to grant the application. Mr McCann referred to customers having to be seated, that the licence holder had to ensure there would be no obstruction of the highway (there was the potential for a review of the premises licence if this was not complied with) and all outside tables and chairs would be rendered unusable by 22:00 each day (this had been amended from 23:00 by the Applicant).

Mr McCann said that there was office space and not residents directly above the Premises. He disputed that there was insufficient width for tables and chairs to be acceptable outside the Premises which was an issue for residents, advising that the complete width of the pavement (the Applicant's area plus the pavement) was 10 feet 8 inches or 3.25 metres (there were bollards and a lamp post on the pavement). Mr McCann made the point that in the event the outside area was not part of the Applicant's demise, there would have to be a minimum of 1.8 metres of public highway and that would leave 1.45 metres for a tables and chairs licence if this had been required. It was intended that tables and chairs would be parallel to the window to reduce the overall space used outside. He also added that if the Applicant had not applied for the sale of alcohol, there would be no restriction on the use of the outside area.

Mr McCann did not accept the argument in the written representations that the proposed hours on Sunday were unacceptable as they were within the Council's Core Hours policy. He emphasised that the Premises were small and not located in one of the Council's designated cumulative impact areas. However, in the spirit of good community relations, the Applicant wished to work closely with residents and management telephone contact details were available.

The Sub-Committee heard from Mr Watson on behalf of Environmental Health. He stated that the application was inside Core Hours. The Premises had A1 retail use and could not be a restaurant. There would be no primary cooking. There would be customers that would come to the Premises, buy something and then leave and in those circumstances it was rare to require a capacity condition. The basement area was quite small and inside the Premises there would probably be less than 20 people.

Mr Watson confirmed that he had agreed a condition with the Applicant that 'all tills shall automatically prompt staff to refuse an alcohol sale outside the hours permitted for the supply of alcohol'. He advised that he was withdrawing the amendment to proposed condition 13 regarding the removal of waste or recyclable materials, including bottles. The content of the condition which specified the hours unless collections are arranged during the times for the Council's own commercial waste collection service for the street would be examined by the Council's legal services prior to being proposed in future by Environmental Health.

Mr Watson spoke about the conditions that had been agreed by the Applicant. These included that there would be no self-service of alcohol, the supply of alcohol would be by waiter or waitress service to seated customers inside and outside the Premises and licensable activities at the Premises would be ancillary to the main function of the Premises as a retail shop and delicatessen. Alcohol

would not be a major part of the offering.

Mr Watson advised that the Council's policy on the use of tables and chairs outside tends to support applications to 23:00. However, the Applicant had reduced the terminal hour for their use to 22:00. He added that he was content with the application.

The Sub-Committee was addressed by local residents. Mr Frazer-Price stated that he lives opposite the proposed site. His concerns related to the licensing hours and the placement of tables and chairs outside the Premises. Adding to the concerns was that there is a school next door to the Premises and how the outside area would be managed with the likes of over 40 schoolchildren and also mothers with prams needing to get past the tables and chairs, particularly during school hours. Mr Frazer-Price commented that there was also restricted space due to the bollards and lamp post fronting the Premises from the pavement.

Mr Frazer-Price requested that drinking outside the premises ceased at 21:00. This was in order that it was in line with the permitted hours for The Larrik Pub in Crawford Place. He had concerns that a later permitted hour for outside drinking would create a precedent in the area, including the Duke of Wellington across the road if it reopened.

Mr Barham made the point that the space from the lamp post to the end of the demise of the shop was 95cm. This he believed this would create problems for mothers with prams and pushchairs, particularly if customers in the outside area decided to stand on the pavement. He also was concerned that customers would buy alcohol inside the Premises and want to make use of the benches in Wyndham Place.

Mr Barham was content with the shop opening at 08:00 but was keen that tables and chairs were not placed outside at this time on the ground it would cause noise for local residents living opposite. He acknowledged that residents had requested no Sunday trading but added that he was particularly seeking that the terminal hour on Sunday was reduced. In general, he had concerns regarding trade at the delicatessen at a later hour in a residential area. This was because of the impact of the noise on residents from people outside talking, car engines starting up or car doors being slammed.

The Sub-Committee heard from Mr Brown, representing Mr Fyfe and also Mr Fyfe. Mr Brown expressed concerns that the pavement in Crawford Street outside the premises being very narrow. The bollards were slightly set in from the kerb. According to Mr Fyfe's measurements, the distance between the lamp post and the beginning of the demise of the Applicant is 3 feet 3 inches. The distance between the Applicant's demise and the doorway of the premises is 4 feet 5 inches. Mr Brown added that Mr Fyfe was of the view that people would be blocked from being able to walk along the street.

Mr Brown queried whether the Applicant would not require a tables and chairs licence due to the proximity of the demise to the highway. He also requested further details of the property licence agreement for the outside area between the Applicant and the landlord in terms of what the constraints were. Mr Brown

explained that residents did not know how many tables and chairs would be placed outside by the Applicant. He referred to Environmental Health's written representation which had indicated they had discussed with the Applicant there being up to 6 to 8 seated outside on the private forecourt. Mr Brown believed this indicated approximately 2 to 3 tables and that much would depend on the size of the tables used. These he added would need to be small. Mr Fyfe was concerned about the close proximity of the school.

Mr Brown commented that it was his understanding that the premises licence for The Duke of Wellington pub opposite had been surrendered.

Mr Fyfe spoke of there being several restaurants further down towards Baker Street which had outside tables. However, they did not have bollards or lamp posts outside on the pavements. This was likely to add to congestion for pushchairs and occasional wheelchairs. Any tables and chairs would need to be set parallel to the shop.

The Sub-Committee asked Mr McCann whether it was intended that the tables and chairs would be located on the left hand side of the premises to avoid the lamp post or whether they would be positioned in front of the whole frontage. He replied that it was yet to be decided. A table would not be positioned at a pinchpoint. The tables were likely to be 2 to 2 feet 6 inches in size.

Mr McCann said that it was appreciated by the Applicant that alcohol purchased at the Premises could not be consumed in Wyndham Place. It was necessary for it to be consumed at the tables and chairs directly outside the premises. The Applicant was also aware that there is a school next door and Mr McCann commented that there was no reason to think that this would cause any issues.

In response to questions from the Sub-Committee Mr McCann estimated that there would be a maximum of 15 people inside and 8 outside at the 4 tables.

Mr McCann clarified for the Sub-Committee what the terms of the property licence agreement were between the Applicant and the landlord for the outside forecourt area. It was stated that the Applicant had covenanted to use the area for the permitted use and these included keeping the forecourt clean, no playing of music, no noise escape, no smoking of shisha, removing furniture from the forecourt outside the opening hours, take all reasonable steps to remove glasses, bottles and cutlery and not allow customers to obstruct the public highway.

The Sub-Committee noted the concerns of local residents regarding the proposed hours and the operation of the outside area. The Sub-Committee considered that the Applicant would be able to use the outside area without any restrictions if the sale of alcohol was not permitted. In granting the application, the Sub-Committee was able to restrict the use of the outside area to 22:00 as agreed by the Applicant and which was acceptable to Environmental Health and attach conditions. The Sub-Committee decided to restrict the maximum numbers using the tables and chairs in the outside forecourt to 8 at any one time in line with discussions between the Applicant and Environmental Health. The Sub-Committee expected the Applicant to proceed in accordance with the stated

	<p>aim of Mr McCann at the hearing and not allow customers or chairs and tables to create an obstruction at the pinchpoints.</p> <p>The Applicant had agreed conditions proposed by the Responsible Authorities, including that customers would have to be seated outside and that the licence holder would ensure that there would be no obstruction of the public highway from patrons and/or furniture from the Premises. The Applicant had appreciated that not only was it necessary to comply with the property licence agreement with the landlord but that if the conditions were not complied with and the licensing objectives were not promoted, particularly in the event of public nuisance being caused to local residents, there was the potential for the premises licence to be reviewed.</p> <p>Mr McCann clarified that the aspect of the application relating to the additional hours sought from the end of permitted hours on New Year's Eve until the start of permitted hours on New Year's Day had been withdrawn.</p>						
2.	Sale by retail of alcohol (On and Off)						
	<table> <tr> <td>Monday to Thursday:</td> <td>10:00 to 23:00</td> </tr> <tr> <td>Friday to Saturday:</td> <td>10:00 to 23:30</td> </tr> <tr> <td>Sunday:</td> <td>12:00 to 22:00</td> </tr> </table>	Monday to Thursday:	10:00 to 23:00	Friday to Saturday:	10:00 to 23:30	Sunday:	12:00 to 22:00
Monday to Thursday:	10:00 to 23:00						
Friday to Saturday:	10:00 to 23:30						
Sunday:	12:00 to 22:00						
	<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>Granted, subject to conditions as set out below.</p>						
3.	Hours premises are open to the public						
	<table> <tr> <td>Monday to Thursday:</td> <td>08:00 to 23:30</td> </tr> <tr> <td>Friday to Saturday:</td> <td>08:00 to 00:00</td> </tr> <tr> <td>Sunday:</td> <td>09:00 to 22:30</td> </tr> </table>	Monday to Thursday:	08:00 to 23:30	Friday to Saturday:	08:00 to 00:00	Sunday:	09:00 to 22:30
Monday to Thursday:	08:00 to 23:30						
Friday to Saturday:	08:00 to 00:00						
Sunday:	09:00 to 22:30						
	<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>Granted, subject to conditions as set out below.</p>						
4.	Seasonal variations / Non-standard timings						

	<p><u>Late Night Refreshment (Indoors), Sale by retail of alcohol (On and Off) and Hours premises are open to the public</u></p> <p>From the end of permitted hours on New Year's Eve until the start of permitted hours on New Year's Day.</p> <p><u>Late Night Refreshment (Indoors)</u></p> <p>Sundays immediately prior to Bank Holidays from 23:00 to 23:30</p> <p><u>Sale by retail of alcohol (On and Off)</u></p> <p>On Sundays immediately prior to Bank Holidays from 12:00 to 23:30.</p> <p><u>Hours premises are open to the public</u></p> <p>On Sundays immediately prior to Bank Holidays from 09:00 to 00:00.</p>
	<p>Amendments to application advised at hearing:</p> <p>Mr McCann clarified that the aspect of the application relating to the additional hours sought from the end of permitted hours on New Year's Eve until the start of permitted hours on New Year's Day had been withdrawn.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the proposed hours for Sundays prior to Bank Holidays.</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 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.

Additional Conditions

9. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of the local resident and use of the area quietly.
10. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
11. A Challenge 25 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.

12. 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.
13. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23:00hours and 08:00hours on the following day.
14. All waste shall be properly present and placed out for collection no earlier than 30 minutes before the schedule collection time.
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 entire 31 day period.
16. 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.
17. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
18. 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.
19. Save for off-sales in sealed containers for consumption away from the immediate proximity of the premises, alcohol consumed shall only be by patrons seated at tables to a maximum of 8 persons in the outside area.
20. All outside tables and chairs shall be rendered unusable by 22.00 each day.
21. No more than 15% of the sales area shall be used at any one time for the sale, exposure for sale or display of alcohol.

22. Waiter or waitress service shall be available at all times alcohol is available for onsite consumption.
23. There shall be no self-service of spirits on the premises save for spirit mixtures less than 5.5.% ABV.
24. No super strength beer, lagers, cider or spirit mixtures of 5.5% ABV or above shall be sold at the premises, save for premium brands.
25. The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a retail shop and delicatessen.
26. Alcohol consumed outside the premises building shall only be consumed by patrons seated at tables.
27. The licence holder shall ensure that there will be no obstruction of the public highway from patrons and/or furniture from the premises.
28. No fumes, steam or odours shall be emitted from the licensed premises so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated.
29. 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.
30. 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. If there are minor changes during the course of construction new plans shall be submitted with the application to remove this condition.
31. All tills shall automatically prompt staff to refuse an alcohol sale outside the hours permitted for the supply of alcohol.

5 SWEATY BETTY, 1-2 CARNABY STREET, W1

LICENSING SUB-COMMITTEE No. 5

Thursday 15 February 2018

Membership: Councillor Peter Freeman (Chairman), Councillor Heather Acton and Councillor Shamim Talukder

Legal Adviser: Horatio Chance

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

Presenting Officer: Yolanda Wade

Relevant Representations: Licensing Authority, 1 Ward Councillor and 3 x residents/residents' associations.

Present: Mr Alun Thomas (Solicitor, representing the Applicant), Ms Georgie Snelling (Senior Retail Operations Manager, Applicant Company), Mr David Sycamore (Licensing Authority) and Mr David Gleeson (The Soho Society).

Sweaty Betty, 1-2 Carnaby Street, W1 17/14852/LIPN ("The Premises")	
1.	Sale by retail of alcohol (On)
	Monday to Saturday: 10:00 to 20:00 Sunday: 12:00 to 20:00
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): The Sub-Committee heard from Mr Thomas and Ms Snelling. They stated that Sweaty Betty had been operating at 1-2 Carnaby Street for 15 years. Sweaty Betty is a retailer specialising in women's activewear. There is an exercise studio in the basement, a retail shop on the ground floor and a café and blow dry salon on the first floor area of the Premises. On sales were sought for the first floor café only where customers were seated. It was submitted that due to the configuration of the Premises it was not possible to obtain the sale of alcohol directly from the street. Residents' representations had referred to the sale of alcohol being at odds with the Applicant promoting a healthy lifestyle. The Applicant wished to address this specific point. Ms Snelling stated that the concept was that customers might want to do an energetic workout and then have the ability to enjoy a cocktail (there were a maximum of four types sold), a glass of red or white wine or a glass of champagne. The cocktails on offer would include Quinoa vodka which was based around healthy eating and would resemble more of a smoothie type drink. Drinking would be encouraged in moderation. Alcohol sales would be estimated to be around one or two per cent of the turnover. Mr Thomas commented that the health aspect was not a matter for the Sub-Committee to consider as it was not a licensing objective. The sale of alcohol was however an ancillary part of the offer and significant levels of drinking would not be tolerated because the Applicant's main business was that of a sports fashion retailer. Mr Thomas said that the Applicant had written to the residents who had submitted representations objecting to the application and a meeting had been

organised to discuss the application. Two of the residents who had made representations and had attended the meeting had decided to withdraw the representations following this meeting. Environmental Health and the Metropolitan Police had also withdrawn their representations.

Additional points made by residents in their representations which Mr Thomas wished to respond to included that the application would change the nature and character of the street. Mr Thomas explained that this was disputed by Shaftesbury, the landlord, on the basis they would ensure that Carnaby Street would remain a retail street. Mr Thomas also explained that the Applicant did not accept the point that the application would cause public nuisance or crime and disorder. There would be the necessary security and CCTV on the Shaftesbury estate which assisted in keeping people safe that would promote the licensing objectives.

Mr Thomas expressed the view that the application was completely policy compliant. The Applicant was, in terms of the Council's policy, seeking to establish a bar as the sale of alcohol was not strictly ancillary to a table meal. However, Mr Thomas in his submissions to the Sub-Committee attempted to deal with the policy considerations regarding the application and quoted paragraph 2.4.20 of the City Council's Statement of Licensing Policy ('the SLP') that 'the availability of alcohol at lunchtime or in the early evening in Premises where alcohol is ancillary to other uses of the Premises and not associated with sustained or high alcohol consumption to later hours may not be likely to add to cumulative impact in the cumulative impact area'. Mr Thomas added that this was relevant in terms of alcohol being ancillary to the retail use and in terms of the hours sought with the terminal hour being 20:00.

Mr Thomas also believed paragraph 2.4.21 of the SLP was relevant as it set out reasons as to how an application was unlikely to add to cumulative impact. One of the criteria was that an application for on sales needed to be 'appropriately conditioned so that the consumption of alcohol is not, and cannot become a significant part of the operation of the Premises and is regulated to promote responsible drinking'. He was of the view that this was achieved with on sales being restricted to the first floor of the Premises. Mr Thomas also took the view that the application complied as 'the character of the premises is such that its customers are not likely to be involved in sustained or heavy drinking at later hours' and in terms of the sale of alcohol not 'being permitted beyond 20.00 hours'.

Mr Thomas also referred to paragraph 2.4.22 of the SLP in terms of 'examples of appropriate conditions to ensure that alcohol consumption is appropriately regulated may include conditions that (i) only permit the sale of alcohol ancillary to the provision of food, or ancillary to other activities at the premises, or to the operation of the premises as a whole'. Mr Thomas referred to the application being ancillary to the retail use. Secondly, it was required that service of alcohol would be only by waiter or waitress to seated persons. Thirdly, the licensed area would remain under the management of the Premises licence holder with the licence being limited to their personal use. In this case the Applicant had offered that the sale of alcohol on the Premises would at all times be ancillary to the main use of the Premises as the Sweaty Betty retail shop. Fourthly, it was

required that the consumption of alcohol would be restricted to an area which is an integral part of the Premises with access to that area only through the Premises and with no direct access to the street. Mr Thomas commented that all the relevant tests had been satisfied and met in terms of paragraphs 2.4.20 to 2.4.22 of the SLP.

Mr Thomas advised that there had been discussions with Environmental Health regarding the proposed conditions in the event the Sub-Committee was minded to grant the application and it had been agreed that proposed condition 15 should be amended to the number of persons permitted on the first floor at any one time (excluding staff) should not exceed 60 persons.

The Sub-Committee heard from Mr Sycamore on behalf of the Licensing Authority. He was of the view that the Applicant had moved away from proposing a public bar and towards being more in keeping with the terms of the SLP. The supply of alcohol was intended to be ancillary to the retail use, it would only be served by waiter or waitress to seated customers. Condition 16 had been put forward by the Applicant that 'the sale of alcohol on the Premises shall at all times be ancillary to the main use of the Premises as the Sweaty Betty retail shop'. This would mean that the Premises licence would have to be varied before it could be operated by another licence holder.

Mr Sycamore stated that the matter he believed needed to be assessed by the Sub-Committee was whether the conditions provided sufficiently tight controls to ensure that alcohol could not become a predominant part of the business. It was not required that alcohol was ancillary to food and it could be consumed up until 20:00 hours. He did take the view that Mr Thomas had addressed many of the concerns and it was a well-conditioned premises licence that would ultimately promote the licensing objectives.

The Sub-Committee also heard from Mr Gleeson on behalf of the Soho Society. He said that the Applicant had been quite clear about the sale of alcohol being ancillary to the premises' use as a shop. The application was within Core Hours and some residents had withdrawn their representations. Mr Gleeson confirmed that the Chair of the Soho Society had attended the meeting organised by the Applicant and had appeared to be satisfied with the application. However, having reviewed the application the Soho Society was concerned about a retail premises applying for an alcohol licence. There could be up to 60 people buying alcohol on the Premises.

In response to questions from Mr Wroe, Mr Thomas clarified that there was an external terrace area in existence and it was being proposed as part of the application that alcohol could be consumed at the three tables with two chairs each. He also confirmed that the shop on the ground floor of the Premises was not part of the application.

In response to questions from the Sub-Committee, Mr Thomas stated that the external terrace had been used in 2017 when alcohol had not been sold and there had been no complaints received. Ms Snelling and Mr Thomas advised that there would be no off sales. Food was not being licensed as part of this application but Sweaty Betty and Farmgirl (who had a sub-lease for an area

within the property) would not be averse to the concept of using their best endeavours that any deliveries of food would be by sustainable means, such as walking, cycling or electric vehicles.

Mr Thomas emphasised that Environmental Health had suggested the capacity of 60 on the first floor. It was not anticipated that the maximum capacity of 60 would all be drinking alcohol. The Applicant had agreed the condition that there would be no advertising of bar facilities at or in the vicinity of the Premises so as to encourage members of the public directly from the street.

Mr Sycamore confirmed that a site visit had been undertaken by Environmental Health prior to Environmental Health withdrawing their representation.

The Sub-Committee, in reaching a decision, noted some residents' concerns about the mix of alcohol with fitness. The Sub-Committee was required under the Licensing Act 2003 to limit its considerations to the four licensing objectives and health is not one of these. The Sub-Committee decided that the Applicant complied sufficiently with paragraphs 2.4.20 to 2.4.22 of the SLP and there were sufficient conditions attached to the licence for the application to promote the licensing objectives and not add to cumulative impact in the West End Cumulative Impact Area. The sale of alcohol would not be ancillary to food. However, it was intended that the sale of alcohol would be ancillary to the retail use. The service of alcohol would be only by waiter or waitress to seated persons. The licensed area would remain under the management of the premises licence holder with the licence being limited to their personal use. The Applicant had offered that the sale of alcohol on the Premises would at all times be ancillary to the main use of the premises as the Sweaty Betty retail shop. The consumption of alcohol would be restricted to an area which is an integral part of the Premises with access to that area only through the Premises and with no direct access to the street. Significantly the sale of alcohol would not be permitted beyond 20:00 hours.

The Applicant had agreed a condition that there would be no advertising of bar facilities at or in the vicinity of the Premises, which is less likely to give the impression that the Premises was just another drinking establishment amongst the many parade of shops on Carnaby Street. The Applicant had also advised that the range of alcoholic drinks would be limited and based around healthy eating and that alcohol sales would be a very low percentage of turnover.

It was agreed by the Applicant that an amended set of plans would be provided to the Licensing Service which included the ground floor area of the Premises.

The Sub-Committee considers that the conditions imposed on the Premises Licence are appropriate and proportionate that will promote the licensing objectives

2. Hours premises are open to the public
Monday to Sunday: 08:00 to 20:00

	<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>Granted, subject to conditions as set out below.</p>

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.

Additional Conditions

9. 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.

10. Loudspeakers shall not be located in the entrance lobby or outside the premises building.

11. 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.

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 are open to the public. This staff member shall be able to show Police recent data or footage with the absolute minimum of delay when requested.

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

15. The number of persons permitted on the first floor at any one time (excluding staff) shall not exceed 60 persons.

16. The sale of alcohol on the premises shall at all times be ancillary to the main

use of the premises as the Sweaty Betty retail shop.

17. The supply of alcohol on the premises shall be by waiter or waitress service only to persons seated at tables or seated at the servery.
18. The sale and consumption of alcohol will be limited to the first floor and terrace as edged red and shown on the plans.
19. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold for consumption on the premises.
20. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
21. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23:00 hours and 07:00 hours on the following day.
22. No deliveries to the premises relating to the licensed activities shall take place between 23:00 and 07:00 on the following day.
23. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23:00 and 07:00 on the following day.
24. A Challenge 25 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.
25. There shall be no draught beer available on the premises.
26. No alcohol shall be taken from the premises.
27. There will be no sale of alcohol until the works have been assessed as satisfactory by the Environmental Health Consultation Team and this condition has been removed from the licence.
28. The licensed area shall at all times remain under the management of Sweaty Betty Ltd and the licence is limited to their personal use only.
29. 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, which 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 or searching equipment or scanning

- equipment
- g) Any refusal of the sale of alcohol
- h) Any visit by a relevant authority or emergency service

- 30. There shall be no advertising of bar facilities at or in the vicinity of the premises.
- 31. 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.
- 32. 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.
- 33. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.
- 34. All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.
- 35. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.

6 DORSET CAFE, DORSET HOUSE, BASEMENT AND GROUND FLOOR, 27 MELCOMBE STREET, NW1

LICENSING SUB-COMMITTEE No. 5
Thursday 15 February 2018

Membership: Councillor Peter Freeman (Chairman), Councillor Heather Acton and Councillor Shamim Talukder

Legal Adviser: Horatio Chance
 Policy Adviser: Chris Wroe
 Committee Officer: Jonathan Deacon
 Presenting Officer: Yolanda Wade

Relevant Representations: Environmental Health and 4 x residents.

Present: Mr Robert Botkai (Solicitor, representing the Applicant), Mr Abdul Harmal (Designated Premises Supervisor) and Mr Ian Watson (Environmental Health).

**Dorset Café, Dorset House, Basement and Ground Floor, 27 Melcombe Street, NW1 (“The Premises”)
 17/14501/LIPN**

1.	Sale by retail of alcohol (On)

	<p>Monday to Saturday: 11:00 to 22:00 Sunday: 12:00 to 22:00</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 heard from Mr Botkai, representing the Applicant. He stated that the café/restaurant sells quality Moroccan food at an affordable price. It is not located in one of the Council's designated cumulative impact areas and the proposed hours of operation are within the Council's Core Hours policy. Mr Botkai clarified that the Applicant had offered the Council's model restaurant condition, MC66, so that alcohol would be ancillary to a substantial table meal at the Premises.</p> <p>Mr Botkai referred to the Applicant sending an invitation to Environmental Health and the residents who had submitted representations objecting to the application in order to discuss the application at a meeting in January. The Sub-Committee was advised that this had been attended by Mr Dave Nevitt for Environmental Health and two local residents. The two local residents, represented by Mr Richard Brown, Solicitor at the Citizens Advice Bureau Licensing Advice Project, had had concerns about the use of the outside area. Mr Botkai advised the Sub-Committee that tables and chairs were already located in the outside area and they were not causing an obstruction. It had been agreed to render the outside tables and chairs unusable by 22:15 each day and that there would be no take away service of food or drink after 22:00. The two local residents had subsequently withdrawn their representations.</p> <p>Mr Botkai addressed the Sub-Committee on the representations from local residents which had not been withdrawn. He said that the Premises would not be a bar (it would be a case of offering a glass of wine ancillary to a meal) and there had never been any problems with drug dealing or football supporters there. The Police had not expressed concerns about the potential for crime and disorder as they had not made a representation.</p> <p>The Sub-Committee heard from Mr Watson on behalf of Environmental Health. He made the point that the representations received from residents had not set out any specific issues with the current operation of the Premises. He advised that the Moroccan café/restaurant had not received any recorded complaints over the five years it had been operated by the Applicant. He doubted whether it was likely that granting on sales at the Premises would result in residents being adversely affected. The Applicant had offered MC66 and the Council's policy is that restaurants are not generally associated with crime and disorder.</p> <p>The Sub-Committee asked the representatives of the Applicant some questions including whether there would be a food delivery service in relation to this application. Mr Harmal and Mr Botkai replied that there was an existing delivery</p>

	<p>service from the Premises and it had not led to any complaints. They also clarified that shisha would not be provided at the Premises.</p> <p>The Sub-Committee granted the application, considering that the application would promote the licensing objectives. This decision took into account that the Premises would operate as a restaurant where alcohol would be ancillary to a substantial table meal and that the premises would close at 22:00 hours. The application would not add to cumulative impact as the restaurant is located outside the designated cumulative impact areas.</p> <p>The Sub-Committee noted local residents' concerns but did not believe that the operation of the restaurant in the event of the application being granted, including the use of the outside area, would add to public nuisance or cause any problems in the locality in respect of beggars, drunks, drug dealing or football supporters.</p>				
2.	Hours premises are open to the public				
	<table> <tr> <td>Monday to Saturday:</td> <td>07:00 to 22:00</td> </tr> <tr> <td>Sunday:</td> <td>08:00 to 22:00</td> </tr> </table>	Monday to Saturday:	07:00 to 22:00	Sunday:	08:00 to 22:00
Monday to Saturday:	07:00 to 22:00				
Sunday:	08:00 to 22:00				
	<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>Granted, subject to conditions as set out below.</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 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.

Additional Conditions

9. 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.

10. 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.

11. All outside tables and chairs shall be rendered unusable by 22:15 each day.
12. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
13. 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.
14. A Challenge 21 or Challenge 25 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.
15. 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.
16. The premises 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 drink for immediate consumption,
 - (v) which do not provide any take away service of food or drink after 2200, 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.

Notwithstanding this condition, customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.

17. The sale and supply of alcohol for consumption outside of the premises

building shall be restricted to alcohol consumed at the outside tables and chairs shown on the licence plan, shall be by waiter or waitress service, served only to a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal.

18. Customers permitted to temporarily leave and then re-enter the premises building e.g. to smoke, shall not be permitted to take drinks or glass containers with them.
19. 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.
20. No take away service of food or drink after 22:00