



CITY OF WESTMINSTER

# MINUTES

## Licensing Sub-Committee (4)

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (4)** Committee held on **Thursday 3rd July, 2014**, Rooms 5, 6 & 7 - 17th Floor, City Hall.

**Members Present:** Councillors Jean Paul Floru (Chairman), Rita Begum and Jan Prendergast

#### 1 MEMBERSHIP

There were no changes to the membership.

#### 2 DECLARATIONS OF INTEREST

There were no declarations of interest.

#### 3 LICENSING APPLICATIONS

##### LICENSING SUB-COMMITTEE No. 4

*Thursday 3 July 2014*

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Jan Prendergast and Councillor Rita Begum

Legal Adviser: Kirsten Chohan  
Policy Adviser: Chris Wroe  
Committee Officer: Jonathan Deacon

Relevant Representations: Environmental Health Service and 10 residents.

Present: Mr Richard Arnot (Solicitor, representing the Applicant), Mr Adnan Naqvi (Local Operations Manager, Applicant Company), Mr Ian Watson (Environmental Health), Mr Richard Brown (Citizens Advice Bureau Licensing Advice Project – on behalf of local residents Ms Gabriella Jeffries and Ms Jane El-Khazen (Ms Jeffries and Ms El-Khazen also in attendance)) and Ms Dorothea Josem (representing local resident Mr Cyril Benjamin).

**Co-operative Food, 18-22 Park Road, NW1  
14/03669/LIPN**

**1. Sale of Alcohol: Off Sales**

Monday to Saturday 08:00 to 23:00  
Sunday 10:00 to 22:30.

Amendments to application advised at hearing:  
  
None.

Decision (including reasons if different from those set out in report):

The Sub-Committee initially heard from Mr Arnot. He stated that it was intended that the premises would be a Co-Operative convenience store selling a range of items. If the application for off-sales was granted, alcohol would be approximately 15% of turnover. The store would not be a dedicated off-licence. Mr Arnot referred to the Applicant company trading guide, including the training for new staff, to ensure that the licensing objectives were complied with. Other measures the Applicant company would be taking to comply included the installation of CCTV cameras, age prompt tills, beers and wines being located furthest from the entrance and spirits kept behind a counter. There would be three personal licence holders for the store. The proposed hours requested were in keeping with the Council's Core Hours policy.

Mr Arnot explained that discussions had taken place with the Metropolitan Police, his client had reached an agreement with them regarding conditions and the Police had withdrawn their representation. A number of conditions had been agreed with Environmental Health although there was one Environmental Health had proposed that Mr Arnot informed the Sub-Committee he was not willing to agree. This related to deliveries as Mr Arnot did not believe that general deliveries such as milk, bread and eggs which did not involve alcohol should be restricted. He had submitted counsel's advice on this subject which had been included in the report. He added that deliveries would be to the rear of the premises.

Turning to the residential objections, Mr Arnot stated that there was no evidence that his client would not be able to promote the licensing objectives. The store would be a purpose built shop designed to accommodate deliveries and customers going in and out. The shop was intended to prevent noise emanating from it with solid concrete floors and would not adversely affect residents in the flats above it. Mr Arnot commented that the Applicant Company would oversee the outside area in order to prevent drinking outside. A condition had been agreed with the Metropolitan Police limiting sales of alcohol prior to football matches at Wembley Stadium. In response to a residential representation that there is a school located across the road, Mr Arnot made the point that there would be a Challenge 25 policy in operation at 18-22 Park Road.

The Chairman stated that the Sub-Committee did invariably condition deliveries to supermarkets in order to prevent public nuisance. He asked whether the Applicant was willing to consider limiting delivery times. Mr Arnot replied that it would be wrong to condition deliveries generally where alcohol was not involved. However, if it was a major factor in the Sub-Committee's decision making he would be willing to discuss a delivery time in the morning and evening.

Mr Watson confirmed Mr Arnot's points that he had agreed the majority of the proposed conditions with the Applicant and had no issues with the hours that were Core Hours. The one particular condition which had not been agreed was in respect of deliveries. Due to the Applicant's reluctance to agree a condition regarding deliveries, it had been decided that this would be a matter that would be raised at the Sub-Committee hearing. Mr Watson advised Members that the plans provided did not show the delivery area very clearly. There was a dedicated delivery yard area which was covered, limiting the potential for noise nuisance from deliveries as they took place. The concerns related to bedrooms overlooking the yard and possible disturbance from the access and egress of vehicles. The plans did not show residential flats in relation to the delivery yard. Mr Watson was asked about rubbish collections. Mr Arnot informed the Sub-Committee that there were no rubbish collections from the street. Rubbish was kept within the store and then taken to the depot.

Mr Brown addressed the Sub-Committee on behalf of local residents. He made the point that there were ten representations objecting to the application and eight of these were from residents living in the block above where the store would be situated. There were a further two from Clarence Terrace behind the premises. Residents' rooms, including bedrooms did overlook the rear of the premises. A key concern of residents was the proposed hours for the sale of alcohol which it was felt would considerably increase the risk of loitering. Mr Brown added that some areas in Westminster had greater problems with street drinking than others. This area was not currently similar to Victoria and residents did not want it to become a problem area. The area around the entrance to 24 Park Road would be attractive as a covered area for beggars and vagrants. Mr Brown stated that there were three particular concerns in terms of the potential for noise. Firstly, as a result of the increased footfall. Secondly, noise transmission from customers inside and outside the premises. It was residents' experience that noise travelled very easily through the building because of the nature of the construction. Mr Brown requested that the Sub-Committee consider attaching to the licence the Council's model condition regarding no noise being permitted to emanate or vibrate through the building if the application was granted. The third related to deliveries. Mr Brown was of the view that general deliveries could be conditioned. Ancillary matters such as smoking which were connected to the premises were conditioned at Sub-Committee hearings in order to prevent public nuisance. Mr Brown also requested that the Council's model condition in respect of removing and prevent litter was attached to the premises licence if granted. Residents preferred that the application was not granted but if it was they were asking that the hours permitted were reduced from those applied for and deliveries were not permitted before 08:00 hours.

The Sub-Committee also heard from Ms Jeffries and Ms El-Khazen. They

described the problem with the lack of insulation in the residential flats which meant that they could hear noise from inside and outside the buildings. The point was made that the management of the residential blocks and the Crown Estate had insisted on restrictions on deliveries with none before 08:00 or after 17:00 hours. Clarence Terrace management could also add strict loading bay restrictions. There was a lack of space for deliveries at the front which was an area the buses use and restrictions on the rear. Ms Jeffries and Ms El-Khazen expressed public safety concerns about departing from underground parking to the rear of the Co-op where delivery vehicles would be driven and where there was often congestion. They had also experienced previous issues from delivery vehicles leaving their engines running which had caused the building to vibrate. Their preference was that the store would operate from 08:00 to 20:00 hours Monday to Saturday and shorter hours on Sunday.

In response to a question from the Sub-Committee, Mr Arnot stated that his client would commit to ensuring that the necessary ceiling insulation was installed to prevent residents' experiencing public nuisance.

The Sub-Committee granted the application, subject to conditions as set out below. Members considered that with the conditions attached to the licence and the measures being taken by the Applicant the application, in particular the sale of alcohol at the store for the hours applied for, would not undermine the licensing objectives. The conditions attached to the premises by the Sub-Committee took into account local residents' concerns. These included the Council's model conditions requested by Mr Brown on behalf of his clients that no noise be permitted to emanate or vibrate through the building and the removal or prevention of litter. Also in keeping with the concerns of the residents, delivery vehicles would not be permitted to leave their engines running whilst waiting to enter the delivery area. Collections and deliveries would have to take place at a specific location within the yard marked 'x' on the plan.

**2. Opening Hours:**

Monday to Sunday 07:00 to 23:00.

Amendments to application advised at hearing:

None.

Decision (including reasons if different from those set out in report):

Granted, subject to conditions as set out below.

## Conditions attached to the Licence

### **Mandatory Conditions**

1. 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.
2.
  - (1) 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.
  - (2) For the purposes of the condition set out in paragraph 9 (1)–
    - (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979 (a)
    - (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 (b)

(3) Where the permitted price given by Paragraph (b) of paragraph 9 (2) would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph rounded up to the nearest penny.

(4) (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 9 (2) 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.

3. No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
4. 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.
5. Every supply of alcohol under this licence must be made or authorised by a person who hold a personal licence.
6. (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.  
  
(2) 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 a holographic mark.

### **Additional Conditions**

7. 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 28 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 28 day period.
8. 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.

9. All tills shall automatically prompt staff to ask for age verification identification when presented with an alcohol sale.
10. The licence holder shall ensure that outside of the hours authorised for the sale of alcohol and whilst the premises are open to the public, all alcohol within the trading area is to be secured behind locked grills, locked screens or locked cabinet doors so as to prevent access to the alcohol by both customers and staff.
11. No super-strength beer, lagers, ciders or spirit mixtures of 5.5% ABV (alcohol by volume) or above shall be sold at the premises.
12. No single cans or bottles of beer or cider or spirit mixtures shall be sold at the premises.
13. 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.
14. There shall be no self service of spirits on the premises, save for spirit mixtures less than 5.5% ABV.
15. Prominent signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises, where alcohol is on public display, and at the point of sale.
16. Prior to any football match taking place at Wembley Stadium the premises licence holder shall ensure that;
  - (i) Alcohol sales in respect of cans of beer or cider are limited to no more than 4 cans per person for a minimum of four hours before the commencement of the relevant designated sporting event;
  - (ii) No sales of alcohol in bottles or glass containers are made in the period four hours before the commencement of the designated sporting event
  - (iii) On any day where there is a relevant designated sporting event taking place, the premises will not externally advertise as a result of a local store promotion the availability of beer or cider in such a way as to be likely to be the sole inducement to attract persons to the premises who are either attending the designated sporting event or in the vicinity of the premises as a result of the designated sporting event;
  - (iv) All members of staff working at the premises are informed of this condition prior to taking up employment;
  - (v) On the day of the relevant designated sporting event, upon the direction of a police officer of the rank of Inspector or above, using the grounds of the prevention of crime and disorder or public safety, the premises will immediately cease to sell alcohol until further directed by the police or until the relevant designated sporting event has finished.

17. There shall be "CCTV in Operation" signs prominently displayed at the premises.
18. An incident log (whether kept in a written or electronic form) shall be retained at the premises and made available to an authorised Officer of the Police or the Local Authority.
19. The premises shall operate a proof of age scheme, such as a Challenge 25, whereby the only forms of acceptable identification shall be either a photographic driving licence, a valid passport, military identification or any other recognised form of photographic identification incorporating the PASS logo, or any other form of identification from time to time approved by the secretary of the state.
20. The premises will be fitted with a burglar alarm system.
21. The premises will be fitted with a panic button system for staff to utilise in the case of an emergency.
22. The premises licence holder shall ensure that the appropriate fire safety, and health and safety regulations are applied at the premises.
23. A complaints procedure will be maintained, details of which will be made available in store and upon request.
24. A refusals register (whether kept and written or electronic form) will be maintained at the premises and will be made available for inspection upon request by an authorised Officer of the Police or the Local Authority.
25. All relevant staff will receive training in their responsibilities under the Licensing Act 2003 and Challenge 25 (or any similar scheme). Refresher training will be given twice a year and training records made available to the Police or an authorised officer of the Licensing Authority.
26. Tills will be installed at the premises which prompt staff to request age verification from customers who appear to be under the age of 25 (or any other age should Challenge 25 be replaced by a similar scheme).
27. All deliveries and collections to take place at the rear of the property marked 'x' on the plan.
28. All deliveries and collections to take place between 08:00 and 23:00 hours.
29. All refuse to be collected inside the premises and to be picked up from the area marked 'x' on the plan.
30. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
31. Delivery vehicles will not be permitted to leave their engines running whilst waiting to enter the delivery area.



32. 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.

**LICENSING SUB-COMMITTEE No. 4**

*Thursday 3 July 2014*

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Jan Prendergast and Councillor Rita Begum

Legal Adviser: Kirsten Chohan  
 Policy Adviser: Chris Wroe  
 Committee Officer: Jonathan Deacon

Relevant Representations: 6 local residents.

Present: Ms Lana Tricker (Solicitor, representing the Applicant) and Mr Andreas Labridis (Applicant Company).

<b>Opso, 10 Paddington Street, W1 14/03471/LIPV</b>	
<b>1.</b>	<b>Sale of Alcohol: On and Off the premises</b>
	To increase the commencement hour for the sale of alcohol for consumption on and off the premises on Sunday from 12:00 to 10:00.
	Amendments to application advised at hearing:  None.
	Decision (including reasons if different from those set out in report):  The premises operate as a Greek style café/restaurant. The Applicant sought to increase the commencement hour for the sale of alcohol for consumption on and off the premises on Sunday from 12:00 to 10:00 and vary the layout of the premises.  The Sub-Committee granted the application, subject to conditions as set out below. The proposed hours for on-sales on Sundays were prior to the Council's Core Hours policy. The application was therefore to be considered on its merits, subject to other relevant policies and with regard to the licensing objectives. The Sub-Committee in granting the application took the view that the application

	<p>complied with the relevant policies and promoted the licensing objectives. Members noted that the Police and Environmental Health had withdrawn their representations. The Environmental Health Officer in withdrawing her representation by e-mail advised, as stated by Ms Tricker at the hearing, that the works had been completed and there was no need to add any works conditions to the plans. She stated that Environmental Health had not had issues with the premises and Opso is not in one of the Council's designated stress areas.</p> <p>There were representations from six local residents submitted objecting to the application. A particular concern of residents in terms of potential public nuisance had been that tables and chairs would be dragged across the forecourt prior to the 08:00 opening hour when the Applicant wished to provide breakfast (without alcohol or other licensable activities being provided). Many of the residents had requested that furniture was not put outside Opso until 09:00 each day, in keeping with the arrangement with Carluccio's restaurant in Paddington Street. Members noted that the Applicant had addressed these residents' concerns in proposing a condition that all outside tables and chairs would be rendered unusable between 23:00 and 09:00 the following day. This was subsequently attached to the licence by the Sub-Committee.</p> <p>The Sub-Committee also took into account that the Applicant had proposed other conditions to prevent public nuisance, including staff managing patrons drinking and/or smoking outside the premises and notices being prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.</p>
<b>2.</b>	<b>No Standard Timings</b>
	<p><b>Sale of Alcohol for consumption on and off the premises and opening hours</b></p> <p>From the end of permitted hours on New Year's Eve to the start of 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>These hours were currently permitted under the existing licence. Therefore, there was no need for the Sub-Committee to consider this activity.</p>
<b>3.</b>	<b>Change of Layout</b>
	<p>To vary the layout of the premises in accordance to the schedule of changes detailed at Appendix A3 and plans submitted at Appendix A4.</p>
	<p>Amendments to application advised at hearing:</p>

	None.
	Decision (including reasons if different from those set out in report):  Granted, subject to conditions as set out below.
<b>4.</b>	<b>Opening Hours</b>
	To increase the opening hours Monday to Saturday from 10:00 to 08:00 and on Sunday from 12:00 to 08:00.
	Amendments to application advised at hearing:  None.
	Decision (including reasons if different from those set out in report):  Granted, subject to conditions as set out below.

**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 shall take all reasonable steps to 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 in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children'

- (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 (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);
- (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;
- (d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on'
  - (i) the outcome of a race, competition or other event or process, or
  - (ii) the likelihood of anything occurring or not occurring;
- (e) 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.

5. The responsible person shall ensure that no alcohol is dispensed 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).

6. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

7. (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

(2) 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 a

holographic mark.

8. The responsible person shall 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; and
  - (b) customers are made aware of the availability of these measures.

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.

#### **Additional Conditions**

9. Alcohol shall not be sold, supplied, consumed in or taken from the premises except during permitted hours.

In this condition, permitted hours means:

- (a) On weekdays, other than Christmas Day, Good Friday or New Year's Eve, 10:00 to 23:00;
- (b) On Sundays, other than Christmas Day or New Year's Eve, 10:00 to 22:30;
- (c) On Good Friday, 12:00 to 22:30;
- (d) On Christmas Day, 12:00 to 15:00 and 19:00 to 22:30;
- (e) On New Year's Eve, except on a Sunday, 10:00 to 23:00;
- (f) On New Year's Eve on a Sunday, 10:00 to 22:30;
- (g) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).

NOTE - The above restrictions do not prohibit:

- (a) during the first twenty minutes after the above hours the consumption of the alcohol on the premises;
- (b) during the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
- (c) during the first thirty minutes after the above hours the consumption of

- the alcohol on the premises by persons taking table meals there if the alcohol was supplied for consumption as ancillary to the meals;
- (d) the sale or supply of alcohol to or the consumption of alcohol by any person residing in the licensed premises;
  - (e) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
  - (f) the sale of alcohol to a trader or registered club for the purposes of the trade or club;
  - (g) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;
  - (h) the taking of alcohol from the premises by a person residing there;
  - (i) the supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied;
  - (j) the supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

In this condition, any reference to a person residing in the premises shall be construed as including a person not residing there but carrying on or in charge of the business on the premises.

10. No person under fourteen shall be in the bar of the licensed premises during the permitted hours unless one of the following applies:
- (a) He is the child of the holder of the premises licence.
  - (b) He resides in the premises, but is not employed there.
  - (c) He is in the bar solely for the purpose of passing to or from some part of the premises which is not a bar and to or from which there is no other convenient means of access or egress.
  - (d) The bar is in railway refreshment rooms or other premises constructed, fitted and intended to be used bona fide for any purpose to which the holding of the licence is ancillary.

In this condition "bar" includes any place exclusively or mainly used for the consumption of intoxicating liquor. But an area is not a bar when it is usual for it to be, and it is, set apart for the service of table meals and alcohol is only sold or supplied to persons as an ancillary to their table meals.

11. The terminal hour for late night refreshment on New Year's Eve is extended to 05:00 on New Year's Day.
12. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
13. All outside tables and chairs outside the premises shall be rendered unusable

between 23.00 and 09.00 each day.

14. The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.
15. The number of persons permitted in the premises at any one time (excluding staff), shall not exceed 120 persons with no more than 60 persons (excluding staff) permitted in the basement at any one time

**The following new mandatory condition which came into effect on 28 May 2014 will be added to the licence following the determination of this application**

- A. (1) 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.
- (2) For the purposes of the condition set out in paragraph 9 (1)–
- (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979 (a)
  - (b) “permitted price” is the price found by applying the formula–

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

where –

- (iv) P is the permitted price,
  - (v) 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
  - (vi) 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–
- (iv) the holder of the premises licence,
  - (v) the designated premises supervisor (if any) in respect of such a licence, or
  - (vi) 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 (b)
- (3) Where the permitted price given by Paragraph (b) of paragraph 9 (2) would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph rounded up to the nearest penny.
- (4) (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 9 (2) 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.

#### **LICENSING SUB-COMMITTEE No. 4**

*Thursday 3 July 2014*

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Jan Prendergast and Councillor Rita Begum

Legal Adviser: Kirsten Chohan  
Policy Adviser: Chris Wroe  
Committee Officer: Jonathan Deacon

Relevant Representations: Environmental Health, Licensing Authority and 17 residents.

Present: Mr Michael Bromley-Martin QC (Representing the Applicant), Ms Lana Tricker (Solicitor, on behalf of the Applicant), Mr David Serlui (Applicant Company), Mr Richard Traviss (Consultant), Ms Olga Kaziukoniene (House Mother), Mr Matthew Willey (local resident, acting as witness for Applicant), Mr Ian Watson (Environmental Health), Mr Steve Rowe (Licensing Authority), Mr Martin McVitie (Licensing Inspector), Objector 8 (represented by Ms Susanna FitzGerald QC), Objector 13 and Objector 16.

**91 Club With Abracadabra Restaurant, 6-7 Ormond Yard, SW1  
14/02824/LISEVN**

#### **Application:**

An application for a new sexual entertainment venue premises licence to provide full nudity by way of striptease, pole dancing and table dancing between the opening



hours of 12:00 noon and 03:30 on each of the days Monday to Sunday.

Amendments to application advised at hearing:

None.

Decision (including reasons if different from those set out in report):

The Sub-Committee initially heard from Mr Bromley-Martin QC. He advised the Sub-Committee that currently Abracadabra is the restaurant on the ground floor and Hide is the nightclub in the basement. The basement would be the area for sexual entertainment if the application was granted and would be known as Club 91 due to it being located in 91 Jermyn Street. The existing premises licence under the Licensing Act 2003 permits entertainment until 03:30 Monday to Sunday and the sale of alcohol until 03:00 Monday to Saturday. The hours proposed for sexual entertainment were designed to match the hours on the existing premises licence. Mr Bromley-Martin stated that it was proposed that the overall capacity would be reduced from 235 to 200 people. The Ground Floor capacity was being reduced from 135 to 100 whilst the basement capacity remained at 100.

Mr Bromley-Martin made the point that a Sexual Entertainment Venue ('SEV') licence had less impact on the locality than a nightclub operation, including the nightclub that was currently in existence at the premises. In addition to there being a reduction in numbers, there would be a different clientele for a SEV establishment. Conditions had been agreed with the Licensing Authority, Environmental Health and the Police. Objections were in the main from residents in Ormond Yard. Mr Bromley-Martin explained that there was a misconception about the address of the premises. All customers, staff and performers would access the premises via 91 Jermyn Street. He asserted that there would be no impact on the residents in Ormond Yard. It was also the case that the premises to date had not impacted on those living in Ormond Yard. The Sub-Committee asked Mr Bromley-Martin about the location of the four star hostel. He replied that it was located on the first and third floors. It was clarified that the hostel had more in keeping with a hotel and was not for vulnerable people. Ms Tricker added that if the application was granted, the hostel's reception would be moving upstairs.

Mr Watson for Environmental Health informed the Sub-Committee that the entrance to the premises had historically been in Ormond Yard but since the nightclub operation access and egress had been via Jermyn Street. Mr Watson had no specific concerns regarding the public safety or prevention of public nuisance licensing objectives being undermined. He had proposed a works condition that the doors leading onto Ormond Yard were only used for emergency purposes after 19:00 hours. Noise attenuation works were sought by Environmental Health to doors to the private dining area in the basement (this area would become performers' facilities). Mr Watson confirmed that no noise complaints had been received in respect of the premises by the Council's Noise Team during the previous two years.

Mr Rowe addressed the Sub-Committee on behalf of the Licensing Authority. The conditions that the Applicant had agreed with the Responsible Authorities had gone some way to addressing his concerns. The Applicant had not applied to amend or disapply any of the standard conditions. Mr Rowe would be able to review whether the Applicant was able to comply with the standard conditions agreed to. He had maintained his representation in the event that the Sub-Committee wished to ask him any questions.

The Sub-Committee heard from Ms FitzGerald QC on behalf of Objector 8, a business in the area. She referred to photographs that had been taken of the premises and stated that the entry and exit would be the same for the hostel/guesthouse (catering for young people) as the SEV should the application be granted. Many of those using the hostel would be young women including late at night. Ms FitzGerald had submitted the case of Alistair Thompson vs Oxford City Council on behalf of her client as an example that SEVs can cause problems, particularly to women in the area. There were issues such as harassment which did not necessarily involve crimes having been committed. The premises had not opened yet so it was uncertain what the effect of a SEV would be at this location. As an operator of a similar business, her client fully appreciated how such a venue needed to be run. The implication from the application was that the operators did not have previous experience of running a SEV. She asserted that the Applicant's Code of Conduct was deficient. There was no dress code, including no stipulation that the performers would need to get dressed immediately after the performance. She did not believe that there was any reference in the Code to a number of scenarios. These included what would happen if a customer touched a performer, how explicit in terms of the style of the dancing were the performers permitted to be, what would happen if a customer started to undress and how would the performers or customers be supervised?

Ms FitzGerald stated that the area was inappropriate for a SEV. High end retail establishments were situated in Jermyn Street. This was a street with a high profile nationally and internationally. The fact that there were 2 other venues with SEV licences in the vicinity of the premises was not particularly relevant as the entrance to the venues of the other sex entertainment establishments were not in Jermyn Street. The entrance to 91 Club would be almost directly opposite a very important and major London church, that of St James's Church, Piccadilly. Ms FitzGerald added that the Council's SEV policy referred to the wish not to see a concentration of SEVs in a locality. This was not a suitable area to create a Soho creep of late night premises or a concentration of SEVs.

Objector 13 shared many of the concerns expressed by Ms FitzGerald. The primary concern was the location of a SEV in Jermyn Street, a conservation area and that there was an additional one being situated in St James's, a special policy area and a unique area. Objector 13 made the point that Jermyn Street contains some of the most important historical shop fronts in London and also St James's Church, Piccadilly which is the only church designed and built by Sir Christopher Wren outside the City of London. It was a focal point for community events.

Objector 16 agreed with the sentiment of Objector 13 regarding the importance of St James's Church, Piccadilly and the community atmosphere it evoked. The SEV was

proposed to be across the road from the Church. He also wished to emphasise that Ormond Yard was overwhelmingly a residential street with flats and family houses. There was a concern amongst residents about undesirable traffic through Ormond Yard. It was a concern that the application was for 6-7 Ormond Yard. Whilst it was being stated that Ormond Yard was not being used as the main entrance, this did not correlate with the history of the premises. He believed the restaurant was being advertised in Ormond Yard and queried whether this would be replaced by an advertisement for a SEV. He was of the view that the 2 SEVs already in the locality were in more commercial areas.

Mr Bromley-Martin responded to points that had been raised by the objectors. In response to Ms FitzGerald's comments he remarked that they were a clear commercial objection on behalf of her client. The four star hostel/hotel had provided a representation in support and there was no evidence of any vulnerable adults residing there. In terms of conditions relating to performers, there were a set of house rules, a set of standard conditions to be applied if the application was granted and additional conditions had been agreed with the Responsible Authorities. The business client of Ms FitzGerald was located nearer to a church than his client was. Any reference to a concentration of SEVs was unfounded, particularly as Scotch St James operated as a nightclub rather than a SEV (Mr Watson confirmed that Scotch St James had never operated as a SEV and Ms Tricker informed those present that the premises could not be operated as a SEV until a works condition on the licence was cleared by Environmental Health). Mr Bromley-Martin stated there was a similar concentration of SEVs to the north east and 91 Club was located in the North CAZ zone of Westminster. The Council had set a maximum of 25 SEVs and there were at present 21. Mr Bromley-Martin acknowledged that the premises were in a conservation area. The business had operated for many years in Jermyn Street without complaint. There had been no representation from St James's Church, Piccadilly to the current application. Conditions ensured that there would be no use of Ormond Yard, except for emergency purposes.

Mr Willey, a resident of Ormond Yard was called as a witness by the Applicant. He stated that Ormond Yard was generally very quiet. He had not known there was a nightclub at the premises until after he had moved in. The doors to the nightclub were always closed and there was no impact on Ormond Yard.

Having regard to both written and oral representations in relation to the impact on residential properties in and around Ormond Yard the Sub-Committee considered the application would not have an adverse impact on those properties, particularly as the entrance/ exit would be situated on Jermyn Street and Environmental Health had not received any noise complaints in respect of the premises and its current use during the previous two years.

Although the same entrance at 91 Jermyn Street would be used by the Applicant's staff, performers and clientele and hostel guests, there was no evidence given to substantiate that the hostel would be used by vulnerable people. The hostel also confirmed, via a late representation, that it was in support of the application.

Despite concerns being raised, the Sub-Committee had no concerns about the current operation of the premises as a nightclub and restaurant and had no reason to believe the Applicant would not be capable of running a SEV in accordance with

Council policy and conditions, particularly as the hours proposed were to match the existing premises licence.

However, having taken into account all the evidence from written representations and from those present at the hearing, the Sub-Committee decided to refuse the application.

In reaching this decision, the Sub-Committee particularly took into account Policy LO1 of the Council's Sexual Entertainment Venues Statement of Licensing Policy 2012, which refers to the character of the relevant locality. The Sub-Committee considered that it would be inappropriate, because of the effect that such an association would have on visitors and on the image of London and Westminster in particular, to locate a SEV in Jermyn Street which, as the objectors had stated, is a nationally and internationally renowned area with high profile retail shops. It was also the case that a church of historical significance and of great value to the community, St James's Church, Piccadilly was almost directly opposite from the entrance to 91 Jermyn Street which it was proposed would be used for the SEV.

Policy LO2 of the Council's SEV Statement of Licensing Policy is also relevant as it is stated in paragraph 2.4.17 that 'the Council considers that sexual entertainment venues, providing a particular type of entertainment for a particular adult clientele, may be inappropriate in the vicinity of other premises depending on their use. This may include premises in the vicinity used for religious worship ... [and]... may also include sex establishments and other premises providing sexual entertainment where the council considers it inappropriate to create a cluster of such premises'. Members of the Sub-Committee had given careful consideration to the points made by the Applicant. Whilst the Applicant's case that there were two SEVs in the nearby vicinity already (Scotch St James and The Gaslight of St James's) and the core CAZ North was a designated area for SEVs was accepted, the unique nature of Jermyn Street with a historic church of significance to the community meant that it was not appropriate for a SEV establishment. The Sub-Committee wished to avoid the potential for a concentration or clustering of SEVs forming in the immediate vicinity of Jermyn Street. The Chairman made the point at the hearing that Scotch St James and The Gaslight of St James's were different to 91 Club in that they are, more appropriately, located on side streets. They were nevertheless close to the applicant's premises and therefore had to be taken into account in deciding whether there was a clustering of premises in the immediate locality.

Policy NO1 of the Council's SEV Statement of Licensing Policy was also taken into consideration and the Sub-Committee had particular regard to paragraph 2.3.15 which provides as follows:

" Within the confines of policy NO1 and notwithstanding the maximum numbers the council considers appropriate for Westminster core CAZ north, the council will also consider, when determining any individual application for a licence to permit sexual entertainment, whether the number of sexual entertainment venues in the more immediate locality of the proposed venue is equal to or exceeds the number which the council considers appropriate for that more immediate locality".

The Applicant correctly stated the Council had set a maximum of 25 SEVs in the core CAZ north and there were at present 21 SEVs in that area. However, the Sub-

Committee did not think that it was appropriate to have a third SEV in the immediate locality, especially when the entrance to that SEV was going to be situated on Jermyn Street. It was noted that Scotch St James was not currently used as an SEV but it was licensed for such use which could not be ignored. It was also stated that there were concentrations of three or more SEVs elsewhere in the core CAZ north area, but they were in areas that were significantly different to the immediate area of the applicant's premises in Jermyn Street.

#### **4 ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT**

There were no urgent items of business.