



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 30th April, 2015**, Rooms 5, 6 & 7 - 17th Floor, City Hall.

Members Present: Councillors Jean Paul Floru (Chairman), Peter Freeman and Rita Begum

1 MEMBERSHIP

There were no changes to the Membership.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 BOUILLABAISSSE, BASEMENT AND GROUND FLOOR, 4 MILL STREET, W1

LICENSING SUB-COMMITTEE No. 4

Thursday 30th April 2015

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Peter Freeman and Councillor Rita Begum

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

Relevant Representations: 1 local resident.

Present: Mr Craig Baylis (Solicitor, representing the Applicant) and Mr Kurt Zdesar (Director, Applicant Company)

**Bouillabaisse, Basement And Ground Floor, 4 Mill Street, W1
15/01491/LIPV**

1. Sale of Alcohol: On the premises

| | | | | | |
|---|--|-------------|-----------|---|---|
| | <table border="0"> <tr> <td style="text-align: center;"><u>From</u></td> <td style="text-align: center;"><u>To</u></td> </tr> <tr> <td>Monday to Saturday: 10:00 to 00:00 Sunday 12:00 to 23:30</td> <td>Monday to Saturday: 08:00 to 00:00 Sunday 09:00 to 23:30</td> </tr> </table> | <u>From</u> | <u>To</u> | Monday to Saturday: 10:00 to 00:00 Sunday 12:00 to 23:30 | Monday to Saturday: 08:00 to 00:00 Sunday 09:00 to 23:30 |
| <u>From</u> | <u>To</u> | | | | |
| Monday to Saturday: 10:00 to 00:00 Sunday 12:00 to 23:30 | Monday to Saturday: 08:00 to 00:00 Sunday 09:00 to 23:30 | | | | |
| | <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>An application for a variation of the premises licence seeking an earlier commencement hour for the sale of alcohol for consumption on the premises of 08:00 Monday to Saturday and 09:00 on Sunday and to change the layout of the premises. The changing of the layout involved relocating the dispense bar to the back of the premises (Mr Baylis, representing the Applicant, advised that the restaurant space would be at the front) and installing new fixed seating on the ground floor, installing new fixed tables and fish tanks and refurbishing the kitchen areas in the basement and adding new office space in the basement.</p> <p>The Sub-Committee received one written representation from a local resident, Mr Murphy, who was requesting that on-sales commenced at 10:00 on Saturday and 11:00 on Sunday. He had particular concerns that the application could potentially lead to the prevention of crime and disorder and public nuisance licensing objectives being undermined. The commencement hours for on-sales on the existing licence were 10:00 Monday to Saturday and midday on Sunday. The Sub-Committee took into account however in granting the application that whilst there was loose seating on both the basement and ground floors, the Applicant would be required to comply with an existing condition on the licence that on-sales were ancillary to a table meal at all times, constituting a restaurant rather than a bar. Mr Baylis clarified that there was no intention to turn the premises into a bar and that alcohol was required earlier in the morning to accompany breakfast.</p> <p>The Sub-Committee considered that the conditions attached promoted the licensing objectives and Bouillabaisse was not located in a designated stress area so no policy presumptions applied. Environmental Health had withdrawn their representation following the Applicant's agreement to the capacity condition (condition 14 in the list of conditions set out below) that 'the number of persons accommodated at one time (excluding staff) shall not exceed; Basement – 30, with no more than 60 persons within the premises at any one time'</p> <p>Mr Baylis advised during the hearing that if the application was granted there would be a further variation to the layout plan which would be the subject of a variation application and would incorporate some additional WCs.</p> | | | | |
| 2. | Variation of layout | | | | |

| | |
|--|---|
| | <p>To change the layout of the premises</p> <ul style="list-style-type: none"> • relocate dispense bar on ground floor • install new fixed seating in ground floor • install new fixed table and fish tanks and refurbish kitchen areas in basement • add new office space in basement. |
| | <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 (see reasons for decision in Section 1).</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. Intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to his meal.
10. Suitable beverages other than intoxicating liquor (including drinking water) shall be equally available with or otherwise as an ancillary to meals served in the licensed area.
11. Alcohol may be sold or supplied:
- (a) On weekdays, other than Christmas Day, Good Friday or New Year's Eve from 10.00 to 00.00
 - (b) On Sundays, other than Christmas Day or New Year's Eve, and on Good Friday: 12.00 to 23:30
 - (c) On Christmas Day: 12.00 to 22.30
 - (d) On New Year's Eve, except on a Sunday, 10.00 to 23.00
 - (e) On New Year's Eve on a Sunday, 12.00 to 22.30
 - (f) 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).

The above restrictions do not prohibit:

- (a) 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;

- (b) 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;
- (c) the sale or supply of alcohol to or the consumption of alcohol by any person residing in the licensed premises;
- (d) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
- (e) the sale of alcohol to a trader or registered club for the purposes of the trade or club;
- (f) 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;
- (g) the taking of alcohol from the premises by a person residing there;
- (h) 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;
- (i) 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.

12. Alcohol shall not be sold or supplied unless the premises have been structurally and bona fide used, or intended to be used, for the purposes of habitually providing the customary main meal at midday or in the evening, or both, for the accommodation of persons frequenting the premises.
13. The terminal hour for late night refreshment on New Year's Eve is extended to 05:00 on New Year's Day.
14. The number of persons accommodated at one time (excluding staff) shall not exceed; Basement – 30, with no more than 60 persons within the premises at any one time.

4 WEST 9 FOOD & STORES, BASEMENT AND GROUND FLOOR, 350 HARROW ROAD, W9

LICENSING SUB-COMMITTEE No. 4

Thursday 30th April 2015

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Peter Freeman and Councillor Rita Begum

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

Relevant Representations: Licensing Authority (the Applicant).

Present: Ms Maria Johnson (Licensing Inspector, on behalf of the Licensing Authority), Mr Jon Payne (Solicitor, representing the Licence Holder), Mr N Anadankumariah (Licence Holder) and Mr N Muhunthakumar (Designated Premises Supervisor)

West 9 Food & Stores, Basement And Ground Floor, 350 Harrow Road, W9 15/01317/LIREVP

Summary of Application:

An application submitted by the Licensing Authority for a review of the premises licence for West 9 Food & Stores, 350 Harrow Road, London, W9 2HP, was received on 24th February 2015 on the grounds of Prevention of Crime and Disorder. On 19th September 2014, during an operation by Her Majesty's Revenue & Customs, substantial quantity of alcohol were seized from the premises as officers were of the view that Excise Duty had not been paid on the goods.

The premises currently benefits from a premises licence that permits:

Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit Unrestricted

Sale by Retail of Alcohol (Off Sales)

| | |
|--------------------|----------------|
| Monday to Saturday | 08:00 to 23:00 |
| Sunday | 10:00 to 22:30 |

Playing of Recorded Music Unrestricted

The opening hours of the premises:

| | |
|--------------------|----------------|
| Monday to Saturday | 08:00 to 23:00 |
| Sunday | 10:00 to 22:30 |

No other representations were received in respect of the application.

The Licence Holder was seeking revocation of the licence.

The Authority must, having regard to the application and the representations, take such steps (if any), as it considers appropriate for the promotion of the licensing objectives. The steps are:

- (a) to modify the conditions of the licence;
and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition added.
- (b) to exclude a licensable activity from the scope of the licence;

- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;

In accordance with section 52(6) of the 2003 Act, if the authority takes measures to modify conditions or exclude licensable activities from the licence, it may stipulate that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

The licensing authority's determination of this application does not have effect until the 21 day appeal period has expired or if the decision is appealed the date the appeal is determined and / or disposed of.

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

The Sub-Committee adjourned the application.

Members of the Sub-Committee took the view that they were being asked to examine whether steps needed to be taken at the review hearing on the basis that Her Majesty's Revenue & Customs officers believed that Excise Duty had not been paid on alcohol that had been seized. The officer of HMRC had advised in a witness statement that 'as no invoices could be produced to substantiate the legitimate origin/supply of the alcohol stock held I was led to believe, on the balance of probabilities that UK duty had not been paid on the alcohol in question'. Just prior to the review hearing, however, the Licence Holder had supplied as evidence a large pile of invoices/receipts. The Sub-Committee considered that it was necessary to adjourn the application as Members could not be expected to take a decision at this juncture based either on the 'balance of probabilities' referred to by the HMRC officer or the large pile of receipts submitted at a late stage by the Licence Holder. There would need to be more conclusive evidence provided for the purposes of a review of the premises licence, including a report from HMRC assessing the status of the invoices/receipts provided by the Licence Holder.

The Sub-Committee noted additional correspondence from HMRC that they had not as yet received any information from the Licence Holder about the invoices/receipts. The Licence Holder had not challenged the legality of the seizure of the alcohol by HMRC. HMRC conducted unannounced visits to excise traders in order to verify that the products they had in stock had the correct tax and duties paid on them. HMRC took the stance that 'a reasonable amount of time is allowed for records to be produced to confirm the duty paid status of the stock, but if these are not forthcoming then a decision is made on the balance of probabilities, this being a civil matter, whether the correct duty has been paid'. It was Ms Johnson's understanding, having spoken to HMRC that it was not too late for the Licence Holder to appeal. Mr Payne, representing the Licence Holder, informed the Sub-Committee that he had also been in contact with HMRC and had been told that the deadline for an appeal had elapsed some time previously.

It was necessary for the purposes of the Licensing Authority's review application that the invoices/receipts were forwarded to HMRC for them to assess.