



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

Members Present: Councillors Jean Paul Floru (Chairman), Heather Acton and Aziz Toki

1 MEMBERSHIP

There were no changes to the Membership.

2 DECLARATIONS OF INTEREST

Councillor Heather Acton declared in respect of Barrafina, 43 Drury Lane, WC2 that she had previously eaten in another Barrafina restaurant but it had not been in the Drury Lane premises.

3 TESCO STORES, 138-144 QUEENSWAY, W2

LICENSING SUB-COMMITTEE No. 4

Thursday 17th September 2015

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Heather Acton and Councillor Aziz Toki

Legal Adviser: Heidi Titcombe
Committee Officer: Jonathan Deacon

Relevant Representations: Environmental Health, Metropolitan Police, 2 Ward Councillors, 2 Residents' Associations and 1 local resident.

Present: Mr Jeremy Bark (Solicitor, Representing the Applicant), Ms Emma Galloway (Store Manager, Applicant Company), Ms Rebecca St Rose (Environmental Health), PC Chris Marriot (Metropolitan Police), Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project, representing Mr John Zamit), Mr John Zamit (South East Bayswater

Residents' Association) and Mr William Kennedy (Queensway Residents' Association).

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| Tesco Stores, 138-144 Queensway, W2 15/05759/LIPN | |
| 1. | Sale by Retail of Alcohol (Off) |
| | Monday to Sunday: 06:00 to 00:00 |
| | <p>Amendments to application advised at hearing:</p> <p>Mr Bark, representing the Applicant, confirmed during the hearing that the proposed hours for off-sales were amended to core hours. Core hours for off-sales are:</p> <p>Monday to Saturday: 08:00 to 23:00 Sundays: 10:00 to 22:30.</p> |
| | <p>Decision (including reasons if different from those set out in report):</p> <p>Mr Bark, representing the Applicant, confirmed there had previously been a Tesco store at numbers 138-142 Queensway which had the benefit of an off-sales licence until the licence was surrendered in October 2014. This was an application for a new premises licence to extend the area of the licence to include numbers 138 and 142, but also number 144 Queensway for off sales of alcohol. It was noted that the previous licence permitted off sales of alcohol during the core hours of 08:00 to 23:00 hours Monday to Saturday and from 10:00 hours to 22:30 hours on Sundays. Mr Bark confirmed that this new application initially sought to extend the hours of the licence for the supermarket from 06:00 hours until midnight every night of the week. However, Mr Bark advised during the hearing that following discussions with the parties who had made representations, the proposed hours for off-sales had been amended to core hours. Mr Bark also advised that, the previous licence had been an old justices' licence with significantly fewer and less stringent conditions than were proposed for the current licence. The Sub-Committee was informed by Mr Bark that the intention was to have more produce on the shop floor than was typical of some Tesco stores, presented in a market stall format.</p> <p>In addition to discussions having led to the Applicant amending the proposed hours for off sales to core hours, the parties present had reached agreement on the majority of the proposed conditions which should be attached to the licence by the time of the hearing. Mr Bark explained that the one point of difference between the Applicant and the Police and Environmental Health was the Responsible Authorities were requesting a condition requiring that all alcohol should be kept in locked cabinets whilst the Premises are open to the public and outside the hours permitted for the sale of alcohol.</p> |

The two points of difference between the Applicant and the residents' associations and Councillor Burbridge were that they were requesting the 'locked cabinets' condition sought by the Responsible Authorities and a further condition that a minimum of one SIA door supervisor would be on duty at the premises at all times whilst it is open for business which the Applicant had not agreed.

Mr Bark explained the reasons as to why his client had not agreed the two conditions. It was felt that imposing the conditions would not be proportionate as there would be a range of measures in place including high levels of staffing (Ms Galloway was supported by six managers and seventy other members of staff in comparison to a typical Tesco Express which typically had eighteen or nineteen staff) and a security guard would be located near to the front entrance of the premises during the hours that alcohol would be sold. There were security cameras in place, including fixed cameras observing the alcohol display area at all times. There would be no self-service of spirits save for spirit mixtures less than 5.5% ABV or spirits sold as part of a gift pack so the highest risk spirits would be behind a counter. Beers and wines would be well away from the main entrance and would be directly adjacent to the checkout areas. The checkout tills would be manned at all times and the self-service tills would be monitored at all times by permanent supervisors. There would be a dedicated person employed whose role was to look after the alcohol display area, advising on the different products. Tesco would carry out a risk assessment of the store and in the event there was felt to be an increased security risk, additional security guards would be employed. Mr Bark expressed the view on behalf of his client that lockable cabinets would not be in keeping with the clientele the Applicant would seek to attract.

Mr Bark added that his client had agreed a significant number of conditions to ensure that the licensing objectives were not undermined as a result of alcohol being sold at the store. There was no evidence that he had been made aware of that any issues had arisen as a result of there not being lockable cabinets at other Tesco stores. Neither the premises licence at 138-142 Queensway nor the Tesco Express in Queensway had required lockable cabinets and there had been no alcohol related problems in these premises. He also made the point that Ms Galloway had experience of managing stores, including in the Victoria area, which did have an issue with street drinking.

Mr Bark stated that his client was content for two additional conditions proposed by Mr Zamit of the South East Bayswater Residents' Association to be attached to the licence. These were that 'prior to the time permitted for servicing (between 07.00 and 19.00 hours on Monday to Saturday and 10.00 -17.00 on Sundays and Bank Holidays), delivery vehicles shall not be permitted to wait or park up in the service road at the back of Cervantes Court leading to the delivery loading area' and 'all tills shall be programmed with the hours permitted for the sale of alcohol and shall not permit alcohol sales to proceed beyond those hours'.

PC Marriot for the Metropolitan Police and Ms St Rose confirmed that they had maintained their representations to request that the 'lockable cabinets' condition

was attached to the premises licence. PC Marriot stated that the adding of the condition to the licence would be consistent with other premises, including the Sainsbury store in the locality. Both PC Marriot and Ms St Rose expressed the view that the condition would reduce the potential for conflict and theft. The Sub-Committee asked them whether there was any evidence that the lack of this condition caused conflict. Ms St Rose replied that there was not specific evidence in the area. PC Marriot commented that there had been an issue with street drinking in the area but this was not the case currently.

Mr Brown representing the South East Bayswater Residents' Association and the Queensway Residents' Association stated that the representations had been submitted on the grounds of cumulative impact in the Stress Area. He thanked the Applicant for making amendments to the application including agreeing a number of proposed conditions. The delivery and servicing conditions had been welcomed, particularly to control where lorries would pull in and to minimise the impact on residents living above the store. Mr Brown confirmed that the points of difference regarding the conditions with the Applicant related to (1) the requests for the lockable cabinet and (2) requiring a door supervisor to be present at all times the store was open. One possible option was for the condition to be amended to allow for a dedicated member of staff to be responsible for monitoring the alcohol display area. Mr Zamit added that a door supervisor was needed between the time when the sale of alcohol ceased and the store closed. The Sainsbury's store in the locality had a lockable cabinet and it was not unsightly. Mr Zamit, Mr Kennedy for Queensway Residents' Association and Councillor Burbridge wished to make the point that there was an issue with street drinkers, beggars and shoplifting in Queensway. The Sub-Committee raised the matter with the objectors that the Waitrose in Porchester Road did not have lockable cabinets. Mr Zamit stated that the security arrangements were different there and there were not the same issues in terms of vagrants in Porchester Road. The premises had closed within core hours.

The Sub-Committee asked Mr Bark whether his client would consider amending their application so that a SIA licensed door supervisor was employed at all times and there was one less member of staff at the premises. Mr Bark replied that the one SIA licensed door supervisor whilst alcohol was being sold was the minimum commitment offered. The situation would be regularly assessed so that if the risk assessment required more door supervisors his client would employ more than one. Ms Galloway made the point that this premises was more 'high end' than the one she had managed in Victoria. In Victoria, there had been a staff programme in place to manage any issues that may arise from street drinkers. Tesco had worked with the local community and there had been no problems in terms of promoting the licensing objectives. She informed Members that there had not been lockable cabinets at the Victoria store.

The Sub-Committee granted the application for the amended hours (core hours), subject to conditions as set out below. Members considered that the revised hours and the conditions which were attached to the licence were appropriate and proportionate to promote the licensing objectives. Members decided not to impose the locked cabinets condition on the basis that there was no specific evidence of any issues at other Tesco stores having arisen where this condition had not been attached to the licence, including in the local area and there were

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| | alternative arrangements proposed by the Applicant at the store to prevent street drinking. In respect of the SIA door supervisor condition, the Applicant was committed to undertake risk assessments as to how many door supervisors should be employed at any one time and this would be kept under regular review and would be updated at least every 12 weeks. The Sub-Committee added the requirement to the condition 19 below that the risk assessment would have reference to local residents' associations and ward councillors. |
| 2. | Opening Hours |
| | Monday to Sunday: 06:00 to 00:00 |
| | 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 (see reasons for decision in Section 1). |

| Conditions attached to the Licence | |
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| <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 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.

5(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.

5(ii) For the purposes of the condition set out in paragraph 5(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.

5(iii) Where the permitted price given by Paragraph 5(ii)(b) above would (apart from this paragraph) not be a whole number of pennies, the price given by that subparagraph shall be taken to be the price actually given by that subparagraph rounded up to the nearest penny.

5(iv) (1) Sub-paragraph 5(iv)(2) below applies where the permitted price given by

Paragraph 5(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.

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

Additional Conditions

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 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.

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. An incident log (whether in electronic or written form) 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 visit by a relevant authority or emergency service.

10. 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.

11. All tills shall automatically prompt staff to ask for age verification identification when presented with an alcohol sale.

12. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
13. No super-strength beer, lagers, ciders or spirit mixtures of 5.5% ABV (alcohol by volume) or above shall be sold at the premises save for any premium or craft beers, lagers or ciders in glass bottles.
14. No single cans of beer, lager or cider shall be sold at the premises.
15. No single bottles of beer, lager or cider shall be sold at the premises where the individual bottle size is less than 400ml or more than 1500ml.
16. 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.
17. There shall be no self-service of spirits on the premises, save for spirit mixtures less than 5.5% ABV or spirits sold as part of a gift pack (see also condition 25).
18. 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.
19. A minimum of 1 SIA licensed door supervisors shall be on duty at the premises at all times when alcohol is available for sale and in addition the premises licence holder shall carry out a specific security risk assessment identifying the need for SIA licensed door supervisors at any time and where such risk assessment identifies the need for additional SIA licensed door supervision then the premises licence holder shall employ additional door supervisors in such numbers and on such days and at such times as identified in the risk assessment. The risk assessment shall be kept under regular review and shall be updated at least every 12 weeks with reference to local residents' associations and ward councillors.
20. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
21. All servicing (including refuse collection) of the Retail (Class A1) unit must take place between 07.00 and 19.00 hours on Monday to Saturday and 10.00 - 17.00 on Sundays and Bank Holidays. This servicing must take place within the internal loading bay with the roller shutter in the down position. Servicing includes loading and unloading goods from vehicles and putting rubbish outside the building.
22. All deliveries and collections to and from the premises by Tesco delivery vehicles shall be via the dedicated loading bay on Inverness Terrace.
23. 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.

24. The Licence will have no effect until the premises have been assessed as satisfactory by the Environmental Health Consultation Team and this condition has been removed from the Licence.
25. There shall be no sales of bottles or containers of spirits in quantities of less than 30 cl from the premises other than where the spirits are sold as part of gift pack containing other goods.
26. On the Sunday and Monday of the Notting Hill Carnival:
 - (a) there will be no sale of alcohol in glass vessels from the premises;
 - (b) there will be no external advertisement of alcohol promotions at the premises; and
 - (c) there shall be no sale of alcohol from the premises after 20:00 hours.
27. Prior to the time permitted for servicing (set out in condition 21 above), delivery vehicles shall not be permitted to wait or park up in the service road at the back of Cervantes Court leading to the delivery loading area.
28. All tills shall be programmed with the hours permitted for the sale of alcohol and shall not permit alcohol sales to proceed beyond those hours.

4 BARRAFINA, 43 DRURY LANE, WC2

LICENSING SUB-COMMITTEE No. 4

Thursday 17th September 2015

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Heather Acton and Councillor Aziz Toki

Legal Adviser: Heidi Titcombe
Committee Officer: Jonathan Deacon

Relevant Representations: 2 x local residents.

Present: Mr Mark Browning (Solicitor, Representing the Applicant).

Declaration: Councillor Heather Acton declared that she had previously eaten in another Barrafina restaurant but it had not been in the Drury Lane premises.

**Barrafina, 43 Drury Lane, WC2
15/04754/LIPV**

1. On and Off Sales

The Applicant is not seeking to amend the proposed hours for on-sales. Off-sales have not previously been applied for. The Applicant seeks the same hours for both on and off sales.

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| Monday to Saturday | 10:00 to 00:00 |
| Sunday | 12:00 to 23:30 |

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.

The Sub-Committee noted that the premises operate as a restaurant on the ground floor and basement floors with an outside area. This was an application to vary the plans in accordance with the refurbishment of the premises. Mr Browning, representing the Applicant made the point that a previous operator had under the terms of the existing licence had tables and chairs located on both Drury Lane and Broad Court. His client was seeking only to use the outside area on Broad Court side which meant a net decrease in the use of the area. He asserted that a plant area had been removed with the refurbishment of Barrafina and that the external area proposed for tables and chairs was part of the premises.

A resident had expressed particular concerns regarding the use of the outside area and also the application for off-sales at the premises. However, Mr Browning stated that his client had informed the resident that a condition had been accepted that the outside area in Broad Court would not be used after 23:00 hours which is in line with the planning consent and also that the only off-sales permitted would be in sealed containers to customers who had already dined in the premises. The off-sales condition was one of the conditions agreed between the Applicant, Environmental Health and the Police which had also included that alcohol consumed outside the premises building shall only be consumed by patrons seated at external tables. The Sub-Committee noted that following the agreement of their proposed conditions, the two Responsible Authorities had withdrawn their representations.

Ms Titcombe raised the issue that the current plan on page 38 of the report (appendix 2) had dotted lines as the proposed licence area boundary whilst the key showed the boundary as a straight line without dots. Mr Browning agreed to amend and re-submit the plan to the Licensing Service.

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| | <p>In granting the application, the Sub-Committee considered that the conditions attached to the licence, which had led to the Police and Environmental Health withdrawing their representations, were appropriate and proportionate and promoted the licensing objectives and were in keeping with a restaurant located in the West End Stress Area.</p> <p>In relation to the proposed conditions specified in Appendix 3 of the committee papers and which will be attached to the licence, the Committee confirmed that :-</p> <p>(1) condition 18 (CCTV) shall be removed and replaced with condition 25 [new conditions 19];</p> <p>(2) condition 20 (restaurant condition) shall be replaced with condition 24 [new conditions 18];</p> <p>(3) condition 23 (off-sales) shall be deleted and replaced with condition 26 (as amended) [new condition 20]; and</p> <p>(4) conditions 27 and 28 shall be added as conditions. [new conditions 21 and 22 respectively]</p> |
| 2. | Variation to layout |
| | As per the plans attached at Appendix A3 of the report. |
| | <p>Amendments to application advised at hearing:</p> <p>Ms Titcombe raised the issue that the current plan on page 38 of the report (appendix 2) does not show the entire area to be licensed as it excludes the terrace which is shown edged by dotted lines as the proposed licence area boundary, whilst the key showed the boundary as a straight line without dots. Mr Browning agreed to amend and re-submit the plan to the Licensing Service to show a thick black line around the area to be licensed, which includes the terraced area coloured blue.</p> |
| | <p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the application, subject to conditions as set out below (see reasons for decision in Section 1).</p> |
| 3. | Late Night Refreshment |
| | No change to proposed hours – the designation of the outside tables and chairs have changed. |
| | Amendments to application advised at hearing: |

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| | None. |
| | <p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the application, subject to conditions as set out below (see reasons for decision in Section 1).</p> |

| Conditions attached to the Licence | |
|---|---|
| <u>Mandatory Conditions</u> | |
| 1. | No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence. |
| 2. | No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended. |
| 3. | Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence. |
| 4. | <p>(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.</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 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;</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 supply alcohol), or</p> <p>(ii) drink as much alcohol as possible (whether within a time limit or otherwise);</p> <p>(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</p> |

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. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
10. All waste is to be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times or such other arrangements as may be agreed with the Environmental Health Consultation Team.
11. The pavement from the building line to the kerb edge including Broad Court the length of the premises immediately outside the premises, including gutter/channel at its junction with the kerb edge including Broad Court for the length of the restaurant premises, is swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.
12. There shall be no payment made by or on behalf of the licence holder to any person for bringing customers to the premises directly off the street.
13. No striptease, no nudity and all persons to be decently attired at all times.
14. Any entertainment, performance, service, or exhibition involving nudity or sexual stimulation which would come within the definition of a sex establishment in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Greater London Council (General Powers) Act 1986 (whether or not locally adopted), shall not be provided.
15. 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 to the public. This staff member must be able to show a Police or authorised council officer recent data or footage with the absolute minimum of delay when requested.
16. 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
 - (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.

17. All outside tables and chairs shall be rendered unusable by 23:00 each day.
18. 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, supplied, or consumed on the premises otherwise than to 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.

19. 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
20. All sales of alcohol for consumption off the premises shall be to patrons who have dined at the premises, shall be in sealed containers only, and shall not be consumed on the premises
21. Alcohol consumed outside the premises building shall only be consumed by patrons seated at external tables.
22. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed:
 - Ground Floor; 43 persons
 - Basement: 32 persons

5 THE LONDON EDITION, 10 BERNERS STREET, W1

LICENSING SUB-COMMITTEE No. 4

Thursday 17th September 2015

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Heather Acton and Councillor Aziz Toki

Legal Adviser: Heidi Titcombe
Committee Officer: Jonathan Deacon

Relevant Representations: The Environmental Health Service, as a responsible authority supports the review application in regards to the prevention of public nuisance licensing objective. 13 residents made representations in support of this review on the grounds of public nuisance. Mr Khalid also submitted as part of his application comments received in support of the review and has submitted two further representations since the report was published. One resident and two interested parties made a representation against the review. The Licensee submitted two further representations against the review since the report was published.

Present: Mr Zafar Khalid (Applicant), Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project, representing the Applicant and local residents in support of review application – Ms Alison Matthews, Ms Prue Thompson, Mr Fernando Gonzalez, Ms Tracey Bower and Mr Kiaron Whitehead), Mr AB Watson, Mr Anders Erden and Ms Dovile Klipstaite (local residents in support of review application), Ms Rebecca St Rose (Environmental Health), Mr Heath Richards (City Inspector), Mr Julian Skeens (Solicitor, Representing the Licensee), Mr Will Gubbins (Trainee Solicitor, on behalf of the Licensee), Mr Edwin Kramer (Hotel General Manager), Mr Lance Perkins (Designated Premises Supervisor), Mr Dominik Prosser (Functions Room Events Manager) and Mr Richard Vivian (Acoustician, employed by Licensee).

**The London Edition, 10 Berners Street, W1
Review application - 15/03928/LIREVP**

An application submitted by Mr Zafar Khalid for a review of the premises was received on 22nd May 2015 on the grounds of Prevention of Public Nuisance.

The premises currently benefits from a premises licence that permits:

Performance of Dance

Monday to Sunday: 09:00 to 01:00 (Subject to conditions 41, 45, 47 & 51)

Non-standard Timings: 24 hours for residents and their bona fide guests

Exhibition of a Film

Monday to Sunday: 09:00 to 01:00 (Subject to conditions 41, 45, 47 & 51)

Non-standard Timings: 24 hours for residents and their bona fide guests

Performance of Live Music

Monday to Sunday: 09:00 to 01:00 (Subject to conditions 41, 45, 47 & 51)

Non-standard Timings: 24 hours for residents and their bona fide guests

Playing of Recorded Music

Monday to Sunday: 09:00 to 01:00 (Subject to conditions 41, 45, 47 & 51)

Non-standard Timings: 24 hours for residents and their bona fide guests

Anything of a similar description to Live Music, Recorded Music or Performance of Dance

Monday to Sunday: 09:00 to 01:00 (Subject to conditions 41, 45, 47 & 51)

Non-standard Timings: 24 hours for residents and their bona fide guests

Performance of a Play

Monday to Sunday: 09:00 to 01:00 (Subject to conditions 41, 45, 47 & 51)

Non-standard Timings: 24 hours for residents and their bona fide guests

Late Night Refreshment

Monday to Sunday: 23:00 to 01:00 (Subject to conditions 41, 45, 47 & 51)

Non-standard Timings: 23:00 to 05:00 for residents and their bona fide guests

Sale by Retail of Alcohol

Monday to Sunday: 06:00 to 01:00 (Subject to conditions 41, 45 to 47 & 51)

Non-standard Timings: 24 hours for residents and their bona fide guests

The opening hours of the premises:

Monday to Sunday: 00:00 to 00:00

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;
 - (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;
- and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition added.

Decision:

The Sub-Committee initially heard from Mr Brown representing the Applicant and the local residents listed above. He provided some background to the review application. Mr Khalid had lived in his flat in York Street, opposite The London Edition hotel since 2011. Mr Brown stated that Mr Khalid had suffered from noise nuisance from the Premises in his flat since July 2014. The hotel had been granted its premises licence in 2012. Mr Brown made the point that Mr Khalid had not made a representation when the original application had been submitted because he believed he had received assurances in terms of how the premises would operate, including the

basement. Mr Khalid had been informed that the basement would be used either for events such as conferences or occasional weddings or as a lounge bar. Mr Brown stated that what had ultimately transpired was that between Wednesdays and Saturdays the basement function room had been used as a nightclub. The experience of Mr Khalid and other residents was that there was an increase in noise nuisance and anti-social behaviour in the area after the hotel opened in September 2013. Mr Khalid had decided to express his concerns about the situation in December 2014 after a guest of the hotel had urinated outside his flat. After that he had complained to the Council and to management of the hotel. A number of meetings and regular correspondence had followed between Mr Khalid and hotel management. Mr Brown stated that a number of measures had been proposed by the hotel which in the opinion of those supporting the review had either not been effective or not been carried out as proposed.

Mr Brown wished to make the point that the basis for the review was that there was a lot of noise being experienced by local residents not only from the public guests of the hotel's use of the basement function room, which has a capacity of 220 people but also from their use of the other public areas of the hotel on the ground floor, including the two bars and restaurant. It was the cumulative effect of the public who had used the hotel's facilities being outside and dispersing from the hotel at a late hour which had caused public nuisance for local residents.

Mr Khalid's grounds for the review were set out in the application and included public guests of the premises arriving and leaving late at night in a noisy manner, making noise whilst smoking, heading to their cars or waiting for taxis outside. Mr Brown explained that one of the problems with the dispersal of the public guests of the hotel was the length of time that it took. An often substantial percentage of the capacity of the basement dispersing into a residential area late at night was causing a public nuisance. He added that the residents in support of the review were not stating that The London Edition hotel was causing 100% of the public nuisance in the area but that a significant proportion was being caused by the hotel patrons late at night.

Mr Brown referred to the representations sent to the Licensing Authority in support of the representation, with the majority, he stated, being from local residents in York House. Mr Khalid had also submitted e-mails he had received in support of the application. Mr Brown believed the total of the representations received by the Licensing Authority and those received by Mr Khalid added up to 22 different individual representations. He commented that it was noticeable that the representations demonstrated that other local residents were experiencing the same issues as Mr Khalid, referring to matters having got worse since the hotel had opened and hearing noise when patrons were smoking or dispersing. Mr Brown stated that Mr Khalid had found that since the basement had ceased being used as a nightclub at the end of June 2015, the nuisance after 02:00 hours had reduced because patrons were not dispersing at that time. He was however still experiencing the same level of noise from approximately 23:30 to 01:30 when patrons were outside the hotel.

Mr Brown drew Members' attention to the noise log Mr Khalid had submitted as part of the application, Environmental Health's 'record of observations' and the Licensee's 'nightlife summary'. He gave three examples where he believed Mr Khalid's evidence of noise nuisance was corroborated in evidence elsewhere. The first

example was:-

- Thursday 29 January 2015 when Mr Khalid had reported noise from patrons dispersing. The date had coincided with a visit by Mr Bolton of Environmental Health who had noted that he had 'witnessed very poor management of the outside area. 16-20 people were outside smoking and talking loudly; not all of them inside the smoking cordon; in addition there were people dotted along the street, in the road and on the other side of the road, generally talking and laughing loudly. The Officer spoke to the head of security, Michael, who didn't think the noise was loud or a problem'. Mr Brown stated that this was important because the Licensee's nightlife summary would be based on the view of the security officers and not on the professional opinion of an Environmental Health officer. The Licensee's summary had referred to ensuring that patrons left the area as quietly as possible that night as being 'a challenge'.

- The second example Mr Brown referred to was on Thursday 26 February 2015. Mr Khalid had written that it had taken 50 minutes for public guests of the hotel to disperse and eventually the hotel manager, Mr Prosser had been required to assist after Mr Khalid had contacted him. The Council's Noise Officer had visited, saw many patrons leaving the basement and heard the loud conversations. The Licensee's nightlife summary referred to staff clearing Berners Street of patrons after 02:00 hours which Mr Brown stated demonstrated that noise was coming from patrons leaving the hotel;

- Mr Brown's third example was on Friday 2 May when issues arising from people dispersing had been witnessed by an Environmental Health officer and Mr Richards, City Inspector. Mr Brown stated that the Environmental Health recorded in their observations that the pavement outside 'was busy and slightly obstructed in some areas. There were at least 20 customers directly outside and occasional loud conversational noise as well as noise from waiting taxis was heard'. A driver had 'sounded his horn which attracted the attention of one of the SIA supervisors.' 'Overall there was a general lack of management of the outside area. The SIA supervisors were not effectively dispersing customers who were leaving'. Mr Brown added that the Licensee's nightlife summary for that date had revealed that the supervisors had been shocked at the complaint received which Mr Brown believed showed a disconnect between their perception of the situation and Council employees' professional opinions.

Mr Khalid, the Applicant, addressed the Sub-Committee. He made a number of points including that the trust of residents had been impaired because of the use of the basement 'function room' as a nightclub. This was contrary to what residents had been advised initially, that the room would be used for weddings or a lounge bar primarily for hotel residents. (During the hearing the Licence Holder confirmed that no weddings had actually taken place). Mr Khalid stated that he had been told in meetings by hotel representatives that it was a nightclub and a manager at the hotel had told him that he should expect disturbance where he lived. Mr Khalid informed the Sub-Committee he had initially frequented the hotel and that it had been a difficult decision for him to bring the review but ultimately the discussions he was having with the hotel management were not leading to the issues he was experiencing being resolved. He expected the Licensee's representatives to make the case at the hearing that it would change the use of the function room and conclude licensable

activities at 01:00. However, even when the function room was closed, he was still being disturbed by patrons leaving the public areas. He believed that there was potentially up to 700 people being able to use the public areas of the hotel. If patrons were leaving the function room with a capacity of up to 220 at 01:30, residents were and would still be adversely affected. He had been told by hotel management that they were unable to legislate for smokers, people dispersing or waiting for taxis. Mr Khalid added that he accepted that it was very difficult for the management to control patrons dispersing from the hotel, once they had left the immediate vicinity of the hotel, or patrons smoking in the street or waiting for taxis. This was why he was requesting a reduction in hours for the public areas in the hotel. This was, in his view, one of the only effective ways to reduce public nuisance, particularly in the early hours of the morning. Mr Khalid also described cars parked on double yellow lines outside his flat, taxi drivers talking loudly whilst they waited for patrons to leave the hotel, which the hotel promised to take action to prevent. He resided in a ground floor flat and could easily observe what was taking place outside when disturbed by noise nuisance. He was of the view that the hotel management was inadequate generally; that they had employed inadequate security over time and there was a lack of signage advising patrons to keep the noise down.

Mr Khalid showed footage to the Sub-Committee captured on his mobile phone. This included footage from the 23 August 2015 at approximately 01:35 hours which he stated was an accurate reflection of patrons shouting outside the hotel and was taken across the road from the hotel on the opposite corner which was further away from the hotel than his flat. He also showed footage of two or three people in front of the hotel appearing to be noisy and not dispersing.

Mr Brown concluded with the point that a reduction in the London Edition's operating hours to the Council's core hours was sought by the Applicant for the public areas. This took into account the time it took for patrons to disperse from the hotel. He also asked the Committee to attach a number of conditions to the licence, in the main to help to control customers in the outside area and to manage customers smoking and dispersing from the premises.

The Sub-Committee then heard from local residents in support of the review application. Mr Watson stated that he had lived in his residence above Mr Khalid's flat since 1999 and there had been no issues with any of the hotels at 10 Berners Street until the London Edition had opened up the basement function room to the public with patrons dispersing at a late hour. Mr Erden explained that he lived around the corner in Berners Mews and it had become clear, since the activities in the function room in the basement had ceased, that it had been the hotel which had been the cause of the issues he had experienced such as the parking of cars in the Mews on single yellow lines and the playing of music from these vehicles. He added that he was not experiencing such problems any longer in the Mews. Ms Klipstaite referred to ineffective security arrangements at the hotel which resulted in patrons failing to disperse promptly, which caused public nuisance to local residents.

Ms St Rose advised the Sub-Committee that Environmental Health maintained their representation due to the lack of management of the area outside the hotel and the noise caused by patrons dispersing from the hotel, particularly in the early hours of the morning. Environmental Health's record of observations was set out in the report.

The Sub-Committee then heard from Mr Skeens, representing the Licensee. Mr Skeens referred initially to the Applicant's 'overview' document which had been forwarded to the Sub-Committee and particularly the point that the hotel had always accepted that the area is busy and noisy as it is located in the West End Stress Area. He also confirmed that the Licensee had never claimed that the hotel and its patrons do not cause any noise or nuisance to local residents. Mr Skeens asked Mr Khalid why he had refused admittance to his flat to the Licensee's acoustician. Mr Khalid replied that it had been insinuated that the noise was his problem and he did not regard this as a basis on which to proceed. Mr Khalid did not accept the point set out in the representative of the Licensee's 'overview' document that there was a very poor quality of fenestration in his apartment. Mr Skeens stated that he was aware Mr Khalid had looked into obtaining double glazing and his client had offered to pay for this to keep out unwanted noise.

Mr Skeens was asked by the Sub-Committee what steps the hotel was taking to address the issues raised by the review. Mr Skeens drew Members' attention to the 'overview' document and these included setting up Fitzrovia Watch with other premises such as Project London and China White. He stated that these premises all accepted that they contributed to the overall noise in the locality and it was a question of what they could do to minimise it.

Mr Skeens showed CCTV footage. He stated that in the case of the evening of 29 January / morning of 30 January 2015 it was admitted by his client that there were problems (it was not accepted that any issues had arisen on the evening 22 January / morning of 23 January 2015). Mr Skeens contended that the footage of the evening of 29 January / morning of 30 January showed a queue of five people outside Berners Street entrance and two taxis waiting in the road and people were leaving and walking away from the hotel. However, they did not congregate. He believed it conveyed normal nightlife, especially in the West End Stress Area. In respect of the evening of 26 February / morning of 27 February 2015, Mr Skeens stated that the CCTV footage did not show a car parked in the street with hotel guests sitting on the bonnet as set out in Mr Khalid's evidence. In respect of the evening of 12 March / morning of 13 March 2015, Mr Skeens remarked that the CCTV footage showed people leaving the hotel and dispersing rather than Mr Khalid's comments that there was lots of noise from people outside the hotel and a car parked outside with occupants making noise. He added that a lamborghini making a three point turn had nothing to do with the hotel. Mr Skeens made the point that when real time footage was shown it demonstrated the actual situation and made it apparent that Mr Khalid's premises was particularly susceptible to picking up noise.

Mr Vivian gave evidence on behalf of the Licensee. He stated that there was no doubt that people parked outside Mr Khalid's flat and that this was a busy area. However, in his view, he questioned whether this amounted to a public nuisance and whether the London Edition hotel was undermining the licensing objective to prevent public nuisance. Mr Vivian clarified that the noise testing assessment he had carried out from Eastcastle Street directly opposite the Applicant's flat in York House had taken place during the evening of the last music night held in the basement function room in the hotel at 22:50 hours on 27th June to 03:24 hours on 28th June). In his opinion on the night of 27-28 June 2015, there was no noise breakout despite a capacity crowd in the function room. Mr Vivian had found from the testing point in

Eastcastle Street that in his view, the use of the function room had not adversely impacted on the licensing objectives as there was no increase in noise levels in the area due to patrons arriving, using the smoking area or dispersing. The peaks in the noise had resulted from the emergency services or refuse vehicles. This was a location with noise above World Health Organisation guidelines and on that evening any noise from people entering and leaving the hotel, or standing talking in the smoking area was masked by the steady road traffic noise, plant noise and other activity in the area. He added that it would have been beneficial to have carried out a noise assessment from Mr Khalid's flat. He contended that a mobile phone as used by the Applicant had technical limitations in recording noise and should not be fully relied upon as evidence. It could not be referenced against other activity such as passing cars.

Mr Perkins gave evidence on behalf of the Licence Holder. He stated that the Licensee had looked at ways to improve the management of the premises both internally and externally following concerns being expressed by Mr Khalid. This included controlling the crowd in the smoking area, changing the route of dispersal, having extra CCTV and approaching people to be quiet. Mr Perkins believed that the hotel management was doing everything possible to improve the situation for people in the area, including working with other licensed premises in Fitzrovia Watch. Management had initially closed the basement function room for music nights on Wednesday and Thursday evenings, particularly as they were school nights, at the beginning of May 2015. There were ongoing complaints from Mr Khalid so the decision was made to cease having music nights completely at the end of June 2015. Mr Perkins did not accept that the basement function room had been used as a nightclub when music nights had taken place. Entry had only been given to those on a guest list. He commented that the legal opinion he had received was that the room had been operated in accordance with the conditions on the premises licence. In response to a question from the Sub-Committee on externally promoted events, Mr Perkins advised that there was a separate basement website. Mr Skeens added that there were private bookings for the function room. It was advertised to members of the public but there was a complete guest list which was closed once the doors had opened for the event. It would not be allowed to impact on the hotel residents.

Mr Perkins explained that events had continued to be held in the basement function room since the music nights had ceased. During July, August and September 2015, there had been launch events, birthday parties and corporate dinners. These had ranged from a dinner for 20 people to 120 for a private birthday party. (The Committee noted the capacity was 220 patrons in the function room) He had not been aware of any complaints in relation to these events. No weddings had yet been held in the function room. The hotel had a wedding licence. Mr Perkins confirmed that management were content for conditions to be attached to the licence that all events would cease at 01:00 hours to minimise the impact on residents. He also informed Members that staff when joining the hotel had a day of training which included patrons' smoking procedures. There was a daily briefing to staff, including in relation to events.

Mr Kramer addressed the Sub-Committee. He explained that the Licensee's vision was to be an integral part of the Fitzrovia community. The core of the business was the hotel bedrooms and the restaurant. In response to a question from the Sub-Committee about the respective capacity within the hotel, Mr Kramer advised that

140 could be seated in the eating part of the restaurant, 50 in the bar area of the restaurant, 160 in the lounges on the ground floor and 220 in the basement function room. Mr Skeens added that there was a capacity of 100 in the meeting rooms. This was in addition to the 173 bedrooms. Mr Kramer stated that the basement function room had been soundproofed to enable music to be played. Hotel management had talked to neighbours prior to opening. Management had listened to Mr Khalid's concerns when raised. The function room was a small part of the operation and it was felt that if the music nights caused nuisance it worked against the vision for the entire building. In spring 2015, when it had been realised that the issues were not going to go away it had been decided to change the operation of the basement. Due to Wednesday nights and Thursday nights being school nights, an initial decision had been taken to cease music nights then. When that had not eased the situation with the neighbours, the decision was taken to cease music nights completely. Mr Kramer commented that he believed the basement was currently being operated in the spirit of what was intended for the neighbourhood for events such as photo shoots or presentations of new music artists. The Sub-Committee asked what time it was intended these events would end. Mr Kramer replied that these could take place any time from early morning to late at night but no later than 01:00 hours. He added that his team was re-examining the use of the basement, including as a restaurant similar to the ground floor. Any change was likely to be at the beginning of 2016 and any events such as staff Christmas parties or presentations from music companies would continue as scheduled in the diary for the remainder of 2015. He also took the view that his team had done everything possible to keep a good relationship with neighbours and implement measures to control nuisance.

Mr Skeens addressed Members of the Sub-Committee on the conditions proposed by the Applicant as set out in the representative of the Licensee's 'overview' document. These included requests that the number of guests that a hotel resident can entertain not be reduced from five to four and resisting the reduction of hours in the restaurant as it was believed that the focus of the application for the review was the disturbance following the dispersal of patrons. The Licensee was content for the personal guest list for the proprietor to be reduced from 30 to 10 and for there to be a last admission time for the restaurant, ground floor and mezzanine floor to be limited to midnight. Mr Skeens added that his client had no problem with employing two SIA door supervisors as sought by the Applicant provided that it related to the use of the function room beyond 23:00 hours. The Applicant's proposed condition that the licence holder would provide a direct telephone number for the manager at the premises was agreed. Mr Skeens confirmed that his client did not seek events after 01:00 hours.

Mr Brown responded to some of the points raised by the Licensee's evidence to the Sub-Committee. He made the point that considerable importance had been given to Mr Vivian's testimony regarding the measurement of noise during one evening at the end of June. He had described the measurements as the average hubbub of the central London location. However, a number of residents had made representations and provided detailed records to show that they were being disturbed by noise and nuisance being caused by patrons of the hotel. Some of this evidence contradicted the records of the management of the Hotel. The Applicant and other local residents supporting the review also confirmed that they suffered a lot less noise before the current PLH had taken over the hotel. The closing of the music nights had reduced the problem after 02:00 hours. A reduction in hours was the only way to promote the

prevention of public nuisance licensing objective. Mr Brown stated, this view was supported by the evidence of Mr Khalid, backed up by the evidence of Environmental Health and corroborated by the hotel nightlife summaries that the nuisance arose from events at the premises. The issue was not just with the time of the last sale of alcohol but with the length of time it took for patrons to disperse from the premises at a time when residents were trying to sleep.

Mr Khalid wished to inform the Sub-Committee that he had made approximately five phone calls to the Council's Noise Team since the music nights had ceased in the basement function room.

The Sub-Committee gave careful consideration to both the oral representations at the hearing and those submitted in writing. Members noted that there was an acceptance on the part of the Licensee that as set out in the 'overview' document, there were aspects of the hotel's operation 'principally the Function Room in the basement of the hotel', that were 'causing noise and disturbance'. The Sub-Committee took into account the extent of the representations that had been made by local residents that their sleep was being affected, largely by patrons dispersing from the public areas of the hotel. The Sub-Committee accepted Mr Brown's point that there were instances where Environmental Health had visited the hotel following complaints to the Noise Team and corroborated the Applicant's evidence that dispersal from the premises had not been well managed and was not promoting the prevention of public nuisance licensing objective.

Members noted that the managers of the hotel had assessed the situation and taken some measures to address the issues raised by the dispersal of patrons from the public areas or steps such as commissioning a sound proof smoking shelter for use within the curtilage of the premises. The decision to cease having music nights at the hotel may indeed have had some impact in reducing the impact on certain residents such as Mr Erden who lived around the corner from the premises, having been more affected by parking issues in Berners Mews. However, these measures did not resolve all the nuisance. The Sub-Committee noted the consideration being given by the managers of the hotel to a change of use for the basement. However, the evidence as provided by Mr Brown and Mr Khalid even after the music nights had ceased was that as set out in Mr Watson's e-mail to Mr Khalid 'as far as we can judge, there has been no real improvement in the situation with reference to the noise problem since we last wrote to you'. The Sub-Committee considered that Mr Khalid's noise log throughout and his complaints to the Council's Noise Team were not malicious, as they were representative of the general nature of the concerns raised by local residents particularly those living in close proximity to (often opposite) the hotel. His additional complaints to the Noise Team that there continued to be issues with dispersal after the music nights had ceased were supported by other local residents. The Sub-Committee concluded that customers of the hotel were causing noise and public nuisance to the Applicant and other local residents contrary to the promotion of the prevention of public nuisance licensing objective.

The Sub-Committee therefore considered that it was appropriate and proportionate to reduce the permitted terminal hours for the use of the public areas where alcohol was not ancillary to food and the dispersal of patrons was most likely to have an adverse impact on local residents. Members decided that the Licensee's proposed 01:00 terminal hour was acceptable on Friday and Saturday evenings which were not

school days. However, the Sub-Committee decided that the terminal hours needed to be reduced to 22:30 hours on Sunday and midnight on Monday to Thursday. The Sub-Committee did not amend the proposed hours for the restaurant on the ground floor given that it was food led and customers were less likely to cause public nuisance on leaving this area.

The Sub-Committee attached some additional conditions to the licence (as listed in Mr Brown's latest list of conditions and discussed at the hearing and many of which were agreed by the Licensee) in order to limit public nuisance, particularly relating to the dispersal of customers from the premises. These included that from 23:00 there would be two SIA registered door supervisors on duty outside the premises until 02:00. Also, Patrons who temporarily leave and re-enter the basement 'function room' e.g. to smoke would not be permitted to take drinks or glass containers with them. Patrons who were permitted to temporarily leave and then re-enter the basement function room, including to smoke or use their mobile phones, would be restricted to using the smoking area at the basement level (the smoking shelter). The Sub-Committee attached conditions which had been agreed by the Licensee, including that last admission would be at midnight, the proprietor's guest list would be limited to ten people and there would be a direct telephone number to a manager of the premises.

Conditions attached to the Licence

Mandatory Conditions

1. No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4.
 - (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
 - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises -
 - (a) games or other activities which require or encourage, or are designed to

require or encourage, individuals to;

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

- (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
- (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
- (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
- (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

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

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

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

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either -

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

7. The responsible person must ensure that -

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or

supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures -

- (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml;
- (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
- (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

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

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

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

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

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

Where -

- (i) P is the permitted price,
 - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -
- (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or

- (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
 - (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.
- 8(iii). Where the permitted price given by Paragraph 8(ii)(b) above would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
- 8(iv). (1) Sub-paragraph 8(iv)(2) below applies where the permitted price given by Paragraph 8(ii)(b) above on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.
9. Admission of children to the premises must be restricted in accordance with the film classification recommended by the British Board of Film Classification or recommended by this licensing authority as appropriate.
10. All persons guarding premises against unauthorised access or occupation or against outbreaks of disorder or against damage (door supervisors) must be licensed by the Security Industry Authority.

Additional Conditions

- 11. All refuse will be stored internally prior to collection.
- 12. No unauthorised advertisements of any kind (including placard, poster, sticker, flyer, picture, letter, sign or other mark) is inscribed or affixed upon the surface of the highway, or upon any building, structure, works, street furniture, tree, or any other property, or is distributed to the public, that advertises or promotes the establishment, its premises, or any of its events, facilities, goods or services.
- 13. When films are shown cinema style linked seating will not be provided except as agreed with the Environmental Health Consultation Team.
- 14. Except for the hotel bedrooms, the licensee shall not permit striptease in the premises. Except for the hotel bedrooms, the Licensee shall not permit nudity

and all persons shall be decently attired at all times.

15. With the exception of the showing of films in Hotel Bedrooms, no entertainment, performance, service, or exhibition involving nudity or sexual stimulation which would come within the definition of a sex establishment in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Greater London Council (General Powers) Act 1986 (whether or not locally adopted), shall be provided under the authority of this licence.
16. Licensable activities authorised by this licence may continue from the end of permitted hours on New Year's Eve until the end of permitted hours on New Year's Day
17. The use for the premises under this licence shall remain ancillary to the main use of the premises as a hotel.
18. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
19. Substantial food and non-intoxicating beverages, including drinking water shall be available
20. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of a Metropolitan Police Crime Prevention Officer. 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. Recordings shall be made available immediately upon the request of Police or authorized officer throughout the preceding 31 day period.
21. 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 to the public. This staff member must be able to show a Police or authorised council officer recent data or footage with the absolute minimum of delay when requested.
22.
 - a) There shall be a liveried doorman on duty at the entrance to the hotel at all times. He or she will hold a SIA (or successor licensing authority) license. There will always be at least two SIA registered staff on duty at all times.
 - b) From 23:00 there shall be two SIA registered door supervisors on duty outside the premises until 02:00.
23. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
24. Waste or recyclable materials, including bottles shall only be moved, removed or placed in outside areas between

Monday to Thursday 0800 and 21:00
Friday and Saturday 08:00 and 21:00
Sunday and Bank Holiday Mondays between 10:00 and 21:00

25. Deliveries to the premises shall only be arranged between:
Monday to Thursday 0800 and 21:00
Friday and Saturday 08:00 and 21:00
Sunday and Bank Holiday Mondays between 10:00 and 21:00
except by hand deliveries (i.e. goods carried into the premises by hand unaided by mechanical means e.g. pallets and sack trucks). All by hand deliveries outside of the above times shall only be delivered in a way that is not noisy and all vehicles delivering such goods shall be requested to not park in Eastcastle Street, Berners Place or Berners Mews.
26. The pavement from the building line to the kerb edge immediately outside the premises, including gutter/channel at its junction with the kerb edge, shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.
27. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
28. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and business and leave the area quietly.
29. Loudspeakers shall not be located in the entrance lobby or outside the premises save for those used only for making emergency announcements.
30. There shall be no payment made by or on behalf of the licence holder to any person for bringing customers to the premises 'directly off the street'
31. Any special effects or mechanical installations shall be arranged and stored so as to minimize any risk to the safety of those using the premises. The following special effects will only be used on 10 days prior notice being given to the Licensing Authority where consent has not previously been given.
- Dry ice and cryogenic fog
 - Smoke machines and fog generators
 - Pyrotechnics including fire works
 - Firearms
 - Lasers
 - Explosives and highly flammable substances
 - Real flame
 - Strobe lighting
32. No person shall give at the premises any exhibition, demonstration or performance of hypnotism, mesmerism or any similar act or process which produces or is intended to produce in any other persons any form of induced sleep or trance in which susceptibility of the mind of that person to suggestion or direction is increased or intended to be increased.

NOTE: (1) This rule does not apply to exhibitions given under the provisions of Section 2(1A) and 5 of the Hypnotism Act 1952.

33. The approved arrangements at the premises, including means of escape provisions, emergency warning equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.
34. 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
35. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.
36. All emergency doors shall be maintained effectively self closing and not held open other than by an approved device.
37. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
38. Curtains and hangings shall be arranged so as not to obstruct emergency signs.
39. All fabrics, curtains, drapes and similar features including materials used in finishing and furnishing should be either non-combustible or be durably or inherently flame-retarded fabric. Any fabrics used in escape routes, other than foyers, entertainment areas or function rooms, should be non-combustible.
40. The certificates listed below shall be submitted to the Licensing Authority upon written request.
 - Any emergency lighting battery or system
 - Any electrical installation
 - Any emergency warning system

Conditions relating to Function Room - basement

41. The hours for Licensable Activities shall be:
Regulated Entertainment – Sunday 09:00 to 22:30, Monday to Thursday 09:00 to 00:00 and Friday to Saturday 09:00 to 01:00
Sale and Supply of Alcohol - Sunday 09:00 to 22:30, Monday to Thursday 09:00 to 00:00 and Friday to Saturday 09:00 to 01:00
Late Night Refreshment - Monday to Thursday 23:00 to 00:00 and Friday to Saturday 23:00 to 01:00
except for:-
 - a) Hotel residents and their guests, which shall be limited to 5 persons.
 - b) Persons on the proprietor's personal guest list up to a maximum of 10, a list of which shall be kept at the entrance to the function room for inspection by a police constable or authorised licensing officer.
42. The number of persons permitted in the function room at any one time shall not

exceed 220 (excluding staff) or such lesser numbers as agreed with the licensing Authority on removal of works condition.

43. There shall be no direct access from the street to the Function Room; patrons must gain access through the lobby.

Conditions relating to Restaurant - ground/mezzanine floors

44. The sale and supply of alcohol shall only be to persons seated taking a table meal there and for consumption by such persons as ancillary to their meals and by waiter and waitress service except:-
- a) To persons waiting to dine at the premises in the holding bar area where there shall be no more than 30 persons
 - b) To persons attending a pre-booked private or corporate function or ticketed event; and/or
 - c) To hotel residents and their guests.
45. The hours for Licensable Activities shall be:
- Regulated Entertainment - Monday to Sunday 09:00 to 01:00
 - Sale and Supply of Alcohol - Monday to Sunday 06:00 to 01:00
 - Late Night Refreshment - Monday to Sunday 23:00 to 01:00
- except to:-
- a) Hotel residents and their guests
 - b) Persons on the proprietor's personal guest list up to a maximum of 10, a list of whom shall be kept at the entrance to the restaurant for inspection by a police constable or authorised licensing officer.
46. The Sale of Supply of alcohol between the hours of 06:00 and 09:00 shall be limited to champagne and wines to patrons partaking in the breakfast menu.
47. Last admissions for the restaurant on the ground/mezzanine floors shall be midnight.

Conditions relating to the Front Living Room and Lounge Area, Ground Floor

48. The hours for Licensable Activities (save for residents of the hotel and bona fide guests of residents limited to 5 persons) shall be:
- Regulated Entertainment - Sunday 09:00 to 22:30, Monday to Thursday 09:00 to 00:00 and Friday to Saturday 09:00 to 01:00
 - Sale and Supply of Alcohol - Sunday 09:00 to 22:30, Monday to Thursday 09:00 to 00:00 and Friday to Saturday 09:00 to 01:00
 - Late Night Refreshment - Monday to Thursday 23:00 to 00:00 and Friday to Saturday 23:00 to 01:00
49. There shall be no direct access from the street to the lounge area; patrons must gain access through the lobby.
50. The number of persons permitted in the Front living room and lounge at any one time shall not exceed 160 (excluding staff) or such lesser numbers as agreed with the licensing Authority on removal of works condition.

Conditions relating to the Meeting Rooms on the first floor

51. The provision of Licensable Activities in the Meeting rooms shall be restricted to private pre-booked functions save for residents of the hotel and bona fide guests.
52. The hours for Licensable Activities (save for residents of the hotel and bona fide guests of residents) shall be:
 - Regulated Entertainment - Monday to Sunday 09:00 to 01:00
 - Sale and Supply of Alcohol - Monday to Sunday 09:00 to 01:00
 - Late Night Refreshment - Monday to Sunday 23:00 to 01:00
53. The number of persons permitted in the meeting rooms at any one time shall not exceed 100 (excluding staff) or such lesser numbers as agreed with the licensing Authority on removal of works condition.
54. Staff shall not be allowed to smoke in Berners Street, Berners Mews, Berners Place, Eastcastle Street and shall be directed to Newman Street
55. There shall be no entrance or egress of hotel guests or members of the public directly from/to Eastcastle Street.
56. Valet parking will be available.
57. The licence holder shall enter into an agreement with a hackney carriage and/or private carriage firm to provide transport for customers, with contact numbers made readily available to customers who will be encouraged to use such services.
58. Persons awaiting a cab or car shall be encouraged to wait in the Front Living Room area at all times,

Further conditions attached by the Sub-Committee at the review hearing

59. Patrons who temporarily leave and re-enter the basement 'function room' e.g. to smoke shall not be permitted to take drinks or glass containers with them.
60. Patrons permitted to temporarily leave and then re-enter the basement 'function room' e.g. to smoke or use their mobile phones shall be restricted to use the smoking area at the basement level.
61. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.

LICENSING SUB-COMMITTEE No. 4

Thursday 17th September 2015

Membership: Councillor Jean-Paul Floru (Chairman), Councillor Heather Acton and Councillor Aziz Toki

Legal Adviser: Heidi Titcombe
Committee Officer: Jonathan Deacon

Relevant Representations: Environmental Health.

Present: Mr Julian Skeens (Solicitor, Representing the Premises User), Mr Will Gubbins (Trainee Solicitor, on behalf of the Premises User), Mr Lance Perkins (Designated Premises Supervisor and Premises User), Mr Edwin Kramer (Hotel General Manager), and Mr Dominik Prosser (Functions Room Events Manager) Ms Rebecca St Rose (Environmental Health) and Mr Heath Richards (City Inspector).

The London Edition, 10 Berners Street, W1 Temporary Event Notice - 15/07400/LITENP

Period of Event and proposed Licensable Activities:

01:00 to 03:00 Tuesday 22nd September 2015

- The sale by retail of alcohol (on and off the premises)
- The provision of regulated entertainment
- The provision of late night refreshment

Decision:

Environmental Health had provided a notice of objection in response to a Temporary Event Notice to hold 'The Business of Fashion' event on Tuesday 22 September at The London Edition. Environmental Health had supported the review application considered earlier by the Sub-Committee. Environmental Health sought an undertaking from the Premises User in line with two conditions that the Sub-Committee had attached for the review. These were that (1) patrons would not be able to take drinks outside with them and that (2) smokers would be required to use a smoking shelter within the curtilage of the premises at basement level which complied with regulations and would help to promote the prevention of public nuisance Licensing objective. The representatives of the hotel agreed to this undertaking. The Sub-Committee decided having regard to all the facts of this case and the concessions offered by the Applicant that this one-off event, which included dinner, should be permitted to proceed, subject to the application being amended to incorporate the above two additional conditions to promote the licensing objectives. The Sub-Committee did not consider it was appropriate to issue a Counter Notice.