



**CITY OF WESTMINSTER**

# MINUTES

## **Licensing Sub-Committee (2)**

### **MINUTES OF PROCEEDINGS**

Minutes of a meeting of the **Licensing Sub-Committee (2)** Committee held on **Thursday 12th May, 2016**, Rooms 5, 6 & 7 - 17th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6 QP.

**Members Present:** Councillors Nickie Aiken (Chairman), Nick Evans and Murad Gassanly

#### **1 MEMBERSHIP**

There were no changes to the membership.

#### **2 DECLARATIONS OF INTEREST**

Councillor Nick Evans declared in respect of application 1 that he had sat as a Member of the Sub-Committee in May 2014 which had considered the review application for Amika at the premises and had revoked the premises licence. He added that he appreciated that there is no connection between the operators of Amika and Jaks.

#### **1 JAKS, 43 SOUTH MOLTON STREET, W1**

##### **LICENSING SUB-COMMITTEE No. 2**

*Thursday 12th May 2016*

Membership: Councillor Nickie Aiken (Chairman), Councillor Nick Evans and Councillor Murad Gassanly

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

Presenting Officer: David Sycamore

Relevant Representations: Metropolitan Police, Environmental Health and 4 x local residents.

Present: Mr Philip Kolvin QC (Representing the Applicant), Mr Valentino Seferi (Owner of premises), Mr Anil Drayan (Environmental Health), PC Toby Janes (Metropolitan Police) and Ms Judy Kuttner (local resident)

Declaration: Councillor Nick Evans declared that he had sat as a Member of the Sub-Committee in May 2014 which had considered the review application for Amika at the premises and had revoked the premises licence. He added that he appreciated that there is no connection between the operators of Amika and Jaks.

<b>Jaks, 43 South Molton Street, W1 16/02285/LIPN</b>	
<b>1.</b>	<b>Late Night Refreshment (Indoors)</b>
	Monday to Sunday: 23:00 to 01:00
	Amendments to application advised at hearing:  None.
	Decision (including reasons if different from those set out in report):  The Sub-Committee initially heard from Mr Kolvin, representing the Applicant. Mr Kolvin stated that Mr Seferi ran six Jaks or Zefi restaurant/bars in the Royal Borough of Kensington and Chelsea. The venues he ran, Mr Kolvin informed Members, were for seated customers being served by waiter or waitress, were low key and in a lounge style. There was a largely local and mature clientele aged between 25 and 50. Mr Kolvin wished to emphasise that Jaks in South Molton Street would be a completely different type of operation from that of Amika, a nightclub whose licence had been revoked (this included the terminal hour which was two hours earlier than Amika).  Mr Kolvin provided further information on the proposed operation. The fourth floor was not in use for customers. The third floor contained public toilets. A proposed condition agreed between Environmental Health and the Applicant required alcohol to be ancillary to a table meal and customers to be seated on the first and second floors. On the ground floor, alcohol would be served by waiter or waitress to seated customers. From 21:00 alcohol would be ancillary to a table meal. The basement would be laid out with tables and chairs (providing at least 120 seating places for customer use). Mr Kolvin commented that anyone walking past would consider the premises a restaurant. The kitchen would be open until midnight. There would be no dance floor in the basement. Mr Kolvin stated that off-sales were only proposed in an area outside the premises. There would be no more than four tables and sixteen chairs in this area and these would be removed by 21:00. Alcohol would be served by waiter or waitress to seated customers.

Mr Kolvin described the consultation process that his client had undertaken. There had been a pre-application consultation letter to neighbours. He had spoken with Councillor Glanz, the Ward Councillor and spoken to the Council's Planning and Licensing departments. Conditions had been agreed with the Police and Environmental Health. Mr Kolvin stated that the Applicant had written to the four objectors who were not located in South Molton Street. The point had been made that the operation would not be similar to Amika's. A condition had been agreed that a member of management or security would patrol South Molton Street from 23:00 until 30 minutes after the premises closed. There would be no queuing, no regulated entertainment in the basement and doors and windows would be closed at 21:00. After 20:00 there would be at least one SIA registered security officer on all days there was provision of licensable activities. On Thursdays, Fridays and Saturdays there would be no fewer than three SIA registered security officers at all times after 20:00 hours and until the last customer had left the immediate area.

Mr Kolvin also explained the dispersal policy which would come into effect at least half an hour before the terminal hour for provision of licensable activities and until the last customer had left the immediate area. Included within this was that customers would be reminded that there were residents in the street and be asked to leave quietly. Customers would be encouraged to walk towards Oxford Street with security staff supervising the exit door and the street outside to oversee the dispersal of customers.

The Sub-Committee next heard from PC Janes on behalf of Metropolitan Police and Mr Drayan on behalf of Environmental Health. They had both maintained their representations due to the terminal hour being beyond the Council's Core Hours policy. PC Janes added that the basement area was not subject to a restaurant condition. If Members were minded to grant the application then the robust conditions which had been agreed with the Applicant had been proposed to address concerns. Mr Drayan agreed with PC Janes that robust conditions had been agreed with the Applicant. He stated that Jaks at 43 South Molton Street was not a drinking establishment. It had been agreed that there would be 120 seats in the basement. He had visited the premises in Walton Street and found that it operated in keeping with Mr Kolvin's description of the Jaks premises.

Ms Kuttner, a local resident, informed the Sub-Committee that she had lived in the neighbourhood for 40 years and would be moving from Brook Street to South Molton Street. The terminal hour for the premises was her main concern. She commented that most of the premises licences in the neighbourhood had a terminal hour of no later than midnight. She had concerns about dispersal, including that this would take place late at night below residents' bedrooms. Also taxis would use the passageway between South Molton Street and South Molton Lane late at night and patrons might relieve themselves there as referred to in Mr Dubell's representation. Ms Kuttner queried where it was intended that customers would go to smoke. She also expressed concerns that whilst tables and chairs were laid out in the basement of Jaks, there was no requirement for people to sit down there or consume alcohol ancillary to food. She did not have reason to believe that the premises would be badly run but made the point that

the Sub-Committee would be licensing the premises and not the enterprise.

The Sub-Committee asked Mr Kolvin a number of questions in respect of the application. These included exploring with the Applicant as to what was sought in terms of live music. Mr Drayan made the point that live music was deregulated until 23:00. A condition had been agreed that amplified live music would be restricted to the basement after 23:00. There would be no regulated entertainment on the ground floor. The Sub-Committee noted that a condition was proposed that no noise would be permitted to emanate from the premises.

The Sub-Committee also asked whether, taking into account the close proximity of residents' properties, the Applicant would be willing to reduce the number of smokers outside to below 15 at any one time. Mr Kolvin replied that smokers would have to be supervised. He offered a maximum of 10 at any one time.

The Sub-Committee questioned why the proposed conditions did not include the Council's model restaurant condition, MC66, for the first and second floors at all times and for the ground floor after 21:00. Mr Drayan advised Members that he had proposed MC38 because the establishment was outside the West End Cumulative Impact Area. Mr Kolvin confirmed that he had no issues with having MC66 in effect for these floors or that there would be waiter or waitress service on the first and second floors (the condition for the ground floor already required waiter or waitress service) or that alcohol would be ancillary to a substantial table meal on the first and second floors and after 21:00 on the ground floor. He was content with conditions that there would be no dance floor or external promoters at the premises.

Mr Kolvin sought to assure those present that the clientele would not be relieving themselves in the local area because security would be patrolling the area. PC Janes advised Members that he was content with security patrolling the street and assisting in reducing noise nuisance. Ms Kuttner requested that the use of the radios did not make sufficient sound which could be heard by residents. Mr Kolvin also made the additional points that it was likely that Jaks would have a local clientele which would limit car or taxi use. The Applicant had agreed to employ a dedicated taxi service and this would need to ensure that residents would not be adversely affected.

The Sub-Committee noted that 43 South Molton Street is not located in a designated cumulative impact area. The application therefore would be judged on its merits and whether it promoted the licensing objectives. The Sub-Committee, in granting the application, shared the view of Environmental Health and Metropolitan Police that the Applicant had agreed with them a robust set of conditions. These included that after 20:00 hours Sunday to Wednesday there would be at least one SIA security officer and after 20:00 hours on Thursdays, Fridays and Saturdays, there would be at least three SIA security officers. Security would oversee the smoking area and patrol South Molton Street from 23:00 until 30 minutes after the premises closed. The Applicant had demonstrated a willingness to listen to the concerns of the Sub-Committee and local residents by offering to reduce the maximum number of smokers outside to a maximum of ten after 21:00. The Applicant would also employ a dedicated taxi service. It was now for the Applicant to demonstrate that the security staff,

	<p>who would be a vital part of ensuring that residents were not adversely affected by the application, would monitor the situation as closely as Mr Kolvin had indicated. The Applicant would need to work with Environmental Health in particular regarding the location of the smokers and the management of the taxis outside the premises.</p> <p>With the agreement of the Applicant, the Sub-Committee tightened up the proposed conditions so that the supply of alcohol on the first and second floors of the premises would be by waiter or waitress to a person seated taking a substantial table meal there. On the ground floor there would be waiter or waitress service to seated customers at all times and after 21:00 alcohol would be ancillary to a substantial table meal. The Sub-Committee took some reassurance from the fact that the Applicant was content to have seating throughout the ground floor which would not promote vertical drinking and also had agreed a condition that there would be no dance floor there. Mr Kolvin had been keen to emphasise that the premises would not be a nightclub as had been the case previously. Conditions were attached to the licence that there would be no regulated entertainment on the ground floor or in the external area used for tables and chairs and no external promoters would be permitted at the premises.</p> <p>In the event that public nuisance was caused by smokers, taxi cabs or people dispersing did cause a public nuisance, residents or the Responsible Authorities would have the option to review the premises licence.</p>				
<b>2.</b>	<b>Sale by Retail of Alcohol (On and Off)</b>				
	<table> <tr> <td>Monday to Saturday:</td> <td>10:00 to 01:00</td> </tr> <tr> <td>Sunday:</td> <td>12:00 to 01:00</td> </tr> </table>	Monday to Saturday:	10:00 to 01:00	Sunday:	12:00 to 01:00
Monday to Saturday:	10:00 to 01:00				
Sunday:	12:00 to 01:00				
	<p>Amendments to application advised at hearing:</p> <p>None.</p>				
	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below (see reasons for decision in Section 1).</p>				
<b>3.</b>	<b>Provision of Film (Indoors), Live Music (Indoors), Recorded Music (indoors) and Provision of anything of a similar description to live music, recorded music or performance of dance</b>				
	<table> <tr> <td>Monday to Saturday:</td> <td>10:00 to 01:00</td> </tr> <tr> <td>Sunday:</td> <td>12:00 to 01:00</td> </tr> </table>	Monday to Saturday:	10:00 to 01:00	Sunday:	12:00 to 01:00
Monday to Saturday:	10:00 to 01:00				
Sunday:	12:00 to 01:00				
	<p>Amendments to application advised at hearing:</p>				

	None.
	Decision (including reasons if different from those set out in report):  The Sub-Committee granted the application, subject to conditions as set out below (see reasons for decision in Section 1).
<b>4.</b>	<b>Opening Hours</b>
	Monday to Sunday:                      07:00 to 01:30
	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 (see reasons for decision in Section 1).
<b>5.</b>	<b>Seasonal Variations</b>
	<b><u>Late Night Refreshment (Indoors), Sale by Retail of Alcohol (On and Off), Provision of Film (Indoors), Live Music (Indoors), Recorded Music (indoors) and Provision of anything of a similar description to live music, recorded music or performance of dance</u></b> To operate until 03:00 on New Year's Day.  <b><u>Opening Hours</u></b> To operate until 03:30 on New Year's Day.
	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.

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

premises supervisor in respect of this licence.

2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4.
  - (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
  - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
    - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;
      - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
      - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
    - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
    - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
    - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
    - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
6.
  - (1) The premises licence holder or club premises certificate holder must

ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
  - (a) a holographic mark, or
  - (b) an ultraviolet feature.

7. The responsible person must ensure that—

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

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

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

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

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



Act 1979;

(b) "permitted price" is the price found by applying the formula -

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

Where -

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

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

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

### **Additional Conditions**

9. The number of persons permitted in each area of the premises at any one time (excluding staff) shall not exceed :-
- a. Basement: 130

- b. Ground floor: 32
- c. First floor: 65
- d. Second floor: 40

No licensable activities shall take place at the premises until the final capacity for each floor has been determined by the Environmental Health Consultation Team and the Licensing Authority has replaced this condition on the licence in the condition dealing with capacities so determined.

10. Before the premises open to the public, the plans as deposited will be checked by the Environmental Health Consultation Team to ensure they are an accurate reflection of the premises constructed. Where the premises layout has changed during the course of construction, new plans shall be provided to the Environmental Health Consultation Team and the Licensing Authority.
11. No licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority.
12. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
13. The supply of alcohol on the first and second floors of the premises shall only be by waiter or waitress service to a person seated taking a substantial table meal there, including customers awaiting service, for consumption by such a person as ancillary to their meal.
14. The supply of alcohol on the ground floor shall only be by waiter or waitress service to customers who are seated and after 21:00 hours shall only be to a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal.
15. The basement shall be laid out with tables and chairs (providing at least 120 seating places for customer use) at all times when there is supply of alcohol in this area (final numbers to be determined on removal of 'works' conditions 10 and 11).
16. The supply of alcohol for consumption off the premises shall be in sealed containers only save for in an area appropriately authorised for the use of tables and chairs on the highway where such supply of alcohol will be:
  - by waiter or waitress service only
  - to customers who are seated
  - and where there will be no more than 4 tables and 16 chairs.
17. All tables and chairs shall be removed from the outside area by 21.00 hours each day.
18. The premises licence holder shall ensure that any patrons drinking and/or

smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.

19. Patrons permitted to temporarily leave and then re-enter the premises, eg to smoke, shall not be permitted to take drinks or glass containers with them unless seated in the authorised external area. After 21:00 hours such patrons shall be restricted to a maximum of 10 at any one time and shall be supervised by a person licensed by the Security Industry Authority.
20. A member of management or security shall patrol South Molton Street from 23:00 hours until 30 minutes after the premises close.
21. There shall be no regulated entertainments on the ground floor or in the external area used for tables and chairs.
22. After 23:00 hours amplified live music shall be restricted to the basement.
23. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
24. The exhibition of films shall be restricted to the basement and there shall be no cinema style showing of films.
25. A Challenge 21 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
26. 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.
27. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
28. A noise limiter must be fitted to the musical amplification system set at a level determined by and to the satisfaction of an authorised officer of the Environmental Health Service, so as to ensure that no noise nuisance is caused to local residents or businesses. The operational panel of the noise limiter shall then be secured by key or password to the satisfaction of officers from the Environmental Health Service and access shall only be by persons

authorised by the Premises Licence holder. The limiter shall not be altered without prior agreement with the Environmental Health Service. No alteration or modification to any existing sound system(s) should be effected without prior knowledge of an authorised Officer of the Environmental Health Service. No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.

29. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
30. No fumes, steam or odours shall be emitted from the licensed premises so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated.
31. All windows and external doors shall be kept closed after 21:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.
32. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
33. 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.
34. 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.
35. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
36. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23:00 hours and 07:00 hours on the following day.
37. No deliveries to the premises shall take place between 23:00 hours and 08:00 hours on the following day.
38. There shall be no striptease or nudity, and all persons shall be decently attired at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue licence.
39. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police, which will record the following:
  - (a) all crimes reported to the venue

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

40. No advertisements of any kind (including placard, poster, sticker, flyer, picture, letter, sign or other mark) that advertises or promotes the establishment, its premises, or any of its events, facilities, goods or services shall be inscribed or affixed upon the surface of the highway, or upon any building, structure, works, street furniture, tree, or any other property, or be distributed to the public..
41. 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.
42. 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.
43. 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.
44. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.
45. All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.
46. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
47. Curtains and hangings shall be arranged so as not to obstruct emergency safety signs or emergency equipment.
48. All fabrics, curtains, drapes and similar features including materials used in finishing and furnishing shall 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, shall be non-combustible.
49. The certificates listed below shall be submitted to the licensing authority upon written request:
  - Any permanent or temporary emergency lighting battery or system
  - Any permanent or temporary electrical installation
  - Any permanent or temporary emergency warning system
50. The premises shall operate a dispersal policy at least half an hour before the

terminal hour for provision of licensable activities and until the last customer has left the immediate area, as follows:

- a. Hot and cold soft drinks must be available.
- b. Music must be lowered.
- c. Lights must be turned up.
- d. Customers must be reminded that there are residents on the street and be asked to leave quietly.
- e. Customers must be encouraged to walk towards Oxford Street.
- f. Security staff shall supervise the exit door and the street outside, to disperse customers rapidly and quietly.

51. After 20:00 hours there shall be at least one SIA- registered security officer on all days there are provision of licensable activities. On Thursdays, Fridays and Saturdays, there shall be no fewer than three SIA-registered security officers at all times after 20:00 hours. The officers shall remain on duty until the last customer has left the immediate area.
52. All staff engaged in supervising of the outside of the premises shall wear high visibility arm bands.
53. There shall be no dance floor at the premises.
54. There shall be no external promoters used at the premises.

## **2 B-BAR, 43 BUCKINGHAM PALACE ROAD, SW1**

### **LICENSING SUB-COMMITTEE No. 2**

*Thursday 12th May 2016*

Membership: Councillor Nickie Aiken (Chairman), Councillor Nick Evans and Councillor Murad Gassanly

Legal Adviser: Barry Panto  
Policy Adviser: Chris Wroe  
Committee Officer: Jonathan Deacon  
Presenting Officer: David Sycamore

Relevant Representations: Environmental Health and Victoria Square Gardens Ltd.

Present: Mr Howard Timms (Solicitor, representing the Applicant), Mr Ian Powrie (General Manager), Ms Sally Thomas (Environmental Health), Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project – on behalf of Victoria Square Gardens Ltd) and Dame Judith Mayhew Jonas (Director, Victoria Square Gardens Ltd)

**B-Bar, 43 Buckingham Palace Road, SW1  
16/02186/LIPV**

**1. Late Night Refreshment (Indoors)**

Extended times to basement only and restricted to members (apart from pre-booked events allowed for on 24 occasions per year). The existing hours are for the whole premises.

<u>From</u> (existing hours for whole premises)	<u>To</u> (basement only)
Monday to Saturday 23:00 to 00:30 Sunday 23:00 to 00:00	Monday to Sunday 23:00 to 02:30.

Amendments to application advised at hearing:

Mr Timms informed Members of the Sub-Committee that the Applicant had made a number of amendments to the application. It was proposed that the extension sought for late night refreshment (indoors) would be limited to Wednesday to Saturday until 01:00 hours only. There would be a reduced capacity to 35 members or their guests in addition to staff after 00:30 hours.

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

The Sub-Committee, with the agreement of the parties at the hearing, adjourned the application to a later date. This was to give the Applicant the opportunity to further reflect on what was being proposed in the application, including in relation to the terminal hours and liaise accordingly with Environmental Health and Victoria Square Gardens Ltd. It was recognised that the proposed conditions as drafted did not consistently reflect what the Applicant intended to do. The inconsistency and poor drafting needed to be addressed. An example of this was that one condition put forward by the Police and agreed by the Applicant (condition 42) set out that alcohol could only be consumed by members of the private club and up to four bona fide guests. This failed to recognise that alcohol could be sold to members of the public until midnight on Monday to Saturday and 23.30 on Sunday (provided the consumption was ancillary to a table meal during the final hour) and that alcohol could further be sold until 02.00 throughout the premises for people attending up to 24 pre-booked functions in a calendar year. The existing licence wasn't at all clear as to whether the public were excluded when the premises were being used for pre-booked functions but this new application was complicating matters further by providing for a general extension to the licensable activities in the basement only (including the sale of alcohol) until 00.30 with a further extension in the basement until 02.30 but restricted to members of a private members club.

Another condition (condition 26) set out that apart from the 24 evenings already sanctioned by the current licence, the basement area of the premises would operate as an upmarket private members club. This suggested that the 24 occasions permitted under an existing condition were limited to evenings only when there was no such restriction on the licence. The problem with that existing condition was that it appeared to oust the means of giving a Temporary Event Notice but permitted 24 "occasions" instead without setting out how long each occasion might last. This would make it difficult if not impossible to be sure when the premises could be used for a private function and when the premises were being used as a private club. Mr Panto recommended that the Applicant look again at cumbersome conditions which combined the use of the premises licence and temporary event notices.

The Sub-Committee had heard the respective positions of the parties at the hearing. The Applicants had amended the application so that the extension sought for late night refreshment (indoors) would be limited to Wednesday to Saturday until 01:00 hours and the closing time to 01:30 hours. The extension sought for the sale of alcohol had been amended to Wednesday to Saturday until 01:00 hours only. The aspect of the application for the provision of anything of a similar description to live music, recorded music or performance of dance had now been withdrawn. There would be a reduced capacity to 35 members or their guests in addition to staff after 00:30 hours. Mr Timms stated at the hearing that his client was part of a wider group of companies and the members travelled a lot, potentially requiring use of the premises at a later hour. He made the point that the members would be carefully selected and he believed the likelihood of people causing a public nuisance to residents in the Victoria Square area was low as they would use a taxi rather than walk. He added that the Reuben Hotel, which was next door and owned by the Applicant Company, did not want disturbance from customers of the B-Bar disrupting the residents of the Hotel.

The Police had withdrawn their representation. Ms Thomas for Environmental Health referred to a number of the proposed conditions that had been agreed with the Applicant reflecting the fact that the provision of anything of a similar description to live music, recorded music or performance of dance had been applied for. This aspect of the application had now been withdrawn. She believed it was the Applicant's intention to continue to operate in the basement in line with the condition (10) that alcohol would be ancillary to a table meal. It would limit the potential for vertical drinking. The capacity of 60 could potentially be amended to take into account that there would only be seated people in the area (Mr Timms confirmed that the customers in the basement would have to be seated). Ms Thomas stated that the conditions she had proposed and had been agreed by the Applicant had looked to address as many of the public nuisance and public safety concerns as possible. Environmental Health's conditions agreed by the Applicant included that there would be no off-sales after 23:00.

Mr Brown, addressing the Sub-Committee, made the point that the principal concern of the Victoria Square Gardens Ltd was the terminal hour. 02:30 had been seen as wildly disproportionate whilst 01:30 was felt to be inappropriate. It was the residents' view that the likely effect of the extension of hours would be noise nuisance and anti-social behaviour. There were three entrances into



Victoria Square and residents felt particularly vulnerable in terms of the entrance from Buckingham Palace Road. Mr Brown drew Members' attention to the B-Bar website reflecting that the premises closed at 23:00. This would mean the application if granted for the hours applied for would have more impact. Mr Brown raised concerns regarding the use of the night tube leading to more people walking past Victoria Square. It was an area which was becoming increasingly residential including the Nova development with 170 residential flats.

Mr Brown stated that the Nova development had recently been granted a number of premises licences until midnight. Permitting beyond midnight for the application would potentially lead to a late night economy and a precedent where premises such as pubs applied for later hours. Victoria Square residents had not objected to the Nova applications because of the hours and use. Mr Brown queried how the Applicant would manage the situation in the basement when the people who were not members of the club were required to leave the premises. Whilst the Applicant was making the case that it did not want noise nuisance as the Reuben Hotel was next door, Mr Brown believed it was unlikely that people in high spirits would walk past the Hotel where there was tighter security. Any issues would take place as people were dispersing towards Victoria. He referred to a number of reviews of premises licences being connected to bars that were next door to hotels.

Mr Holford confirmed that of the residents who had been canvassed in Victoria Gardens an overwhelming number were against the application. They had experienced problems such as urination and broken bottles. The previous week the Police had arrested three people at this location. The application, he believed, would impact on the character of the area. Whilst the premises would potentially be well run, the issue was dispersal.

Dame Judith Mayhew Jonas referred to the area becoming a more upmarket residential and business district, including the Nova development and Grosvenor Gardens having 44 new flats. She stated that it was vitally important to set the tone now and not allow the area to become a late night economy. She had supported the Nova development and the fact it would not operate after midnight. Residents owned Victoria Square Gardens and were against its use late at night. Core Hours was suitable for the area.

Mr Timms responded to questions from the Sub-Committee. He made the point that B-Bar with the private club at a later hour was a very different operation from a pub applying for later hours with a different clientele. He estimated that approximately 5% of guests attending B-Bar visited Reubens Hotel. Membership would be approximately £200 a year. Mr Powrie informed the Sub-Committee that of the 24 'occasions' per year when the Applicant was permitted to sell alcohol and provide late night refreshment until 02:00, the premises had operated in accordance with this approximately a dozen times in 2015. The Applicant had given the requisite notice to the Police and Licensing Authority on each occasion.

**2. Sale by Retail of Alcohol (On and Off)**

	<p>Extended times to basement only and restricted to members (apart from pre-booked events allowed for on 24 occasions per year). The existing hours are for the whole premises.</p> <table border="1" data-bbox="253 336 1404 555"> <thead> <tr> <th data-bbox="253 336 828 443"><u>From</u> (existing hours for whole premises)</th> <th data-bbox="828 336 1404 443"><u>To</u> (basement only)</th> </tr> </thead> <tbody> <tr> <td data-bbox="253 443 828 555">Monday to Saturday 10:00 to 00:00 Sunday 10:00 to 23:30</td> <td data-bbox="828 443 1404 555">Monday to Sunday 10:00 to 02:30.</td> </tr> </tbody> </table>	<u>From</u> (existing hours for whole premises)	<u>To</u> (basement only)	Monday to Saturday 10:00 to 00:00 Sunday 10:00 to 23:30	Monday to Sunday 10:00 to 02:30.
<u>From</u> (existing hours for whole premises)	<u>To</u> (basement only)				
Monday to Saturday 10:00 to 00:00 Sunday 10:00 to 23:30	Monday to Sunday 10:00 to 02:30.				
	<p>Amendments to application advised at hearing:</p> <p>Mr Timms informed Members of the Sub-Committee that the Applicant had made a number of amendments to the application. It was proposed that the extension sought for the sale of alcohol would be limited to Wednesday to Saturday until 01:00 hours only.</p> <p>The Applicant had agreed a condition with Environmental Health that there would be no off-sales after 23:00 hours. There would be a reduced capacity to 35 members or their guests in addition to staff after 00:30 hours.</p>				
	<p>Decision (including reasons if different from those set out in report):</p> <p>The application was adjourned to a later date (see Section 1).</p>				
<b>3.</b>	<b>Provision of anything of a similar description to live music, recorded music or performance of dance</b>				
	Monday to Sunday: 10:00 to 02:30				
	<p>Amendments to application advised at hearing:</p> <p>Mr Timms informed Members of the Sub-Committee that this aspect of the application was being withdrawn by the Applicant.</p>				
	<p>Decision (including reasons if different from those set out in report):</p> <p>The application was adjourned to a later date (see Section 1).</p>				
<b>4.</b>	<b>Opening Hours</b>				
	For the whole premises				

	<u>From</u>	<u>To</u>
	Monday to Saturday 10:00 to 00:30 Sunday 10:00 to 00:00	Monday to Sunday 10:00 to 02:30.
	Amendments to application advised at hearing:	
	Mr Timms informed Members of the Sub-Committee that the Applicant had made a number of amendments to the application. It was proposed that the extension sought for the opening hours would be limited to Wednesday to Saturday until 01:30 hours. There would be a reduced capacity to 35 members or their guests in addition to staff after 00:30 hours.	
	Decision (including reasons if different from those set out in report):	
	The application was adjourned to a later date (see Section 1).	

### 3 BURGER KING, UNIT 1, CHARING CROSS STATION, STRAND, WC2

#### LICENSING SUB-COMMITTEE No. 2

*Thursday 12th May 2016*

Membership: Councillor Nickie Aiken (Chairman), Councillor Nick Evans and Councillor Murad Gassanly

Legal Adviser: Barry Panto  
Policy Adviser: Chris Wroe  
Committee Officer: Jonathan Deacon  
Presenting Officer: Darren O'Leary

Relevant Representations: Environmental Health, Metropolitan Police and 1 local resident.

Present: Ms Nicola Smith (Solicitor, representing the Applicant), Mr Richard Attwood (Operations Director, Applicant Company), Mr Trevor King (Operations Manager, Burger King), Mr Maxwell Owusu Koduah and PC Bryan Lewis (Metropolitan Police and on behalf of the British Transport Police).

<b>Burger King, Unit 1, Charing Cross Station, Strand, WC2</b> <b>16/00209/LIPN</b>	
<b>1.</b>	<b>Sale by Retail of Alcohol (On)</b>
	Monday to Saturday 11:00 to 23:00

	Sunday 12:00 to 22:30
	<p>Amendments to application advised at hearing:</p> <p>Ms Smith confirmed at the hearing that as a result of communications with Covent Garden Residents' Association, who had subsequently withdrawn their representation, the terminal hour for on-sales of alcohol was amended to 21:00 hours on every day of the week.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee initially heard from Ms Smith, representing the Applicant. She confirmed at the hearing that as a result of communications with Covent Garden Residents' Association, who had subsequently withdrawn their representation, the terminal hour for on-sales of alcohol had been amended to 21:00 hours seven days a week. The other local resident objector, Ms Rice, had been informed of the amendment but had not responded. The Applicant had agreed conditions with Environmental Health and a number of conditions with the Metropolitan Police including that customers would be limited to one branded beer or lager of no more than 4.8% Alcohol by Volume, per person, per meal of draught beer. The beer provided would be no more than 570ml in volume.</p> <p>The two Police proposed conditions which had not been agreed were that 'a menu on display shall clearly show when alcohol may be served with a specific meal plan' and that premises licence holder would ensure that all staff engaged in the sale of alcohol would be trained to a minimum standard of BIIAB Level 1 or equivalent. Ms Smith stated that the first condition would require a menu to be produced specifically for this Unit when Burger King had standard menus. She added that the sale of alcohol was being restricted to a terminal hour of 21:00. The Applicant was proposing that prominent signage would be displayed so as to be visible at the point of sale indicating the permitted hours for the sale of alcohol and that the sale of alcohol would be restricted to one sale per person per meal. In terms of the second condition, Ms Smith informed those present that Burger King's current staff training for the sale of alcohol complied with the BIIAB standard but what happened in relation to the BIIAB standard in the future was outside of the Applicant's control. The Applicant had no issues with the second part of the proposed condition that training records would be kept on the premises and produced at request to the Police or an authorised officer on request.</p> <p>Ms Smith stated there was no objection to the late night refreshment aspect of the application (which was already authorised on the existing licence for Burger King at Charing Cross station). She made the point that she was aware of the British Transport Police representation via the Metropolitan Police but this had preceded the amendment to on-sales only. She added that football fixtures had been referred to as being a concern for the British Transport Police but her client, Select Service Partner ('SSP') had agreed not to sell alcohol in the event that the Police had specific concerns regarding special events. Ms Smith</p>

believed that the Police's concerns as set out in an article in The Huffington Post regarding the potential for increased crime and disorder at Charing Cross when the night tube was introduced were mitigated by on-sales concluding at 21:00.

Ms Smith informed those present that Select Service Partner ('SSP') operates branded catering and retail units in stations and airports and had done so for over fifteen years at Charing Cross. In addition to Burger King, some of their portfolio of brands included Whistlestop, Marks and Spencer and Simply Food units. SSP had recently been granted applications to sell alcohol in Fenchurch Street and East Croydon Stations. Ms Smith described Burger King as a quick service restaurant providing hot and cold food. The alcohol sold would be a single brand of lager. It would be served by counter and there was no self-service. There was a requirement for it to be consumed within the Unit and she expressed the view that there was good supervision of the seating area.

Ms Smith addressed the Sub-Committee on the Council's policy. She stated that there was no presumption of refusal against the application. The terminal hour for alcohol was within the Council's Core Hours policy. It would not in her view act as a precedent for other quick service restaurants. She made the point that the Burger King outlet was in the station in a contained area away from the street. Station customers would be passing through and would be unlikely to stay in the Unit for a prolonged time. Alcohol would be ancillary to a meal. There were other premises in Charing Cross Station which sold alcohol to a later hour.

In terms of training, Ms Smith made the points that employees would have to achieve perfect scores in their training or undergo refresher training. There would be refresher training every six months in any event. Members of Staff were required to have conflict management training in the event that customers wanted to take an alcoholic drink outside the Unit. Customers would be offered a refund should they not appreciate that alcohol was on-sales only and needed to depart. Ms Smith expressed the view that as a result of the Applicant having agreed the vast majority of the conditions proposed the licensing objectives had been met. In the event that the Applicant was not able to meet the licensing objectives the application could be reviewed. CCTV would be installed in the Unit.

PC Lewis, on behalf of the Metropolitan Police and British Transport Police advised the Sub-Committee that he was not objecting to late night refreshment but was strongly opposed to the aspect of the application for on-sales. He clarified that he had only discussed and agreed conditions with the Applicant in the event that the Sub-Committee was minded to grant the application. PC Lewis stated that the Police in the borough had a lot of experience of problems with drunkenness associated with fast food. The Police were uncomfortable with a fast food outlet providing alcohol. Charing Cross was a particularly high risk location, surrounded by multiple licensed premises. This was before the late night tube came into operation as referred to in the Huffington Post article. It was a very busy station with a diverse group of people including the homeless, tourists and sports fans and was fully accessible to the general public. PC Lewis informed Members that when the application had been submitted in January 2016, the British Transport Police, the Metropolitan Police and Network Rail had

not been consulted. He did not believe therefore that the application had been properly risk assessed.

PC Lewis explained that whilst there had been a change in the terminal hour for on-sales, it was still the case that people who had been drinking were attracted to fast food and were more likely to be involved in anti-social behaviour. The Police did not wish to see a new source of alcohol being provided to those who had already been drinking. The Applicant was selling pints of alcohol up to 4.8% ABV and this was at a price of £3.50 per pint which he believed was less than most licensed premises in London. Drunkenness did not start at 23:00 but at a much earlier hour. There were huge numbers in the area, including patrons of the biggest nightclub in the borough, Heaven. This routinely had events with 1200 people starting at 18:00 hours and many of the patrons would be dispersing into the station.

PC Lewis referred to Burger King's use of bright red and yellow colours in their advertising to raise excitement and stimulate appetite and this was not conducive to the responsible consumption of alcohol. PC Lewis took the view that the Unit would not be a restaurant. There were no knives and forks and food was served at a counter. There were other premises which sold alcohol until later but he believed there was a difference between a pub in a relaxing environment with muted furnishings and soft colours where patrons would consume alcohol over a period of time and the fast food environment. Sales of alcohol in other premises in Charing Cross Station differed from this as fast food was designed to be consumed quickly after purchase. Directly selling this with alcohol would result in customers being encouraged to consume both swiftly. The other units selling alcohol also did not tend to attract younger people. He was concerned that amongst the younger people, unaccompanied children could be attracted by the environment and low cost meals. PC Lewis also queried what was defined by the Applicant as a substantial meal.

PC Lewis questioned the staff's ability in a scenario when there was a fast moving queuing situation to verify the age of customers. He expressed the view that members of staff in Burger King premises were often younger and had limited experience of taking difficult decisions. They were also being exposed to a new concept of alcohol being sold there. Age was just one assessment members of staff were required to make in a short period of time including whether customers were intoxicated, is the application within licensable hours and providing one drink per person per meal. There was also the potential for disorder to be caused by customers who wished to purchase alcohol being taken out of the queue at 21:00 when late night refreshment continued.

PC Lewis stated that customers would be coming in and out of the open Unit in significant numbers. It would be impossible to ensure that people would remain in the Unit, consuming their food and drink there and not take their food and drink outside the Unit, without the assistance of SIA security staff. He advised that the British Transport Police could not post officers outside the premises, ensuring that the licensing objectives were adhered to at all times.

In response to Ms Smith's representation regarding the proposed conditions, PC Lewis explained that he had put forward the condition that 'a menu on display

shall clearly show when alcohol may be served with a specific meal plan' as the menu would then define when alcohol could be served. He was concerned overall that the application could potentially set a precedent. The BIIAB standard had been proposed so that the Police had some indication that staff were receiving appropriate and recognisable training.

Mr Koduah addressed the Sub-Committee on behalf of Environmental Health. He confirmed that the Applicant had agreed the conditions which he had proposed to minimise the risks of public nuisance and public safety. He had maintained his representation as the application related to a fast food premises in terms of policy and not a restaurant outside the cumulative impact areas, RNT1. It was also a matter for the Sub-Committee to consider, particularly in the light that three applications for Burger King outlets in stations where it had been proposed alcohol would be sold had previously been refused by the Sub-Committee.

The Sub-Committee asked a number of questions. Ms Smith was asked whether Burger King considered itself a restaurant and what it defined as a substantial meal. She replied that it was a quick service restaurant and that it did not provide fast food as it was prepared from fresh. Her definition of a substantial meal was a main item such as a burger and a side order such as french fries. The drink would accompany this.

Ms Smith looked to reassure the Sub-Committee that staff training and prominent signage would ensure that no more than one beer per meal would be provided to customers. Challenge 25 and one beer per meal till prompts would be given to staff in addition to training. She also made the point that it was possible to consume more than one pint in the Beer House next door and there were premises which provided off-sales at cheaper prices. Staff would supervise the area and challenge customers if they sought to take alcohol off the premises. The Sub-Committee asked her about the possible scenario that a customer in a queue was not able to find a seat. Ms Smith replied that alcohol could not be served to a customer who did not have a seat. They would be able to see the thirty five seats from the counter.

The Chairman stated that Members of the Sub-Committee were uncomfortable as to how the Applicant would police the premises in the event the application was granted. She questioned whether the staff would be able to prevent someone leaving the premises with alcohol if they were determined to do so (and especially if they needed to catch a train). She asked Ms Smith whether her client had considered introducing SIA registered security. Ms Smith replied that the Applicant was of the view that it was not proportionate to employ SIA security at the Unit. It was the Applicant's opinion that the volume of sales of alcohol was likely to be low. SSP did have SIA security for the Marks and Spencer / Simply Food outlets in order to prevent shoplifting and they could support staff if specifically required to do so. Mr Attwood added that he appreciated that in situations of conflict there was a duty of care for the team and there was the option to remove the sale of beer if any customers were confrontational.

Ms Smith responded to some of the points made by PC Lewis. These included

that the staff in Unit 1, Charing Cross Station would not be inexperienced but would be existing staff that were re-trained.

The Sub-Committee also had regard to the written submissions from the applicant, including statements from Richard Attwood and Trevor King. It was noted that they had never faced any review of their existing licence for late night refreshment and accepted that they would stop selling alcohol if there was considered to be a high risk situation. However, that concession did not address the concerns expressed by PC Lewis as to how they could actually manage the day-to-day sale of alcohol in conjunction with the service of fast food at this particular venue. Ms Smith had asserted that they did not provide fast food as the food was freshly prepared. The members did not understand the point being made as the concern was simply about the speed at which the food is normally provided to the customer who is being served at a counter. This was not a typical restaurant operation and PC Lewis had carefully explained the distinction.

The Sub-Committee considered in refusing the application that Charing Cross Station is a busy mainline station with many millions of people of all ages passing through. The Sub-Committee concurred with the point made by PC Lewis that customers would be coming in and out of the open layout of the Burger King Unit in significant numbers. Members also concurred with his professional opinion that given the challenges of operating the premises at the busiest times of the week it would be very difficult for existing staff to be able to successfully monitor the Unit. There would inevitably be occasions when the premises are very busy when staff would not be able to adequately respond to some potentially challenging situations. When asked what the response would be to a customer who was rushing out of the premises with alcohol, it was suggested that the customer would firmly but politely be told that they had to remain in the premises. Whilst that might be a successful approach in some instances, Members did not agree that it would be realistic if a customer was in a hurry or if a customer was frustrated about the requirement and in some cases it was considered that customers will have actually left the premises before a member of staff has even had the opportunity to approach them. Consequently, there was a significant risk that alcohol would be taken away from the premises in circumstances where that alcohol was in an open container, encouraging its immediate consumption on the station forecourt or in the streets within the vicinity of the station.

The concerns identified above do not typically arise when alcohol is sold in a dedicated restaurant environment. These were specific concerns about the selling of alcohol at these type of outlets and the Members of the Sub-Committee fully agreed with the views expressed by PC Lewis in that regard. No amount of training could ensure that the staff would be able to adequately deal with the licensing issues that would arise on a regular basis, whether that related to the selling of alcohol to children or limiting the amount of alcohol that could be sold with each meal. There was also a serious concern that alcohol would be sold to persons who had not actually purchased a substantial meal or would be sold in circumstances where a number of meals had been purchased by an individual but the alcohol was then consumed by persons who did not consume any food at all.



	<p>These were all considered to be legitimate concerns that arose from the selling of alcohol from a counter at what the Members regarded as a fast food operation. The concerns were even greater at this particular venue as it was a relatively small unit within a small but busy (and frequently congested) mainline station. Members also acknowledged that the Police had enough policing issues to deal with in the vicinity of this particular location. Members did consider whether it might be possible to authorise the sale of alcohol to an earlier hour or to authorise the sale of alcohol subject to SIA door staff being engaged but, largely due to the strength of the representation from the Police, it was ultimately decided that it was not appropriate to allow this particular premises to sell alcohol at any time of the day.</p>
<b>2.</b>	<b>Late Night Refreshment (Indoors)</b>
	Monday to Sunday 23:00 to 01:00
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The application was refused (see reasons for decision in Section 1).</p>
<b>3.</b>	<b>Opening Hours</b>
	Monday to Sunday: 00:00 to 00:00
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The application was refused (see reasons for decision in Section 1).</p>
<b>4.</b>	<b>Non-Standard Timings</b>
	<p><b><u>Late Night Refreshment</u></b>  From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.</p> <p>In addition, the premises may open for late night refreshment until 05:00 daily, if</p>

	<p>requested to do so by senior station management, a senior Network Rail representative or a senior police officer.</p> <p><b><u>Sale by retail of alcohol (on)</u></b>  From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.</p>
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The application was refused (see reasons for decision in Section 1).</p>

**4 RESTAURANT, BASEMENT AND GROUND FLOOR, 1 GROSVENOR GARDENS, SW1**

**LICENSING SUB-COMMITTEE No. 2**

*Thursday 12th May 2016*

Membership: Councillor Nickie Aiken (Chairman) and Councillor Susie Burbridge

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

**Restaurant, Basement and Ground Floor, 1 Grosvenor Gardens, SW1  
15/07477/LIPN**

Application adjourned prior to the hearing to enable the Applicant and the Landlord to discuss options regarding access to the site.

**5 JAPAN CENTRE, 35B PANTON STREET, SW1**

**LICENSING SUB-COMMITTEE No. 2**

*Thursday 12th May 2016*

Membership: Councillor Nickie Aiken (Chairman), Councillor Nick Evans and Councillor Murad Gassanly

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon  
Presenting Officer: Sumeet Anand-Patel

Relevant Representations: Environmental Health and Licensing Authority.

Present: Mr Alun Thomas (Solicitor, representing the Applicant), Mr Emmett Loughran (Chief Operating Officer), Mr Mike Kewer (Project Manager), Ms Suzanne Davis (Solicitor on behalf of the landlord, Stargas Nominees Limited), Mr Anil Drayan (Environmental Health) and Ms Claire Hayes and Ms Heidi Lawrance (Licensing Authority)

<b>Japan Centre, 35B Panton Street, SW1 16/02493/LIPN</b>	
<b>1.</b>	<b>Late Night Refreshment (Indoors and Outdoors)</b>
	Monday to Thursday: 23:00 to 23:30 Friday to Saturday: 23:00 to 00:00
	Amendments to application advised at hearing:  None.
	Decision (including reasons if different from those set out in report):  A discussion ensued at the beginning of the hearing regarding the premises licences on the ground floor, basement and sub-basement in the building. This application was in respect of the basement with the entrance from the ground floor. As set out in the Licensing Service's list of licences provided by Ms Anand-Patel, Busaba Eathai Limited already held a premises licence for the ground floor (16/00082/LIPDPS). The proposed entrance for Japan Centre was on the ground floor and was one of Busaba's fire exit doors. The Japan Centre's licensable activities would take place in the basement. In the event that the Japan Centre application was granted, Busaba would be required to vary their plans to change the use of the fire escape route being used as the entrance to the Japan Centre premises.  Mr Thomas, representing the Applicant, referred to the fact that the Busaba licence was in effect but was not being used currently. The freeholder, Stargas Nominees Limited, also held a premises licence with an entrance on the ground floor but with the potential for licensable activities in the basement that would enable it to operate as a nightclub (12/11144/LIPDPS). The works condition on the freeholder's licence had not been approved by Environmental Health. This premises licence had a capacity of 400 people excluding staff. The freeholder's licence was subject to a condition that the licence would not come into effect unless the licence in the sub-basement had been varied so that no licensable activities were authorised for the basement or the licence had been surrendered. This was the licence originally held by the Buzz Bar which was eventually

superceded by the licence for Press. Mr Thomas stated that in his view this condition was being satisfied.

The primary licence for Press had since been revoked by the Sub-Committee and the secondary licence was held by the freeholder (14/00930/LIPN). The freeholder's licence for the sub-basement had access through the ground floor and basement but all licensable activities were required to take place in the sub-basement. Currently the licence had two works conditions on it. These had not been approved by Environmental Health and therefore no licensable activities could take place under that licence. It did appear that the secondary licence for the sub-basement of the premises was not in conflict with this application for the basement.

It was Mr Thomas' assertion therefore that the Japan Centre premises would become the primary licence in the basement of the premises. The freeholder of the basement premises (Stargas Nominees Ltd) would retain their existing licence in the basement (12/11144/LIPDPS) as a secondary licence. Mr Thomas asserted in correspondence that the application for this new primary licence was essentially a licence for a retail unit for off-sales but with provision for on-sales associated with a table meal apart from a small drink-led provision for 12 persons until 20.00. He added that this would not add to cumulative impact as the use was "softer" than the existing use authorised by the secondary licence. Mr Panto and Mr Wroe responded that they accepted that there was not a crossover in the various premises, including in the basement, in terms of where licensable activities took place. The freeholder's licence 14/00930/LIPN if it came into effect would not result in licensable activities taking place in the basement. The crossover only took place in relation to access points (entrances, exits and fire escapes). If this application was granted, the plans in respect of the Busaba licence would have to be amended so as to ensure that there was no conflict between the two licences on the ground floor of the premises.

Mr Loughran explained to Members of the Sub-Committee in a presentation how Japan Centre intended to operate at the premises. Goods were imported from Japan. There would be a food hall with a tea room, sake room and an area for fish and meat. Bread and noodles would be made on-site. There would not be a focus on take away food. The design of the premises would have a minimalistic Japanese feel. Mr Thomas took Members through the plans. The cross hatched area in the basement would be a restaurant where alcohol was sold. The sake shop was hatched black on the plans.

Mr Thomas addressed Members on policy. The terminal hour for the sake shop was designed to be in keeping with paragraph 2.4.21 that refers to when applications are appropriately conditioned and 'when the sale of alcohol is not permitted beyond 20.00 hours; then permitting the sale of alcohol for consumption on the premises is unlikely to add to cumulative impact in the cumulative impact area'. Mr Thomas expressed the view that it was for Members to consider whether elements of the restaurant use fell outside RNT2 (in the West End Cumulative Impact Area). He stated that the Council's Model Condition 38 had been applied. The plates were not disposable but the chopsticks were. Customers were not taken to their tables. Instead they went to

the counter and brought the food back to the tables. There was also no waiter or waitress service. There was not however a significant emphasis on alcohol sales. The food was not packaged with the purpose of the food being for takeaway. Mr Thomas added that if Members of the Sub-Committee accepted that the existing basement licence already permitted bar use, then an exception could be made on this basis. If the Sub-Committee did not accept this then he believed he could make the case as to why the application was in keeping with RNT2.

Mr Drayan for Environmental Health advised that as a result of becoming aware of the position regarding the existing premises licences at the premises he had accepted from a policy point of view that the Council's model restaurant condition MC66 would not necessarily need to apply. He had also taken into account the type of food being offered in accepting Model Condition 38. He was content with the application but sought some changes to the proposed conditions. These included asking for use of the updated Model Condition 12 so that 'no noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance and also use of Model Condition 87 that 'no fumes, steam or odours shall be emitted from the licensed premises so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated'. He also requested that Model Condition 81 was used, replacing the existing condition. This states that 'no licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority'. Mr Drayan was keen that if during the course of construction the layout of the premises changed from that set out in the plan, new plans would be submitted to the Environmental Health Consultation Team and the Licensing Service. Mr Drayan clarified that it was expected that the capacity would be approximately 140 persons.

Mr Thomas made the case not to include MC87 (prohibiting fumes, steam or odours) as whilst he was sure that his clients would not breach it, he did not believe it was proportionate or appropriate. Factors in this were there were no residents in the block and he did not want his clients blamed if the Busaba licence was in operation and was responsible for odours. He preferred the existing works condition licence to MC81 because it relied on the works shown on the plans rather than the premises being assessed.

Ms Hayes for the Licensing Authority referred to the premises being located in a designated cumulative impact area and that it was up to the Applicant to demonstrate as to why the application did not add to cumulative impact.

In response to questions from Mr Panto, Mr Thomas informed him that the lease from the freeholder included the part of the premises which was the Busaba prep kitchen on the ground floor. This was being surrendered back to the freeholder. There was no intention to surrender any existing licences at the premises. The current application was not a shadow licence. From the freeholder's point of view, if the retail application did not succeed they still had a valuable licence that they would like to keep. Mr Thomas stated that there was

a substitution of an existing licensable activity at the premises, only in this case it would have less impact. Mr Wroe concurred that this was not a shadow licence. It had different conditions being proposed. Mr Panto added that there was nothing to stop the premises licence for the basement being switched back to the nightclub use. However, it was the Applicant's position that the retail was a 'softer' use than operating the premises as a nightclub.

In reaching the decision to grant the application for the hours applied for, Members of the Sub-Committee took into account that the freeholder had an existing licence in the basement for a capacity of 400 and the conditions on the licence would potentially enable the premises to be operated as a nightclub. It was proposed that the capacity would be 140 for Japan Centre. Members of the Sub-Committee therefore did not consider that the application would add to cumulative impact.

In respect of the conditions, the Sub-Committee required alcohol in the customer eating area to be ancillary to a substantial table meal. Members considered that it was appropriate for no licensable activities to take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition would be removed from the Licence by the Licensing Authority. It was also not putting the Applicant in an unreasonable position if, during the course of construction the layout of the premises changed from that set out in the plan, new plans needed to be submitted to the Environmental Health Consultation Team and the Licensing Service. The Sub-Committee did not deem it necessary to impose Model Condition 87. There was no clear evidence that there was likely to be an issue with odours emanating from the premises. Environmental Health did have recourse to the Environmental Protection Act should any issues arise.

<b>2.</b>	<b>Sale by Retail of Alcohol (On and Off)</b>						
	<table> <tr> <td>Monday to Thursday:</td> <td>08:00 to 23:30</td> </tr> <tr> <td>Friday to Saturday:</td> <td>08:00 to 00:00</td> </tr> <tr> <td>Sunday:</td> <td>10:00 to 22:30</td> </tr> </table>	Monday to Thursday:	08:00 to 23:30	Friday to Saturday:	08:00 to 00:00	Sunday:	10:00 to 22:30
Monday to Thursday:	08:00 to 23:30						
Friday to Saturday:	08:00 to 00:00						
Sunday:	10:00 to 22:30						
	<p>Amendments to application advised at hearing:</p> <p>The Applicant had accepted a condition that there would be no off-sales of alcohol after 23:00. On-sales in the sake shop would conclude at 20:00. On-sales in the customer eating area were ancillary to a substantial table meal.</p>						
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the proposed hours for on-sales and also the amended hours for off-sales from Monday to Saturday, subject to conditions as set out below.</p>						

<b>3.</b>	<b>Opening Hours</b>
	Monday to Thursday:                    08:00 to 00:00 Friday to Saturday:                    08:00 to 00:30 Sunday:                                    10:00 to 23:00
	Amendments to application advised at hearing:  None.
	Decision (including reasons if different from those set out in report):  Granted, subject to conditions as set out below (see reasons for decision in Section 1).

<b>Conditions attached to the Licence</b>	
<b><u>Mandatory Conditions</u></b>	
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**

55. Alcohol shall only be consumed on the premises in the customer eating area cross hatched black on the plan and the sake shop area hatched black on the plan.

56. In the customer eating area cross hatched black, the supply of alcohol on the premises shall only be to a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal.

57. In the customer eating area cross hatched black, the number of persons permitted in the area at any one time (excluding staff) shall not exceed a number to be determined by the Environmental Health Consultation Team. This condition shall then be replaced by the Licensing Authority with a new condition detailing the capacity so determined.

58. Notwithstanding condition 10, alcohol may be supplied and consumed in the sake shop hatched black on the plan, by up to a maximum at any one time, of 12 persons until 20:00 hours.

59. There shall be no on sales of alcohol before 10:00 hours Monday to Saturday or before 12:00 hours on Sunday.

60. There shall be no off sales of alcohol after 23:00 hours.

61. No super-strength beer, lager, ciders or spirit mixtures of 5.5% ABV (alcohol by volume) or above shall be sold for consumption off the premises, except for

premium beers and ciders supplied in glass bottles unless the prior written consent of the Police and EHCT has been obtained.

62. Substantial food and non-intoxicating beverages, including drinking water shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
63. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
64. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance
65. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
66. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
67. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23:00 and 08:00 hours on the following day.
68. 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 sweeping collected and stored in accordance with the approved refuse storage arrangements by close of business.
69. There shall be no striptease or nudity, and all persons shall be decently attired at all times, except when the premises are operating under the authority of a sexual entertainment Venue Licence.
70. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke shall not be permitted to take drinks or glass containers with them.
71. 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.
72. 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.

73. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police, which will record the following:
- (a) all crimes reported to the venue
  - (b) all ejections of patrons
  - (c) any complaints received concerning crime and disorder
  - (d) any incidents of disorder
  - (e) all seizures of drugs or offensive weapons
  - (f) any faults in the CCTV system
  - (g) any refusal of the sale of alcohol
  - (h) any visit by a relevant authority or emergency service.
74. No licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority. If during the course of construction the layout of the premises changes from that set out in the plan, new plans will be submitted to the Environmental Health Consultation Team and the Licensing Service.