



CITY OF WESTMINSTER

# MINUTES

## Licensing Sub-Committee (1)

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (1)** Committee held on **Thursday 18th August, 2016**, Rooms 5, 6 & 7 - 17th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6 QP.

**Members Present:** Councillors Tim Mitchell (Chairman) and Louise Hyams

#### 1 MEMBERSHIP

There were no changes to the Membership.

#### 2 DECLARATIONS OF INTEREST

There were no declarations of interest.

#### 3 MARRAKECH, 8 QUEENSWAY, W2

##### LICENSING SUB-COMMITTEE No. 1

*Thursday 18th August 2016*

Membership: Councillor Tim Mitchell (Chairman) and Councillor Louise Hyams

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

**Marrakech, 8 Queensway, W2**  
**16/04464/LIPN**

The application was withdrawn by the Applicant prior to the hearing.

#### 4 MAYFAIR GARDEN, 8-10 NORTH AUDLEY STREET, W1

##### LICENSING SUB-COMMITTEE No. 1

*Thursday 18th August 2016*

Membership: Councillor Tim Mitchell (Chairman) and Councillor Louise Hyams

Legal Adviser: Barry Panto

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

Presenting Officer: David Sycamore

Relevant Representations: Environmental Health and 3 local residents.

Present: Ms Clare Eames (Solicitor, representing the Applicant), Ms Helen Cardy (Solicitor, on behalf of the Applicant), Mr Graziano Arricale (Operations Director and Designated Premises Supervisor) and Mr Ian Watson (Environmental Health).

<b>Mayfair Garden, 8-10 North Audley Street, W1 16/05656/LIPV</b>	
<b>1.</b>	<b>To vary the layout of the premises in accordance with the plans attached to the application</b>
	Proposal to vary the layout of the premises – current application seeks to licence the ground floor only. The existing premises licence permits licensable activities on the ground floor and first floor
	Amendments to application advised at hearing:  Ms Eames, representing the Applicant, informed the Sub-Committee that her client was now planning to phase in the scheduled refurbishment with the major changes likely to take place in the New Year (see decision below).
	Decision (including reasons if different from those set out in report):  The Sub-Committee initially heard from Ms Eames. She stated that Caprice Holdings, the Applicant, which owned premises including Scotts, J Sheekey and Sexy Fish, had acquired the premises at 8-10 North Audley Street in March 2016. She explained that the Applicant is currently trading at Mayfair Garden and it would continue to be operated as a Chinese restaurant. Ms Eames informed the Sub-Committee that her client was now planning to phase in the scheduled refurbishment with the major changes likely to take place in the New Year. A lot of works had already taken place at the premises including back of house improvements to assist in pest control and ensure fire safety. It was intended that some further changes would take place which would not need licensing consent such as updating the furniture and the bar fittings.  Ms Eames advised that it had been intended that all aspects of the application would be dealt with at the same time (as had been discussed with Environmental Health when pre-application advice had been sought). The premises would be closed and it was hoped that it would be able to open subject to works conditions being approved by the Environmental Health Consultation

Team. However, Ms Eames explained that despite the decision to delay certain aspects of the scheduled refurbishment with the plans variation not taking effect immediately, her client was keen to proceed with the proposed amendments to conditions which it was hoped could be considered at the hearing. She clarified that the existing premises licence permitted the licence holder to sell alcohol from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day. The Applicant was seeking that the New Year hours were also operational for the provision of late night refreshment as well as the opening hours. The Applicant also sought an additional hour to the terminal hour on the day that British Summertime commences.

Ms Eames referred to residents' concerns set out in their written representations relating to deliveries, waste and refuse collections. She confirmed that her client was content to restrict deliveries to the premises between 20:00 and 07:00 with the model condition being proposed. In response to a question from the Sub-Committee on the 07:00 start time for deliveries, Ms Eames replied that it was sought in order to have deliveries of bread. If the condition was attached to the premises licence it would give more protection to residents as there had been no such restriction on the existing licence.

Ms Eames stated that she had concerns in terms of agreeing conditions with specific timings for waste and recycling conditions because she was of the view that they were dependent on the Council's contract with Veolia and were not in the control of the Applicant. The Sub-Committee made the point that if there were no conditions with timings for waste and recycling attached to the premises licence it was possible for the Applicant to change contractor. The new contractor could then in theory carry out collections in the middle of the night. Ms Eames responded that there was no intention to have waste or recycling collections other than via the Council's contract. Her client would be agreeable to a condition on the understanding that the Applicant would not be held accountable if circumstances changed in respect of the timings of the collections including any changes to the Council contract. Mr Panto stated that it was his understanding that the hours of collections were those that the Council specifies and the contractor has to comply with them.

Mr Watson clarified that the times in North Audley Street for refuse collections (Monday to Sunday 06:30 to 08:30 and 16:00 to 18:00) and for recycling collections (Monday to Sunday 18:00 to 20:00) were those that it was expected that Veolia would comply with in accordance with the Council contract. In the event that private contractors were used, there was a requirement that rubbish was not put out on the street more than 30 minutes before the collection and was not left out on the street more than two and a half hours after the collection should have taken place. If the collection did not take place within the two and a half hour period there was a requirement that the contractor must collect from inside the premises. Mr Panto stated that even if the Council had a new contractor they would be expected to keep to the same hours for collections.

Ms Eames addressed Members of the Sub-Committee on the conditions the Applicant sought to amend. The conditions which the Applicant was not asking to come into effect straight away related to the capacity, any works conditions and that 'no licensable activities are permitted within the basement area'. Ms

Eames added that the 'no licensable activities are permitted within the basement area' condition could not take effect currently because at the moment there was a private dining area in the basement and a kitchen on the ground floor. It was proposed as part of the refurbishment that the kitchen would move to the basement and where the kitchen is on the ground floor would become an additional customer area.

The conditions the Applicant wished to come into effect straight away included the model conditions relating to CCTV, the incident log, keeping the area clean outside the premises and introducing a Challenge 21 proof of age scheme. The Applicant was also requesting that there was a more relaxed operation prior to 20:00 than was permitted on the existing premises licence so as to enable alcohol to be sold without a requirement for the consumption to be ancillary to food. After 20:00, except during pre-booked private functions or for up to a maximum of 20 people in the bar area at any one time, alcohol would be ancillary to table meals. Ms Eames explained that Caprice is a restaurant operator but would like some flexibility (as she stated was the case at Sexy Fish and other Caprice premises) where regular customers would be able to have a cocktail but would not be required to stay for dinner. The Applicant would submit an updated plan for the current premises prior to the more extensive refurbishment works taking place. This would show the hatched area for the ground floor bar.

The Sub-Committee were keen that after 20:00 alcohol should be served by waiter or waitress to seated persons. Ms Eames was asked by Mr Wroe whether her client would be content for the Council's model restaurant condition, MC66 to apply except for pre-booked private functions or for up to a maximum of 20 people in the bar area at any one time. Ms Eames replied that the Applicant would be content with such a condition. The Applicant was also asked by the Sub-Committee about the nature of the pre-booked private functions. Mr Arricale replied that he did not envisage closing the premises more than three or four times a year for private functions. Holding the private functions on a regular basis would not be good for business as it is a restaurant operation and the company had a commitment to look after the regular customers. Additional staff arrangements would also need to be taken into account. Ms Eames and Mr Arricale added that it was more likely that there would be smaller and occasional usage of the option to hold private functions such as in the private room at the back of the premises for 15 to 20 people providing canapés in addition to alcohol. The Sub-Committee brought to the Applicant's attention that a resident had proposed that contact details for the manager were made available. Ms Eames responded that her client did not have a problem with this condition being attached to the premises licence.

The Sub-Committee also heard from Mr Watson on behalf of Environmental Health. He stated that he had visited the premises and referred to the refurbishment works that were due to be undertaken. He made the point that with the upgrade of the toilet facilities the likely capacity was 240 on the ground floor. In the event that the private room at the back of the premises was used for pre-booked events it was possible to have 80 people there for a stand-up buffet function.

Mr Watson informed the Sub-Committee that there was no history of complaints relating to the premises, including in respect of deliveries. Environmental Health had therefore not sought to place a number of restrictive conditions on the licence to prevent public nuisance. The entrance to the premises was via an acoustic lobby which would be retained and assist in preventing the potential for noise breakout. Mr Watson stated in respect of the Applicant's request for a more relaxed operation until 20:00, he had taken into account his experience of the manner in which Caprice operated at other premises. He did not have concerns about how customers would behave at Mayfair Garden.

Mr Watson commented that he concurred with the Applicant's view in terms of the proposed conditions which could take effect now and those which would need to take effect later. He made the point that the proposed works condition (condition 16) needed to be amended because it needed to take into account the later refurbishment work.

The Sub-Committee gave careful thought to the application as it was an unusual situation where the Applicant was proposing to phase in the refurbishment works. Members had looked at options such as whether or not to permit the variations until after all the refurbishment works were completed. They had also looked at whether to place a time limit on the refurbishment works but appreciated that there was the potential for delays. Members decided that the solution in granting the application was to attach a condition that 'the variation to the licence plan and condition 15 (no licensable activities are permitted within the basement area) shall not have effect until the premises have been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from this Licence by the licensing authority'.

The key aspect for the Sub-Committee was that Mayfair Garden remained primarily a restaurant and was food rather than drink led. Ms Eames had emphasised that the premises would be a restaurant in keeping with Caprice Holdings Ltd's other operations. The Sub-Committee therefore attached the condition to the premises licence that 'the sale and consumption of alcohol at the premises shall be ancillary to the primary use of the premises as a restaurant'. Members wished to ensure that the character of the premises did not change even in the event that the premises licence was transferred. There was no policy presumption against the application as Mayfair Garden is not located in one of the Council's designated cumulative impact areas. It was considered purely on its merits. The Council's model restaurant condition, MC66, was attached to the licence except for prior to 20:00, for up to 20 persons in the bar area and for pre-booked private functions. The Applicant would be required to submit an updated plan for the current premises showing the ground floor bar area hatched black.

The Sub-Committee noted residents' concerns about timings of deliveries. However, as referred to by both Ms Eames and Mr Watson there was limited evidence of complaints or issues being caused as a result of deliveries to the premises. The Applicant's proposed condition that there would be no deliveries to the premises between 20.00 and 07:00 the following day (to take into account deliveries of bread) was attached to the premises licence. The restricted hours did provide some protection which had not been present on the existing premises licence. In keeping with the collection times in the Council/Veolia

contract for North Audley Street, there would be no collections of waste or recycling materials from the premises between 20.00 and 06.00 on the following day.

The Sub-Committee attached a number of model conditions to the premises licence. These included those proposed by the Applicant relating to CCTV, the incident log, keeping the area clean outside the premises and introducing a Challenge 21 proof of age scheme. As suggested by a resident and agreed with the Applicant, management contact details would be made available to residents and businesses in the vicinity. Model conditions for New Year's Eve and British Summertime were also attached to the premises licence as applied for by the Applicant. The New Year's Eve condition enabled the premises to operate from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day (this was already permitted for the sale of alcohol). The British Summer Time model condition sets out that 'on the morning that Greenwich Mean Time changes to British Summer Time one hour will be added to the terminal hour of any activities and to the closing time for the premises where the existing terminal hour for the activities and/or closing hour for the premises ends after 01.00'.

**2. Seasonal variations / Non-standard timings**

Late Night Refreshment (indoors), Sale by Retail of Alcohol (On and Off) and Opening Hours

<u>Current</u>	<u>Proposed</u>
Converted management conditions	<p>From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day (though it was noted that this was already included on the licence in respect of the sale by retail of alcohol).</p> <p>An additional hour to the terminal hour on the day that British Summertime commences.</p>

Amendments to application advised at hearing:

None.

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

The Sub-Committee granted this aspect of the application, attaching Model Conditions 83 and 84 which enabled the premises to operate from the end of permitted hours on New Year's Eve to the start of permitted hours on New

Year's Day and also an additional hour to the terminal hour on the day that British Summertime commences (see Section 1 above).

**3. Amendments to conditions**

<u>On existing premises licence</u>	<u>Proposed</u>
<p>9. Intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to his meal.</p> <p>10. Suitable beverages other than intoxicating liquor (including drinking water) shall be equally available with or otherwise as an ancillary to meals served in the licensed premises.</p> <p>11. (i) Alcohol may be sold or supplied:</p> <p>(a) On weekdays, other than Christmas Day, Good Friday or New Year's Eve from 10:00 to 00:00;</p> <p>(b) On Sundays, other than Christmas Day or New Year's Eve, and on Good Friday: 12:00 to 23:30;</p> <p>(c) On Christmas Day: 12:00 to 23:30;</p> <p>(d) On New Year's Eve, except on a Sunday, 11:00. to 00:00;</p> <p>(e) On New Year's Eve on a Sunday, 12:00 to 23:30;</p> <p>(f) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).</p> <p>(ii) (a) Alcohol may be sold or supplied until 01:00 in the morning following weekdays and 00:30 in the morning following Sundays to persons taking table meals in the premises in a part of the premises usually set apart for the service of such persons and for consumption by</p>	<p>9. Except during pre booked private functions, after 20.00 hours intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to their meal except for up to 20 persons who may consume alcohol without it being ancillary to a table meal in the bar areas hatched black on the approved plan.</p> <p>10. The number of persons permitted on the premises at any one time (excluding staff) shall not exceed (XX) persons. Such figure to be agreed with the District Surveyor following a final inspection of the premises at which time this condition will be amended by the Licensing Authority.</p> <p>11. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.</p> <p>12. A staff member from the premises</p>

<p>that person in that part of the premises as an ancillary to his meal.</p> <p>(b) The alcohol must be sold or supplied at a time before (i) the provision of entertainment by persons present and performing or (ii) the provision of substantial refreshment has ended. For other purposes or in other parts of the premises the hours set out above shall continue to apply.</p> <p>(c) This condition does not authorise any sale or supply to any person admitted to the premises either after midnight or less than half an hour before the entertainment is due to end.</p> <p>NOTE - The above restrictions do not prohibit:</p> <p>(a) during the first twenty minutes after the above hours the consumption of the alcohol on the premises;</p> <p>(b) during the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;</p> <p>(c) during the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking table meals there if the alcohol was supplied for consumption as ancillary to the meals;</p> <p>(d) the sale or supply of alcohol to or the consumption of alcohol by any person residing in the licensed premises;</p> <p>(e) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;</p>	<p>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.</p> <p>13. 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:</p> <p>(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 refusal of the sale of alcohol</p> <p>14. 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.</p> <p>15. No licensable activities are permitted within the basement area.</p> <p>16. 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.</p> <p>17. 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</p>
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<p>(f) the sale of alcohol to a trader or registered club for the purposes of the trade or club;</p> <p>(g) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;</p> <p>(h) the taking of alcohol from the premises by a person residing there;</p> <p>(i) the supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied;</p> <p>(j) the supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises. In this condition, any reference to a person residing in the premises shall be construed as including a person not residing there but carrying on or in charge of the business on the premises.</p> <p>12. Alcohol shall not be sold or supplied unless the premises have been structurally and bona fide used, or intended to be used, for the purposes of habitually providing the customary main meal at midday or in the evening, or both, for the accommodation of persons frequenting the premises.</p>	<p>premises layout has changed during the course of construction new plans shall be provided to the Environmental Health Consultation Team and the Licensing Authority by way of variation.</p> <p>18. 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.</p>
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	<p>13. No person under fourteen shall be in the bar of the licensed premises during the permitted hours unless one of the following applies:</p> <p>(a) He is the child of the holder of the premises licence.</p> <p>(b) He resides in the premises, but is not employed there.</p> <p>(c) He is in the bar solely for the purpose of passing to or from some part of the premises which is not a bar and to or from which there is no other convenient means of access or egress.</p> <p>(d) The bar is in railway refreshment rooms or other premises constructed, fitted and intended to be used bona fide for any purpose to which the holding of the licence is ancillary.</p> <p>In this condition "bar" includes any place exclusively or mainly used for the consumption of intoxicating liquor. But an area is not a bar when it is usual for it to be, and it is, set apart for the service of table meals and alcohol is only sold or supplied to persons as an ancillary to their table meals.</p>	
	<p>Amendments to application advised at hearing:</p> <p>None.</p>	
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee deleted conditions 9-13 as listed on the existing premises licence. Members replaced these with the Applicant's proposed conditions 9-15 and 18 (above). Condition 9 was amended so as to reflect the applicant's agreement that the Council's model condition 66 could apply after 20.00 but subject to an ability to supply alcohol without that being ancillary to a substantial meal to (i) persons attending a pre-booked private function or (ii) up to 20 persons in the ground floor bar area shown hatched on the plan attached to the licence. Also, the Applicant's proposed conditions 16 and 17 were deleted and a new condition 16 attached that 'the variation to the licence plan and condition 15 shall not have effect until the premises have been assessed as satisfactory by</p>	

the Environmental Health Consultation Team at which time this condition shall be removed from this Licence by the licensing authority’.

### Conditions attached to the Licence

#### **Mandatory Conditions**

1. No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4.
  - (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
  - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
    - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;
      - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
      - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
    - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
    - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
    - (d) selling or supplying alcohol in association with promotional posters or

flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;

- (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

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

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

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

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

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

7. The responsible person must ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—

- (i) beer or cider: ½ pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
- (iii) still wine in a glass: 125 ml;

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

A responsible person in relation to a licensed premises means the holder of the premise licence in respect of the premises, the designated premises supervisor (if

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

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

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

(a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;

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

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

Where -

(i) P is the permitted price,

(ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence, or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

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

8(iv). (1) Sub-paragraph 8(iv)(2) below applies where the permitted price given by

Paragraph 8(ii)(b) above on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.

- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

**Additional Conditions**

9. (a) After 20.00 hours, and subject to condition 9(b) below, the premises shall only operate as a restaurant:
- (i) in which customers are shown to their table,
  - (ii) where the supply of alcohol is by waiter or waitress service only,
  - (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery,
  - (iv) which do not provide any take away service of food or drink for immediate consumption,
  - (v) which do not provide any take away service of food or drink after 23.00, and
  - (vi) where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

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

(b) Condition 9(a) above does not apply to the supply of alcohol for consumption by (i) persons attending a pre-booked private function or (ii) up to 20 persons in the ground floor bar area shown hatched on the plan attached to the licence.

10. The number of persons permitted on the premises at any one time (excluding staff) shall not exceed (XX) persons. Such figure to be agreed with the District Surveyor following a final inspection of the premises at which time this condition will be amended by the Licensing Authority.
11. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.
12. 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.

13. 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 refusal of the sale of alcohol
14. 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.
15. No licensable activities are permitted within the basement area.
16. The variation to the licence plan and the implementation of condition 15 shall not have effect until the premises have been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from this Licence by the licensing authority.
17. 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.
18. No deliveries to the premises shall take place between 20.00 and 07.00 on the following day.
19. No collections of waste or recycling materials (including bottles) from the premises shall take place between 20.00 and 06.00 on the following day.
20. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times
21. 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.
22. The premises may remain open for the sale of alcohol and the provision of late night refreshment from the terminal hour for those activities on New Year's Eve through to the commencement time for those activities on New Year's Day.
23. On the morning that Greenwich Mean Time changes to British Summer Time one hour will be added to the terminal hour of any activities and to the closing time for the premises where the existing terminal hour for the activities and/or

closing hour for the premises ends after 01.00.

24. The sale and consumption of alcohol at the premises shall be ancillary to the primary use of the premises as a restaurant.

**5 JACKSON AND RYE, 56-58 WARDOUR STREET, W1**

**LICENSING SUB-COMMITTEE No. 1**  
*Thursday 18th August 2016*

Membership: Councillor Tim Mitchell (Chairman) and Councillor Louise Hyams

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

Relevant Representations: The Soho Society.

Present: Ms Bo-Eun Jung (Counsel, representing the Applicant), Mr Kevin Jackaman (Solicitor, on behalf of the Applicant), Mr Matthew Lazenby (General Manager, Applicant Company) and Mr Steve Seager (Property Director, Cote Restaurants Ltd).

**Jackson + Rye, 56-58 Wardour Street, W1**  
**16/06169/LIPV**

**1. Sale by retail of alcohol (On-sales)**

<u>Current Hours</u>	<u>Proposed Hours</u>
Monday to Saturday 10:00 to 00:00 Sunday 12:00 to 23:30	Monday to Saturday 10:00 to 00:00 Sunday 10:00 to 23:30

Amendments to application advised at hearing:

None.

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

There were three aspects to the application. Firstly the Applicant sought to bring forward the commencement hour on Sundays for on-sales from midday to 10:00. Secondly, the Applicant applied to add the sale of alcohol for consumption off the premises from 10:00 hours to midnight Monday to Saturday and 10:00 to 23:30 on Sundays. This was subject to a condition that such off-sales should be in sealed containers only and supplied with andn ancillary to a takeaway meal for delivery only. Thirdly, the Applicant proposed to bring forward the opening hours from 10:00 to 08:00 Monday to Saturday and 12:00 to 08:00 on Sundays.



Mr Sycamore clarified that The Soho Society's objection to the application was due to the earlier proposed commencement hour for on-sales on Sundays being prior to Core Hours in the West End Cumulative Impact Area.

Ms Jung, representing the Applicant, provided some background information to the application. Jackson and Rye had been operating at 56-58 Wardour Street since October 2013. They offered breakfast, brunch, lunch and dinner menus and the clientele included local residents, tourists and theatregoers. Ms Jung referred to the fact that there were no objections to adding off-sales to the application. She advised that Deliveroo were currently delivering restaurant meals to customers on the Applicant's behalf. Her client would like to offer alcohol ancillary to the takeaway meal and had agreed a condition with the Metropolitan Police that off-sales would be in sealed containers only and supplied with and ancillary to a takeaway meal for delivery only.

In respect of the proposal to provide on-sales from 10:00 on Sundays, Ms Jung made the point that the Applicant was bringing the start time for this particular licensable activity in line with the other days of the week. She added that breakfast and brunch meals were increasingly popular with customers. The Applicant wished to be able to offer a Prosecco or Bloody Mary with the meal. Ms Jung expressed the view that adding two hours to the commencement hour would not add to cumulative impact. There were no representations from the Responsible Authorities with the Police having withdrawn their representation. She wished to emphasise in relation to The Soho Society representation that her client was not looking to encourage any form of vertical drinking. There were stringent conditions on the existing premises licence including alcohol being ancillary to a table meal with the exception of an area hatched on the plans. Throughout the premises there was a requirement for waiter or waitress service to seated customers which would continue to apply, including on Sundays.

The Sub-Committee asked Ms Jung a number of questions relating to the application. Further information was requested in terms of what the Applicant wished to provide for the breakfast and brunch menus. Ms Jung replied that they were substantial ranging from pancakes, fruit and granola to larger meals, such as full English breakfast. She commented that it was not expected that the alcohol sales on Sunday would be extensive.

Ms Jung confirmed to Members that Jackson and Rye was owned by Cote. Cote had recently been granted an application by the Sub-Committee on 28 July 2016 which involved off-sales being delivered from their Westbourne Grove premises ancillary to a takeaway meal by Deliveroo. Concerns had been expressed by residents and the Sub-Committee at the hearing regarding the potential for nuisance from those delivering on behalf of Deliveroo using motorbikes. Ms Jung had requested that there should not be a condition that the Applicant controlled the actions of the delivery people of other companies as this was not within their power. It was appreciated by the Sub-Committee at that hearing that the Applicant did not want potential criminal liability for the actions of Deliveroo delivery people. The Sub-Committee for the current application noted this position and requested that the Applicant encourage Deliveroo to use bicycles for deliveries.

	<p>The Sub-Committee in granting the application considered that whilst the commencement hour for on-sales was prior to the Council's Core Hours policy, the existing premises licence for 56-58 Wardour Street has restaurant conditions attached to it, including alcohol being ancillary to a substantial menu in the restaurant area. Members of the Sub-Committee were satisfied that providing a glass of alcohol with a breakfast or brunch menu from 10:00 would not lead to the licensing objectives being undermined and would not add to cumulative impact in the area. The Responsible Authorities did not have issues with the application and there was no evidence to show that selling alcohol at the premises had caused any issues whatsoever. Whilst there is a hatched area on the plans where alcohol is not ancillary to a substantial table meal, this area is limited to a maximum of ten people at any one time and alcohol is served by waiter or waitress to seated customers there.</p> <p>The Sub-Committee noted that there were no representations relating to off-sales or earlier opening hours. The Sub-Committee did have some reassurance from the fact that the Applicant had agreed a condition with the Police that off-sales would be in sealed containers only and supplied with and ancillary to a takeaway delivery only. It was understood that Deliveroo had robust procedures and training in place to prevent underage sales. The Sub-Committee was keen that the Applicant attempt to influence Deliveroo's delivery methods from their premises with the use of bicycles rather than motorbikes in order to minimise the potential for public nuisance.</p>				
<b>2.</b>	<b>To add the sale by retail of alcohol (Off-sales)</b>				
	<p>Monday to Saturday 10:00 to 00:00 Sunday 10:00 to 23:30</p> <p>This was in conjunction with a proposed condition that the "sales of alcohol for consumption off the premises shall be in sealed containers only and supplied with and ancillary to a takeaway meal for delivery only" (see box 4 below).</p>				
	<p>Amendments to application advised at hearing:</p> <p>None.</p>				
	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below (see reasons for decision in Section 1).</p>				
<b>3.</b>	<b>Opening Hours</b>				
	<table border="1" data-bbox="252 1854 1406 1998"> <thead> <tr> <th data-bbox="252 1854 826 1921"><u>Current Hours</u></th> <th data-bbox="826 1854 1406 1921"><u>Proposed Hours</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="252 1921 826 1998">Monday to Saturday 10:00 to 00:30 Sunday 12:00 to 00:00</td> <td data-bbox="826 1921 1406 1998">Monday to Saturday 08:00 to 00:30 Sunday 08:00 to 00:00</td> </tr> </tbody> </table>	<u>Current Hours</u>	<u>Proposed Hours</u>	Monday to Saturday 10:00 to 00:30 Sunday 12:00 to 00:00	Monday to Saturday 08:00 to 00:30 Sunday 08:00 to 00:00
<u>Current Hours</u>	<u>Proposed Hours</u>				
Monday to Saturday 10:00 to 00:30 Sunday 12:00 to 00:00	Monday to Saturday 08:00 to 00:30 Sunday 08:00 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).
<b>4.</b>	<b>Condition proposed to be added to the premises licence</b>
	Sales of alcohol for consumption off the premises shall be in sealed containers only and supplied with and ancillary to a takeaway meal for delivery only.
	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**

9. Alcohol may be sold or supplied:

(a) On weekdays, other than Christmas Day, Good Friday or New Year's Eve from 10:00 to 00:00.

(b) On Sundays, other than Christmas Day or New Year's Eve, and on Good Friday: 10:00 to 23:30.

(c) On Christmas Day: 12:00 to 22:30;

(d) On New Year's Eve, except on a Sunday, 10:00. to 23:00.

(e) On New Year's Eve on a Sunday, 12:00 to 22:30.

(f) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.

NOTE - The above restrictions do not prohibit:

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

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

- 10. The terminal hour for late night refreshment on New Year's Eve is extended to 05:00 on New Year's Day.
- 11. 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 authorised officer throughout the preceding 31 day period.

12. 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.
13. With the exception of the area hatched on the plans (Ref: PL-G-01 Rev C Ground Floor) the premises shall only operate as a restaurant (i) in which customers are shown to their table, (ii) 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, (iii) which do not provide any take away service of food or drink for immediate consumption, and (iv) where alcohol shall not be sold, supplied, or consumed on the premises otherwise than to persons who are bona fide taking substantial table meals and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.
14. Substantial food and non-intoxicating beverages including drinking water shall be available in all parts of the premises where alcohol is sold or supplied on the premises.
15. The sale of alcohol in the hatched area shall only be to persons seated and served at the bar.
16. The number of customers permitted in the hatched area shall be limited to 10 at any one time.
17. The availability of alcohol without food shall not be promoted or advertised otherwise than on menus and price lists within the premises.
18. Any person in the hatched bar area consuming alcohol otherwise than as an ancillary to a table meal shall be required to leave the premises by 23:00.
19. Alcohol shall not be supplied in the hatched area after 22:30 to persons who are not taking a table meal.
20. The supply of alcohol for consumption on the premises shall be by waiter, waitress or bar staff service only to persons seated at tables or at the bar.
21. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
22. All windows and external doors shall be kept closed after 22:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.



23. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 180 persons.
24. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
25. 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.
26. 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.
27. 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.
28. Unless the premises are operating under the benefit of a Sexual Entertainment Venue licence there shall be no striptease, no nudity and all persons to be decently attired at all times.
29. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
30. No deliveries to the premises shall take place between 23.00 and 07.00 on the following day.
31. During the hours of operation 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 the aforementioned 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.
32. Sales of alcohol for consumption off the premises shall be in sealed containers only and supplied with and ancillary to a takeaway meal for delivery only.