



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (5)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (5)** Committee held on **Thursday 20th October, 2016**, Rooms 5, 6 & 7 - 17th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6 QP.

Members Present: Councillors Angela Harvey (Chairman), Louise Hyams and Aziz Toki

1 MEMBERSHIP

There were no changes to the Membership.

2 DECLARATIONS OF INTEREST

In respect of San Carlo Fumo, Basement and Ground Floor, 37 St Martin's Lane, WC2, Councillor Louise Hyams declared that the premises are located within the Ward she represents, St James's Ward. She stated that she was able to consider the application with an open mind and had no connections with anyone involved with the application.

3 72 PIMLICO ROAD, SW1

LICENSING SUB-COMMITTEE No. 5

Thursday 20th October 2016

Membership: Councillor Angela Harvey (Chairman), Councillor Louise Hyams and Councillor Aziz Toki

Legal Adviser: Horatio Chance
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon

**72 Pimlico Road, SW1
16/09132/LIPN**

The application was granted under delegated powers as all representations had been withdrawn.

4 THE TAKEOVER, BASEMENT, 12-13 GREEK STREET, W1

LICENSING SUB-COMMITTEE No. 5

Thursday 20th October 2016

Membership: Councillor Angela Harvey (Chairman), Councillor Louise Hyams and Councillor Aziz Toki

Legal Adviser: Horatio Chance
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon
Presenting Officer: Nick Nelson

Relevant Representations: Environmental Health, Metropolitan Police, landlord of the premises and 1 local resident.

Present: Mr Graham Hopkins (Licensing Consultant, representing the Applicant), Mr Nathan Lowry (Applicant and owner of business), Mr Oscar Flohr (General Manager), Mr Anil Drayan (Environmental Health "EH"), PC Sandy Russell (Metropolitan Police the "Police"), Ms Saba Naqshbandi (Counsel, representing the landlord, Soho Estates), Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project – on behalf of Ms Christie Tucker) and Ms Christie Tucker (local resident).

Declaration: Councillor Louise Hyams declared that she knows a number of representatives of Soho Estates in her capacity as a councillor.

The Takeover Basement 12-13 Greek Street W1 16/08347/LIPN	
1.	Recorded Music (Indoors)
	Unrestricted (Monday to Sunday 00:00 to 00:00).
	Amendments to application advised at hearing: The Sub-Committee was informed that the application was now time limited so that it was proposed to run until 6 January 2017.
	Decision (including reasons if different from those set out in report): Mr Nelson, the Presenting Officer and Mr Hopkins, the Applicant's Representative advised the Sub-Committee that the Applicant was seeking a time limited premises licence until 6 January 2017 when the lease the tenant

had with the landlord, Soho Estates ("SE"), was due to expire. The Applicant had agreed conditions proposed by Environmental Health and Ms Tucker, a local resident.

Mr Hopkins explained that SE had requested as a result of the lease expiring that the Applicant applied for a 'shadow' licence which mirrored the hours and the conditions of the primary licence for the basement area held by SE. This had previously operated as Miabella London. The Sub-Committee noted that this licence had been suspended since September 2015 for non-payment of the annual fee but was still in existence. The Applicant would not be operating a licence held by SE. The Applicant had offered a condition that in the event of him ceasing to trade at the premises the licence would not be transferred to any third party. Mr Hopkins referred to the fact that there were already two licences for the premises as SE had been granted a secondary licence in May 2014. He expressed the view that as the application was for a premises licence which mirrored that of the Miabella licence, it was in keeping with the terms of the 'Extreme Oyster' judgement and should be granted accordingly.

Mr Hopkins stated that the Applicant wished to operate The Takeover as an event space with corporate events and product launches. The premises would not open to the general public, attendance would be via booking and a guest list would be kept as a requirement. The venue had 60 seats, a dance floor and small events bar. There would be sales at the premises of high end wines, premium Craft beers and niche spirits and there would be no drinks promotions (the Sub-Committee was informed that the Applicant is a fine wine trader who owns a number of shops in Westminster). Mr Hopkins added that the clientele at The Takeover would be over the age of 25. The events would generally be overseen by five SIA security staff. The capacity of the venue was 243 but it was intended that approximately 100 to 150 guests would attend events. It would cost event organisers £1500 to book an event for half a day and £2500 for a full day. Events would generally take place between Wednesday and Saturday. The two main DJs would be regulars on Friday and Saturday nights.

Mr Hopkins advised the Sub-Committee that an event which had appeared in the Evening Standard and had been described as a 'naked club night' had not taken place and was never going to take place for the avoidance of doubt. The article had been included in the representation on behalf of Environmental Health and referred to an opening party on 7 October with the 'nude night' taking place fortnightly. Mr Hopkins explained that the circumstances behind the article were that an event promoter who had approached the Applicant had provided information to the press. The promoter had not obtained the Applicant's consent to hold the event or issue information to the press. Mr Hopkins clarified to the Sub-Committee that the Applicant did not want to hold this type of event and the matter had been misreported.

Mr Hopkins stated that his client had been operating from July to September 2016 using the SE secondary licence. He made the point that in relation to EH reference to a haze machine triggering a fire alarm during his visit to the premises, the Applicant had taken remedial steps to address the problem including the paint on the machine being made flame retardant. The machine was not currently in use. The seating with the removal backrest which EH also referred to had been panelled over. Mr Hopkins stated that his client was very

aware of the need for the District Surveyor and the Fire Service to carry out an inspection. He was willing to offer a works condition so that the premises licence if granted would not come into effect until the works were inspected and approved.

Mr Hopkins also looked to address concerns raised by the Police in Sgt Hoppe's written representation. He stated there had been discussions with Police Sergeant Paul Hoppe since then and that he believed that Sergeant Hoppe was now content with the quality of the CCTV following an upgrade of the equipment. The equipment to scan patrons who came to the premises (Live Scan) was now functioning correctly. There was also a new security company in place which was taking part in the Greek Street dispersal policy. This would be put in writing. Mr Hopkins was keen to stress to the Sub-Committee that a fight which had taken place on 13 August had occurred outside the premises and not inside the venue. Whilst staff had not called the Police in relation to the incident, a doorman had nonetheless, reported it to a passing Police officer on the night in question. Mr Hopkins clarified that customers had taken their tops off at an event on 29 July but were not indecently exposed. He responded to Sergeant Hoppe's written concern that the manager had stated he was not allowed to employ full-time staff, making the point that The Takeover would be an event space and it would not make financial sense to employ people full-time. The pool of people used were trained and experienced in working in pubs, clubs and bars. He added that Mr Lowry, Mr Flohr and a colleague were all personal licence holders. Mr Flohr would be the Designated Premises Supervisor. Mr Hopkins also offered to make a telephone number available to local businesses and residents.

Mr Flohr informed Members of the Sub-Committee that he had worked in hospitality for 12 years, had worked in a number of successful restaurants and had then moved on to private members' clubs. He had organised events at The Takeover over the last three months and it was intended that there would continue to be two regular events over the next ten weeks, Jodie Harsh Room Service and Gus from Razorlight hosting Indie Rock Nights. He added that there had been no issues to date with the events. He stated he was Chairman of the Greek Street licensing community. There were a number of corporate and Christmas events booked from the likes of the NHS hospital, Warner Brothers and Curzon Cinema and these were not open to the public.

The Police stated to the Sub-Committee that they lacked confidence in the venue management and did have some concerns regarding the prevention of crime and disorder licensing objective being promoted if the application was granted. Reference was made to the Police visits to the premises where it had been found that the CCTV system and the Live Scan equipment was not functioning at the required standard. There had also been two incidents of violence involving customers of the premises whilst it had been operating. The Sub-Committee noted there were no incident reports submitted and the Police had not been called. It was stated that it may have been the case that staff had spoken to the Police outside the venue. The Police expressed concerns that Sergeant Hoppe had requested a business plan which would enable him to reach an informed view on the current application. It was stated that a brief summary had been received. The Police also advised that SEhad withdrawn

support for their secondary licence to be used.

The Sub-Committee heard representations from EH. It was stated that EH did have operational concerns but that the Applicant was putting forward some ways of working which allayed some of those concerns. EH's main submission related to the application being a 'shadow' or 'tertiary' premises licence. It was submitted by EH that the 'secondary' licence had been granted to protect the landlord's interest on the same terms and with the same conditions as the original premises licence. He believed it had been the case that should the 'primary' licence be reviewed then the landlord's secondary licence could be reviewed at the same time. In this case Mr Drayan questioned if the tertiary licence had to be reviewed could the landlord simply replace the licence holder with someone else without all the licences being reviewed? If the application could not be related to the existing licences, Mr Drayan asserted, the application was for a new licence in the West End Cumulative Impact Area and could be considered contrary to the Council's policy. Mr Drayan accepted there was a mitigating factor in that the licence was for a ten week time limited period. However, he also felt there was the possibility the Applicant might not be as focused as other licence holders who had the responsibility that came with a premises licence in perpetuity.

Mr Drayan stated that the Applicant had not taken as much care to read through the conditions on the licence as he would have expected. He was keen that Environmental Health did not have to invest significant time in monitoring and providing information to staff for a relatively short ten week period.

The Sub-Committee next heard from Mr Brown, representing Ms Tucker who lives opposite the premises. He advised the Sub-Committee that the representation had been submitted for two reasons. Firstly, the circumstances of the application were not clear. Secondly, there were specific issues being experienced by Ms Tucker in Greek Street. Ms Tucker was keen that as much as possible would be achieved to prevent noise nuisance. She had referred in her representation to being frequently woken up by noise. She accepted that she lives in Soho but there needed to be a balance and the night time economy appropriately regulated.

Mr Brown informed Members that Ms Tucker's representation was being maintained because of the additional matters that had come to light in the Responsible Authorities' representations. She had referred to being awoken in the middle of the night and the Police had indicated that fighting had taken place involving customers of the venue. Mr Brown asked Members to look carefully at the point made by Mr Hopkins regarding the Extreme Oyster case. It was the case he added that there was not an automatic right to grant the application due to that judgement. The application also had to promote the licensing objectives. Mr Brown also expressed the view that it was often difficult for there to be the appropriate scrutiny of 'pop-up' events. It was not he believed encouraging for residents when there had been what appeared to be a difference of opinion between the tenant and the landlord over the way forward, albeit SE were officially taking a neutral stance.

Mr Brown stated there was a potential difficulty with a tertiary licence. If the

licence in use was reviewed, would all of them be reviewed? If another licence was suspended, would that be reviewed? There was the likelihood that there would not be sufficient time for any review to take place given the time limited nature of the application and there was potentially not the same incentive for the operator to comply with conditions or the licensing objectives. Ms Tucker wished to thank the Police and Environmental Health for working in the interests of residents in Soho.

Ms Naqshbandi referred the Sub-Committee to the most recent letter of her client, SE dated 13 October 2016. She stated that it was for the Applicant to satisfy the Sub-Committee that the licensing objectives were being promoted for the time limited application. The landlord would continue to maintain a strong interest in the operation of the premises. She also referred to SE's letter dated 29 September 2016 that advised the Applicant that authority to provide licensable activities under the landlord's licence had been withdrawn. Ms Naqshbandi informed Members that it had always been anticipated that the Applicant would seek his own licence from the outset. The Applicant had been permitted temporarily to use SE's licence prior to permission being withdrawn. In response to questions from the Sub-Committee Ms Naqshbandi stated she had not been instructed on the future plans of SE's after 6 January 2017.

The Applicant wished to emphasise that the expiry of the lease was not related to the operation of the premises. Other tenants in the block had also been given notice which is to expire on 6 January 2017. Mr Hopkins, in response to comments from the objectors, stated that he had spoken with the Police the day before the hearing and he was now satisfied that the CCTV and the Live Scan equipment were working to the required standard. The door staff were working with other venues in Greek Street. Sergeant Hoppe did have a business plan in writing. He acknowledged that there had been teething problems but these had now been resolved. He disputed that the premises needed special attention or 'mothering' from the Responsible Authorities. Mr Hopkins said that the Applicant was an experienced operator. He added there were consequences if the Applicant did not comply with conditions or promote the licensing objectives, including potentially an expedited review brought by the Police if there was an incident of serious crime or serious disorder. It was stated that the Applicant would also have to comply with the works condition if the Sub-Committee decided to attach it to the licence as the premises could not open until EH was content. The Applicant had spoken to the Police in the vicinity of the premises after the fight had taken place and it was questioned whether the Police should have been contacted to ensure there was a written record of the incident..

The Police and EH were asked by the Sub-Committee about the issues that they had raised in relation to the premises. The Police commented that the premises had traded for six weeks and staff had not appeared to respond to the issues raised by Police after the first visit. These included that the Live Scan equipment had not been working and customers had not been scanned which breached conditions on the licence. EH advised that licensing inspectors had made a visit and when the haze machine had been set off, staff's reaction had been to try and turn off the haze machine rather than stop the alarm. EH together with the Fire Officer and District Surveyor confirmed that they had visited the premises and had provided the Applicant with the Rules of

Management in relation to the haze machine. EH, added that since that time, the Applicant had submitted Temporary Event Notices without demonstrating clearly that the issue had been resolved.

The Sub-Committee asked the Applicant a number of questions. It was confirmed to the Sub-Committee that the Applicant would be on the premises for the entire time that any events were taking place and until after all attendees had left the premises. The Applicant stated that as far as he was aware he and his colleagues were complying with the requests of the Responsible Authorities. The Applicant advised that it was his understanding that Sergeant Hoppe was content with the efforts that staff were making to resolve the issues that had been raised. The Applicant stated that the Rules of Management had not been received despite Environmental Health sending this by email. It was confirmed that staff at the premises would not be using the haze machine in the future. In response to a question on the Live Scan equipment, the Applicant advised that there had been a problem because it needed an internet connection to function. An extra router had now been installed upstairs. He had spent much time liaising with the IT company in order to try and fix the problem. Whilst the Live Scan equipment was not functioning correctly, IDs were being scanned manually throughout the evening. The Applicant confirmed to the Sub-Committee that the equipment was now fully functional.

The Applicant stated that in respect of all the key aspects requested by the Responsible Authorities, management of the premises had resolved the issues that had been brought to their attention. The haze machine had been fixed several weeks ago and the paint on the machine made flame retardant. The new security team was experienced, having being employed across the West End. The Police raised a concern in relation to conditions that had not been complied with over a number of visits. The Sub-Committee was provided with an example where the Live scan condition referred to on the premises licence was breached in that scanning IDs manually appeared not to be taking place. . However, if the Applicant was able to demonstrate that the Live Scan equipment was functioning correctly and the CCTV met the necessary standards then the Police's concerns would be lessened. The Police stated that there would need to be regular visits of the premises by the Police if the application was granted, potentially on a weekly basis which would add to the extensive workload in the build up to Christmas. The Applicant wished to put it on record that double the CCTV cameras were operating than had been present at the premises previously and management were fully compliant in respect of the CCTV and Live Scan conditions.

Mr Hopkins advised the Sub-Committee that he had been through the Rules of Management with the Applicant and he was fully aware of what they entailed. The Applicant advised the Sub-Committee that it had experience from other premises it owned, including Pall Mall Fine Wine and Shepherd Market Wine House. The Applicant advised the Sub-Committee that there was a management plan in place for every single event that was booked, including an operational plan for the evening, briefing staff and security in advance. There were three incident books and the CCTV was checked.

The Sub-Committee asked the Applicant whether this was a different type of

operation from what they were used to running and also whether they were surprised by the concerns raised. The Applicant stated that he had previously owned night clubs with larger capacities, including The Marquee Club at 1 Leicester Square. He believed that the premises, including when it had been Miabella, had been a troublesome club historically. It was a tricky street to operate in. He believed the reason SE had chosen him over other operators was that they were of the view he would run the premises well. However, it would be necessary to vacate the premises as the development in Greek Street was proceeding more quickly than all parties had originally thought.

The Policy Adviser referred to Mr Hopkins' earlier comment that the capacity of the venue was 243 but it was intended that approximately 100 to 150 guests would attend events. The Applicant was asked whether he was willing to reduce the capacity on the premises licence accordingly. The Applicant stated that most events would be for 100-150 people. However, if the Sub-Committee was minded to grant the application, they would be content with a capacity of 150-160 people. The Policy Adviser also asked if the Applicant (as had been suggested) was willing to accept a condition that all events would be pre-booked, private events only with a guest list submitted to the Responsible Authorities 14 or 28 days in advance. The Applicant stated that he was content for all events to be guest listed. He was amenable to the idea of making the guests lists available to the Responsible Authorities on the day of the event and held at the premises for a period of 31 days afterwards.

EH confirmed that they no longer had any concerns specifically relating to the haze machine as the Applicant had agreed that it would not be used. However, EH did request the Applicant to confirm when the issue with the removal backrest had been resolved but had not heard back. The Applicant stated that he would welcome a visit from EH at the premises to see that the haze machine and removal backrest issues had been addressed. He had not been aware that there had to be evidence provided prior to the hearing that the matters had been resolved.

The Sub-Committee, having taken into account all the representations received, granted the time limited application until 6 January 2017. The Sub-Committee had noted that the Applicant was content to reduce the capacity and restrict the nature of the events so that licensable activities would only be provided at the premises at pre-booked private events where the only customers admitted to the premises are held on a guest list. The Applicant had confirmed that improvements would be made to the premises which would be subject to a works condition. This would need to be assessed as satisfactory by EH before The Takeover was able to operate.

The Sub-Committee had also noted that the Applicant had given a number of assurances, including that the CCTV and Live Scan equipment was now operating in accordance with the conditions on the premises licence and also in relation to the haze machine and the removal backrest. The Sub-Committee advised the Applicant to ensure that he complied with all the conditions as would be expected at other premises he was currently operating or had previously operated.

	<p>The Sub-Committee considered that the proposed hours did mirror those of the existing Miabella premises licence. The capacity was less than the existing licence. Members therefore took the view that the application did not add to cumulative impact in the West End Cumulative Impact Area.</p> <p>In respect of the condition attached to the premises licence by the Sub-Committee that 'licensable activities shall only be provided at the premises at pre-booked private events where the only customers admitted to the premises are held on a guest list forwarded to the Police at least 24 hours prior to the start of the event and held at the premises and made available for inspection by an authorised officer of the Council or Police on demand for a period of 28 days following the event', the Police requested that the guest list was forwarded directly to Sergeant Hoppe.</p>
2.	Performance of dance (Indoors)
	<p>Monday to Saturday 09:00 to 03:00 Sunday 09:00 to 23:00.</p>
	<p>Amendments to application advised at hearing:</p> <p>The Sub-Committee was informed that the application was now time limited so that it was proposed to run until 6 January 2017.</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>
3.	Anything of a similar description to live music, recorded music, or performance of dance (Indoors)
	<p>Monday to Saturday 09:00 to 03:00 Sunday 09:00 to 23:00.</p>
	<p>Amendments to application advised at hearing:</p> <p>The Sub-Committee was informed that the application was now time limited so that it was proposed to run until 6 January 2017.</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>
4.	Late Night Refreshment (Indoors)

	Monday to Saturday 23:00 to 03:00.
	Amendments to application advised at hearing: The Sub-Committee was informed that the application was now time limited so that it was proposed to run until 6 January 2017.
	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).
5.	Sale by retail of alcohol (On and Off)
	Monday to Saturday 10:00 to 03:00 Sunday 12:00 to 22:30.
	Amendments to application advised at hearing: The Sub-Committee was informed that the application was now time limited so that it was proposed to run until 6 January 2017.
	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).
6.	Hours premises are open to the public
	Monday to Saturday 09:00 to 03:30 Sunday 09:00 to 23:00.
	Amendments to application advised at hearing: The Sub-Committee was informed that the application was now time limited so that it was proposed to run until 6 January 2017.
	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).
7.	Seasonal variations / Non-standard timings

	<p><u>Recorded Music (Indoors), Performance of dance (Indoors), Anything of a similar description to live music, recorded music, or performance of dance (Indoors), Sale by retail of alcohol (On and Off), Hours premises are open to the public</u></p> <p>From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.</p> <p><u>Late Night Refreshment (Indoors)</u></p> <p>From the end of permitted hours on New Year's Eve to 05:00 on New Year's Day.</p>
	<p>Amendments to application advised at hearing:</p> <p>The Sub-Committee was informed that the application was now time limited so that it was proposed to run until 6 January 2017.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below (see reasons for decision in Section 1).</p>

Conditions attached to the Licence	
<u>Mandatory Conditions</u>	
1.	No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2.	No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3.	Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4.	(1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

- (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
- (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

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

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

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

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served

alcohol, identification bearing their photograph, date of birth and either—

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

7. The responsible person must ensure that—

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

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

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

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

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

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

Where -

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

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

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

- (i) the holder of the premises licence,
- (ii) the designated premises supervisor (if any) in respect of such a licence, or
- (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

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

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

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

8(iv). (1) Sub-paragraph 8(iv)(2) below applies where the permitted price given by Paragraph 8(ii)(b) above on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.

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

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

Additional Conditions

10. This licence is subject to all the former Rules of Management for Places of Public Entertainment licensed by Westminster City Council, in force from 4 September 1998 and incorporating amendments agreed by the Council on 25 October 1999, 30 June 2000, 16 January 2001 and 1 October 2001.

11. On New Year's Eve the premises can remain open for the purpose of providing regulated entertainment from the time when the provision of regulated entertainment must otherwise cease on New Year's Eve to the time when regulated entertainment can commence on New Year's Day (or until midnight on New Year's Eve where no regulated entertainment takes place on New

Year's Day).

12. Notwithstanding the provisions of Rule of Management No. 6 the premises may remain open for the purposes of this licence from 23:00 on each of the days Monday to Saturday to 03:00 on the day following.
13. Whilst the premises are in use under this licence:
 - (a) The entertainment shall be limited to a type commonly known as discotheque and to background music;
 - (b) No live performances shall be used.
14. The sound limiter is to be set to the satisfaction of officers from the Environmental Regulation Service. The operational panel shall then be secured and the system shall not be altered without prior agreement with this Department.
15. No alteration or modification to any existing sound system(s) should be effected without prior knowledge of an authorised officer of the Environmental Regulation Service.
16. Any additional sound generating equipment shall not be used on the premises without being routed through the sound limiter device.
17. All doors giving access/egress to the premises shall not be fixed open after 23:00.
18. All openable windows shall be closed after 23:00.
19. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 160 persons.
20. Substantial food and suitable beverages other than intoxicating liquor (including drinking water) shall be available during the whole of the permitted hours in all parts of the premises where intoxicating liquor is sold or supplied.
21. Intoxicating liquor may only be sold or supplied to persons admitted to the premises as follows:
 - (a) On Monday to Thursday after 23:30 by payment of an admission fee of not less than £3 for music, dancing and entertainment;
 - (b) On Friday and Saturday after 23:30 by payment of an admission fee of not less than £5 for music, dancing and entertainment;
 - (c) Persons who are specially invited guests of the management listed by name at reception prior to admission, such list to be available for inspection by the relevant authorities;
 - (d) By private invitation to a bona fide private function held at the premises of which 24 hours notice has been given to the Police;
 - (e) Artistes and persons employed on the premises.
22. Alcohol shall not be sold, supplied, consumed in or taken from the premises except during permitted hours.
Monday to Saturday

(a) Subject to the following paragraphs, the permitted hours on weekdays shall commence at 10:00 and extend until 03:00 the following morning except:

(i) the permitted hours shall end at midnight on any day on which music and dancing is not provided after midnight; and

(ii) on any day that music and dancing end between midnight and 03:00 the following morning, the permitted hours shall end when the music and dancing end.

(b) In relation to the morning on which summer time begins, paragraph (a) of this condition shall have effect-

(i) with the substitution of references to 04:00 in the morning to 03:00 in the morning

(c) The sale of alcohol must be ancillary to the use of the premises for music and dancing and substantial refreshment.

(d) The permitted hours on New Year's Eve will extend to the start of permitted hours on the following day, or if there are no permitted hours on 1 January, to 00:00 on New Year's Eve.

NOTE - The above restrictions do not prohibit:

(a) during the first thirty minutes after the above hours the consumption of the alcohol on the premises;

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

(c) 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.

Sundays:

In this condition, permitted hours means:

(a) On Sundays, other than Christmas Day or New Year's Eve, 12:00 noon to 22:30;

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

(c) 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, 00:00 midnight on 31st December).

NOTE - The above restrictions do not prohibit:

(a) during the first twenty minutes after the above hours the consumption of the alcohol on the premises;

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

(c) during the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking table meals there if the alcohol was supplied for consumption as ancillary to the meals;

(d) the sale or supply of alcohol to or the consumption of alcohol by any person residing in the licensed premises;

(e) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;

(f) the sale of alcohol to a trader or registered club for the purposes of the trade or club;

(g) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;

(h) the taking of alcohol from the premises by a person residing there;

(i) the supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied;

(j) the supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

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

23. If any entertainment is provided for children or if an entertainment is provided at which the majority of persons attending are children, then, if the number of children attending the entertainment exceeds 100, it shall be the duty of the holder of the premises licence:
- (a) to station and keep stationed wherever necessary a sufficient number of adult attendants, properly instructed as to their duties, to prevent more children or other persons being admitted to the building, or to any part thereof, than the building or part can properly accommodate,
 - (b) to control the movement of the children and other persons admitted while entering and leaving the building or any part thereof, and
 - (c) take all other reasonable precautions for the safety of the children.
24. No person under fourteen shall be in the bar of the licensed premises during the permitted hours unless one of the following applies:
- (a) He is the child of the holder of the premises licence.

- (b) He resides in the premises, but is not employed there.
- (c) He is in the bar solely for the purpose of passing to or from some part of the premises which is not a bar and to or from which there is no other convenient means of access or egress
- (d) The bar is in railway refreshment rooms or other premises constructed, fitted and intended to be used bona fide for any purpose to which the holding of the licence is ancillary.

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

- 25. The terminal hour for late night refreshment on New Year's Eve is extended to 05:00 on New Year's Day.
- 26. 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.
- 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 is open to the public. This staff member shall be able to show Police recent data or footage with the absolute minimum of delay when requested.
- 28. 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 or searching equipment or scanning equipment
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.
- 29. 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.
- 30. All SIA staff engaged at the premises shall wear high visibility yellow jackets or vests. SIA licences worn by door staff, shall be clearly displayed and visible at all times.

31. A daily Door Supervisor Log shall be correctly maintained at the premises and signed at the end of each day by the Duty Manager. This will include: The printed name of the Door Supervisor/Badge Number/Expiry date of SIA Licence and a signature of the Door Supervisor.
32. A log shall be maintained to ensure that the capacity limit set for the premises is recorded hourly and can be properly monitored. Information regarding the capacity will be given to an authorised officer or Police Officer on request.
33. (a) All drinking vessels used in the venue shall be polycarbonate. All drinks in glass bottles are to be decanted into polycarbonate containers or polycarbonate carafes prior to be served, with the exception of champagne or bottles of spirits with a minimum size of 70cl supplied by waiter/waitress service to tables. Staff shall clear all empty champagne and spirit bottles promptly from the tables. Customers shall not be permitted to leave their table carrying any such glass bottles or drink from the table.
(b) Notwithstanding 36(a) above, with the written agreement of the Westminster Licensing Police, a copy of which will be held at the premises reception, glass drinking vessels may be used for private or pre-booked events within the lounge/club area.
34. All customers entering the premises will have their ID scanned on entry. All records shall be stored for a minimum period of 31 days with date and time stamping. These records shall be made available immediately upon request of the police or authorised officer throughout the preceding 31 day period.
35. All persons entering or re-entering the premises shall be searched by an SIA-trained member of staff and monitored by the premises CCTV system. The searching will be supplemented by the use of two functional metal detecting wands operated by a male and female door supervisor dedicated to that duty either until the end of the permitted hours or until there is no further admissions.
36. Whenever the premises are open for licensable activities an attendant shall be on duty in any designated male and female toilets.
37. When a customer chooses to pay by credit card, he/she will be presented with an itemised bill upon final payment showing details of all drinks and food items purchased.
38. 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.
39. There shall be no payment made by or on behalf of the licence holder to any person for bringing customers to the premises.
40. No person on behalf of the premises or on behalf of a person carrying or

attempting to carry on a licensable activity shall cause, permit, employ or allow, directly or indirectly, whether on payment or otherwise, any person(s) to importune, solicit or tout members of the public on any public highway within the specified area outlined below for the purpose of bringing customers to the premises. The distribution of leaflets or similar promotional material is also prohibited within the specified area.

For the purpose of this section, 'Directly' means:- employ, have control of or instruct. 'Indirectly' means allowing / permitting the service of or through a third party.

For the purposes of this condition, 'Specified Area' means the area encompassed within Shaftesbury Avenue, Piccadilly Circus, Regent Street up to the junction with Pall Mall, Cockspur Street, Trafalgar Square, Strand up to the junction with Bedford Street, Garrick Street, Great Newport Street and Charing Cross Road to the junction of Shaftesbury Avenue.

41. 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.
42. 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.
43. Notices shall be prominently displayed at exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.
44. 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.
45. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
46. 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.
47. 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.
48. All exit doors shall be available at all material times without the use of a key, code, card or similar means.
49. All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.
50. The edges of the treads of steps and stairways shall be maintained so as to be

conspicuous.

51. Curtains and hangings shall be arranged so as not to obstruct emergency signs.
52. All fabrics, curtains, drapes and similar features including materials used in finishing and furnishing should be either non-combustible or be durably or inherently of flame-retarded fabric. Any fabrics used in escape routes, other than foyers, entertainment areas or function rooms, should be non-combustible.
53. All scenery should be maintained suitably flame retarded to the appropriate standards.
54. The certificates listed below shall be submitted to the Licensing Authority upon written request.
 - Any emergency lighting battery or system
 - Any electrical installation
 - Any emergency warning system.
55. Any special effects or mechanical installations shall be arranged and stored so as to minimise any risk to the safety of those using the premises. The following special effects will only be used on 10 days prior notice being given to the Licensing Authority where consent has not previously been given.
 - dry ice and cryogenic fog
 - smoke machines and fog generators
 - pyrotechnics including fire works
 - firearms
 - lasers
 - explosives and highly flammable substances
 - real flame
 - strobe lighting.
56. No person shall give at the premises any exhibition, demonstration or performance of hypnotism, mesmerism or any similar act or process which produces or is intended to produce in any other person any form of induced sleep or trance in which susceptibility of the mind of that person to suggestion or direction is increased or intended to be increased.

NOTE: (1) This rule does not apply to exhibitions given under the provisions of Section 2(1A) and 5 of the Hypnotism Act 1952.
57. Flashing or particularly bright lights from the premises shall not cause a nuisance to nearby properties.
58. 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.

59. No rubbish including bottles will be moved, removed or placed in outside areas between 23.00 hours and 08.00 hours.
60. All waste is to be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
61. From midnight until 30 minutes after the premises has closed, an SIA licensed door supervisor shall be on duty outside the entrance to the premises for the purpose of managing and enabling the efficient dispersal of customers from the premises.
62. 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.
63. A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
64. Licensable activities shall only be provided at the premises at pre-booked private events where the only customers admitted to the premises are held on a guest list forwarded to the Police at least 24 hours prior to the start of the event and held at the premises and made available for inspection by an authorised officer of the Council or Police on demand for a period of 28 days following the event.
65. 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.

5 TOPS PIZZA, GROUND FLOOR, 8 GREAT WESTERN ROAD, W9

LICENSING SUB-COMMITTEE No. 5

Thursday 20th October 2016

Membership: Councillor Angela Harvey (Chairman), Councillor Louise Hyams and Councillor Aziz Toki

Legal Adviser: Horatio Chance
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon
Presenting Officer: Nick Nelson

Relevant Representation: Environmental Health.

Present: Mr Anthony Baptiste (Agent, representing the Applicant), Mr Pejman Eftekhari (Applicant) and Mr Anil Drayan (Environmental Health).

Tops Pizza, Ground Floor, 8 Great Western Road, W9 16/08964/LIPV					
1.	Late Night Refreshment (Indoors and Outdoors)				
	<table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: center;"><u>Current Hours</u></th> <th style="text-align: center;"><u>Proposed Hours</u></th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;">Monday to Sunday 23:00 to 00:00</td> <td style="vertical-align: top;">Monday to Wednesday: 23:00 to 01:00 Thursday to Saturday: 23:00 to 02:00 Sunday: 23:00 to 01:00</td> </tr> </tbody> </table>	<u>Current Hours</u>	<u>Proposed Hours</u>	Monday to Sunday 23:00 to 00:00	Monday to Wednesday: 23:00 to 01:00 Thursday to Saturday: 23:00 to 02:00 Sunday: 23:00 to 01:00
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Monday to Sunday 23:00 to 00:00	Monday to Wednesday: 23:00 to 01:00 Thursday to Saturday: 23:00 to 02:00 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>Mr Nelson, introducing the report and Mr Baptiste, representing the Applicant confirmed that the Police had withdrawn their representation. The Police had agreed a condition with the Applicant that after midnight no customers would be permitted on the premises and all sales would be via delivery only. The Police and the Applicant had also agreed a reduction in the terminal hours for the delivery aspect of the application. It was clarified during the hearing that this was from Monday to Thursday 23:00 to 02:00 and Friday to Saturday 23:00 to 03:00 to Monday to Wednesday 23:00 to 01:00 and Thursday to Saturday: 23:00 to 02:00. A local resident had withdrawn his representation following amendments to the application, including that there would be no late night refreshment to people attending the premises until after midnight. The remaining representation was from Environmental Health.</p> <p>Mr Baptiste stated that he acknowledged that the hours his client was seeking for late night refreshment were beyond the Council's Core Hours policy. However, he believed that as it had been agreed with the Police that beyond Core Hours sales of hot food or hot drink would be via delivery only, the impact of the operation would not be overly significant. Mr Baptiste referred to the premises not being in the Council's designated cumulative impact areas. He also provided reasons as to why it was felt that the application promoted the licensing objectives, including an upgraded CCTV system being implemented during the last couple of months promoting the prevention of crime and disorder licensing objective. Mr Baptiste accepted on behalf of his client that there had been issues with delivery drivers loitering immediately outside the premises which had been referred to in Environmental Health's written representation. However, he added the Applicant had now introduced a management plan which would prevent this happening in the future. The Applicant had agreed a condition with the Police that a notice would be displayed by the front door stating the restaurant opening hours and that all orders after midnight would</p>				

need to be phoned through and be sent by home delivery only. Mr Baptiste made the point that the front door would be locked and that at midnight an opaque blind would be drawn which would cover the length and width of both shop windows and the front door.

Mr Baptiste stated in respect of promoting the prevention of public nuisance licensing objective that there was no regulated entertainment at the premises. There was no increase in the proposed hours for off sales (permitted until 23:00 Monday to Saturday and 22:30 on Sunday). The Applicant had agreed a condition with Environmental Health that notices would be prominently displayed at the exit and in the main window display requesting patrons to respect the needs of local residents by not loitering outside the premises after 23:00 and leave the area quietly. Mr Baptiste referred to Environmental Health's representation that there had been an issue with delivery drivers parking their bikes on the public highway causing an obstruction. He commented that staff had been informed that this was not permitted and that there was sufficient space for one motorbike to be parked outside only. Drivers would not be permitted outside unless they were in the process of leaving with a delivery. The motorbikes would be low emission, low cc bikes which had been purchased in 2013. Mr Baptiste also made the point that there was background noise in Great Western Road so he did not expect the starting and ceasing of the motorbikes to have much impact on the noise levels in the area.

Mr Baptiste said that it was his understanding that there had been no complaints from the residents living above the premises. His client would continue to service and maintain the extractor fan. Mr Baptiste identified the conditions which he believed promoted the protecting children from harm licensing objective, including a Challenge 25 proof of age scheme. The Sub-Committee was advised that there were measures in place to prevent deliveries to under age children. He expressed the view that the application was food led. He added that the premises met all the public safety requirements.

The Sub-Committee also heard from Mr Drayan on behalf of the Council's Environmental Health department. He described the locality as a mixed residential / business area. He was recommending that the proposed terminal hours for late night refreshment were reduced to midnight Sunday to Wednesday and 01:00 Thursday to Saturday. This was due to the residential aspect of the locality and comparable operational hours for similar premises in the area.

Mr Drayan advised the Sub-Committee that one of his concerns had been who the providers of the delivery service would be. The Applicant had agreed a condition that the deliveries would only be carried out by in-house employees. The bikes would be renewed every two years. Mr Drayan advised in response to a question from the Sub-Committee that there had been no evidence of complaints from the use of extractor fans. A condition had been proposed by Environmental Health on the basis 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*'. Conditions had been agreed by the Applicant restricting the times for movement and collections of waste or recyclable materials. Mr Drayan also

clarified that there was no provision for on-sales at the premises.

Mr Baptiste was given the opportunity to respond to Mr Drayan's comments at the hearing. In relation to Mr Drayan's representation on limiting the terminal hour for late night refreshment, he stated that his client employed several members of staff and was finding it difficult to compete with some of the other businesses in the area. Being granted the hours applied for would be incredibly helpful. There had been requests from customers for later hours, including local hospitals. He believed there were some businesses that were outside the immediate area that did operate until later.

The Sub-Committee asked Mr Baptiste about the visit by Licensing Inspectors in March 2016 which had found that the premises had been operating beyond its permitted hours. He replied that it had been irresponsible behaviour and would not be repeated. Mr Eftekhari wished to bring to the Sub-Committee's attention that there had been cleaning of the ovens for two days each month. Staff had to wait slightly longer at the premises whilst the ovens cooled. It was appreciated that keeping the premises open was a serious error and this would no longer happen.

In keeping with the Applicant's agreement with the Police, the Sub-Committee granted late night refreshment for customers attending the premises until midnight. Members considered that this was an important amendment to the hours by the Applicant given the problems that can occur when late night refreshment is available at premises until the early hours of the morning. The Sub-Committee granted 02:00 on Friday and Saturday for deliveries only in line with the amended hours proposed by the Applicant and agreed with the Police. Members considered that Tops Pizza is located in a residential area and that there was more likely to be the potential for more impact on residents during the week when deliveries took place, including Sunday evening / Monday morning. The deliveries were therefore restricted until 01:00 Sunday to Thursday. The Chairman advised the Applicant that if there were any persistent issues, leading to complaint, including in relation to noise from the motorbikes, there was the potential for a review of the premises licence. With a view to limiting any likelihood for noise from the deliveries, the Applicant was recommended by the Sub-Committee to carry out deliveries by bicycle. Members did take the view that there was more likelihood that the Applicant would be responsible with the use of the motorbikes, given that a condition had been agreed that home deliveries would only be carried out by in-house employees of the licence holder. The Sub-Committee attached a condition to the premises licence that in addition to no noise generated on the premises, or by its associated plant or equipment being permitted to give rise to a nuisance, this would also apply to delivery vehicles near the premises. Conditions that had been agreed between the Police and the Applicant that vehicles used for delivery must switch off their engines when waiting outside of the premises for the collection of food for delivery and that drivers would wait inside the premises between deliveries/for deliveries were also attached to the licence by the Sub-Committee.

2. Hours premises are open to the public

	<p><u>Current Hours</u></p> <p>Monday to Thursday 11:00 to 00:00 Friday to Saturday 11:00 to 02:00 Sunday 11:00 to 00:00</p>	<p><u>Proposed Hours</u></p> <p>Monday to Wednesday: 11:00 to 01:00 Thursday to Saturday: 11:00 to 02:00 Sunday: 11:00 to 01:00</p>				
	<p>Amendments to application advised at hearing:</p> <p>The Applicant in discussions with the Police amended the proposed terminal hour the premises would be open to the public to midnight seven days a week.</p>					
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the amended terminal hour of midnight for the opening hours, subject to conditions as set out below.</p>					
3.	Non-standard timings					
	<p><u>Late Night Refreshment (Indoors and Outdoors) & Hours premises are open to the public</u></p> <table><thead><tr><th><u>From</u></th><th><u>To</u></th></tr></thead><tbody><tr><td>Sundays before Bank Holidays: 23:00 to 00:00</td><td>All Sundays 23:00 to 01:00</td></tr></tbody></table>		<u>From</u>	<u>To</u>	Sundays before Bank Holidays: 23:00 to 00:00	All Sundays 23:00 to 01:00
<u>From</u>	<u>To</u>					
Sundays before Bank Holidays: 23:00 to 00:00	All Sundays 23:00 to 01:00					
	<p>Amendments to application advised at hearing:</p> <p>The Applicant in discussions with the Police amended the proposed terminal hour the premises would serve late night refreshment and be open to the public to midnight seven days a week.</p>					
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the Applicant's amended terminal hour, subject to conditions as set out below.</p>					
4.	Conditions being varied, added or removed					
	<p>Condition</p> <p>14. After 00:00 no customers shall be permitted on the premises.</p>	<p>Proposed variation</p> <p>After 00:00 no customers shall be permitted on the premises and all</p>				

	<p>sales will be by delivery only to a bona fide address.</p> <p>15. A proof of age scheme, such as Challenge 21, shall be operated at the premises.</p> <p>A Challenge 25 policy will be implemented at the premises, acceptable forms of proof of age will be a passport, a photo card driving licence or pass accredited identification card.</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>For clarification purposes, the Sub-Committee updated condition 14 from the existing premises licence to 'after 00:00 customers shall not be permitted on the premises and there shall be no sales of hot food or hot drink to persons actually attending the premises for consumption either on or off the premises otherwise than by delivery only to a bona fide address'. This is condition 16 below.</p> <p>The Sub-Committee attached to the premises licence the model condition as proposed by Environmental Health that 'a Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram'. This is condition 32 below.</p>

Conditions attached to the Licence	
<u>Mandatory Conditions</u>	
1.	No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2.	No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3.	Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.

4. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
- (a) a holographic mark, or
- (b) an ultraviolet feature.
- 5(i) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- 5(ii) For the purposes of the condition set out in paragraph 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.

5(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.

- 5(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

- 6. The supply of Alcohol shall be ancillary to the provision of food.
- 7. The supply of Alcohol shall be in sealed containers only.
- 8. No beer or Cider to be sold above 5.5% Alcohol by Volume.
- 9. No Alcohol shall be displayed.
- 10. A delivery register to include the full details of any order for the supply of alcohol to be maintained and available for inspection by a Police Officer or authorised Officer for a period of 31 days.
- 11. After 00:00 and until the following day's business an opaque blind which will cover the length and width of both shop windows and door will be drawn to prevent the escape of light from the premises.
- 12. 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.
- 13. 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 shall be able to show Police recent data or footage with the absolute minimum of delay when requested.

14. 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 in the vicinity.
15. Prominent signage indicating the permitted hours for the late night refreshment shall be displayed so as to be visible before entering the premises.
16. After 00:00 customers shall not be permitted on the premises and there shall be no sales of hot food or hot drink to persons actually attending the premises for consumption either on or off the premises otherwise than by delivery only to a bona fide address.
17. Vehicles used for delivery must switch off their engines when waiting outside of the Premises for the collection of food for delivery.
18. Drivers shall wait inside the premises between deliveries/for deliveries.
19. A notice shall be displayed by the front door stating the restaurant opening hours and that all orders after 00:00 must be phoned through and are by home delivery only.
20. Appropriate staff training in responsible alcohol retailing to be completed, training records shall be made available for inspection upon request by a relevant officer of a responsible authority.
21. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the premises by the police or an authorised officer of the City Council at all times whilst the premises is open.
22. Only wines and bottled beer shall be sold by the premises.
23. Deliveries of goods shall be carried out at such a time or in such a manner as to prevent nuisance and disturbance to nearby businesses and residents.
24. Staff who arrive in the morning or depart late at night will be asked not to cause disturbance to nearby residents.
25. Home deliveries shall only be carried out by in-house employees of the licence holder.
26. Notices shall be prominently displayed at the exit and in the main window display requesting patrons to respect the needs of local residents by not loitering outside the premises after 11pm and leave the area quietly.
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. No noise generated on the premises, or by its associated plant or equipment or delivery vehicles near the premises, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
29. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
30. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 08.00 hours on the following day.
31. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 08.00 on the following day.
32. A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.

6 CLARETTE, 44 BLANDFORD STREET, W1

LICENSING SUB-COMMITTEE No. 5

Thursday 20th October 2016

Membership: Councillor Angela Harvey (Chairman), Councillor Louise Hyams and Councillor Aziz Toki

Legal Adviser: Horatio Chance
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon
Presenting Officer: Nick Nelson

Relevant Representations: 1 local resident.

Present: Mr Jack Spiegler (Solicitor, representing the Applicant) and Ms Natsuko Perromat du Marais (Applicant Company).

Clarette, 44 Blandford Street, W1 16/09186/LIPV

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| 1. | The application is to permit structural alterations at the premises. The proposed works include the following: <ul style="list-style-type: none">• Relocation of the kitchen to the basement and general refurbishmentrearrangement of back of house areas, including third floor staff facilities; |
|-----------|--|

	<ul style="list-style-type: none"> • Addition of female toilet in the basement; • Inclusion of external area in ambit of licence; • Resizing of ground floor bar servery; • Addition of a bar counter on first floor in former kitchen area; • Addition of the second floor front room to the licensed area; • Relocation of customer toilets from first to second floor; • General refurbishment of the premises to include new electrical wiring, emergency arrangements, CCTV etc. <p>No change is proposed to the conditions and permitted hours of the licence, save the addition of model conditions consistent with the pre-application report sought in advance of this application.</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>44 Blandford Street was previously the Lincoln Inn and it operated as a public house. The licence had been transferred to the Applicants in July 2016 and Ms Perromat du Marais advised that she and her business partner are proposing to operate the premises as a high quality bar with a particularly varied wine list. Food would be provided to complement it.</p> <p>Mr Spiegler, representing the Applicant, placed emphasis on the fact that the existing premises licence was quite unrestricted in terms of capacity and conditions. It authorised licensable activities across the ground and first floors. The current application included the proposed extension of the licensable area to the exterior forecourt of the ground floor and also a small private dining room on the second floor. Mr Spiegler made the point that off-sales were permitted on the private forecourt as a result of the existing licence. He believed it would be of benefit for residents and enforcement officers to include the private forecourt within the licensable area. He also stated that there were no residents above the second floor where the dining room was located. Mr Spiegler added that his clients had proposed additional conditions for the application. Pre-application advice had been obtained from Environmental Health. There had been no representations from the Responsible Authorities.</p> <p>Mr Spiegler advised the Sub-Committee that the Applicants would be keeping the lines of communication open with Ms Johnstone, the local resident who had objected to the application and would take on board her views. It was the Applicants' understanding that the local resident had no objections to them running the premises. The concerns were that the premises would be 'brought back to life' and that it would be operated for the hours being applied for. The previous operator had not run the premises on Sundays. Mr Spiegler commented that the option had still been available to the previous operator to run the premises for the hours applied for. The Sub-Committee had the</p>

opportunity to attach additional conditions in order to promote the licensing objectives which were not on the existing premises licence. He referred to the fact that 44 Blandford Street is not located within the Council's designated cumulative impact areas.

The Sub-Committee asked Mr Spiegler and Ms Perromat du Marais a number of questions. These included whether they had in mind a terminal hour for the use of the external area. Mr Spiegler replied that at the moment unrestricted use was permitted in this area and the Applicants wished to retain this use. No reported complaints had been received in relation to the use of the outside area. The Sub-Committee also asked where it was proposed the smoking area would be located. Mr Spiegler replied that his clients were keen to engage with residents regarding this matter. Ms Perromat du Marais stated that she was keen to discuss this also with the General Manager of the hotel at 10 Manchester Street. Hotel residents were using an area outside the hotel towards the premises and this could be a potential option.

Mr Wroe referred to the proposed capacity condition and enquired whether the Applicants would be putting forward a capacity for the outside area. Mr Spiegler confirmed that in keeping with the plans there were approximately 24 seats proposed for this area. His clients would like some flexibility so that there would be a few customers who were able to stand. He put forward a capacity of 30 for the external area.

The Sub-Committee granted the application, subject to conditions. Members took into account that the proposed hours were the same as those the Applicants were able to operate in respect of the existing premises licence, including in the external area. The hours applied for and granted which are in keeping with the existing licence are unrestricted for recorded music and private entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit and 10:00 to 23:30 Monday to Thursday and 10:00 to midnight Friday and Saturday for performance of live music and provision of facilities for making music. Late night refreshment was permitted on the existing licence and applied for on the current licence between 23:00 to 23:30 Monday to Saturday and on and off sales of alcohol were sought 10:00 to 23:30 Monday to Thursday, 10:00 to midnight Friday and Saturday and 12:00 to 22:30. The hours the premises are currently open to the public and were applied for by the Applicants are Monday to Thursday 10:00 to 23:30, Friday and Saturday 10:00 to midnight and Sunday 12:00 to 23:00.

The Sub-Committee also considered that the current application offered additional conditions which were not attached to the existing licence, including that no noise would be permitted to emanate from the premises nor vibration be transmitted through the structure of the premises which would give rise to a nuisance. The Sub-Committee noted that Environmental Health had not submitted a representation or expressed any concerns regarding the potential for public nuisance.

Members attached the proposed capacity condition, including that the maximum number in the external area would be 30 people. The Sub-Committee advised the Applicants that they expected the outside area to be well managed. They

noted that the Applicants were committed to maintaining a dialogue with local residents, including in relation to the smoking area.

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. The terminal hour for late night refreshment on New Year's Eve is extended to 05:00 on New Year's Day.
10. Alcohol may be sold or supplied:
- (a) On Monday to Thursday 10:00 to 23:30, Friday to Saturday 10:00 to 00:00 and Sunday 12:00 to 22:30
- (b) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).

NOTE - The above restrictions do not prohibit:

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

11. The performance of Live Music shall be limited to a maximum of two entertainers.

12. The variation (16/09186/LIPV) of 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.
13. 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.
14. 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 premise 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.
15. 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 or searching equipment or scanning equipment
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.
16. The number of persons permitted on the premises at any one time (excluding staff) shall not exceed
 - Ground Floor – 60 persons
 - First Floor – 35 persons
 - Second Floor – 25 persons
 - External Area – 30 persons.
17. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
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.

LICENSING SUB-COMMITTEE No. 5

Thursday 20th October 2016

Membership: Councillor Angela Harvey (Chairman), Councillor Louise Hyams and Councillor Aziz Toki

Legal Adviser: Horatio Chance
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon
Presenting Officer: Nick Nelson

Relevant Representations: Environmental Health and Metropolitan Police.

Present: Mr Anthony Lyons (Solicitor, representing the Applicant), Mr Dave Nevitt (Environmental Health) and PC Michael Day (Metropolitan Police).

Declaration: Councillor Louise Hyams declared that San Carlo Fumo in St Martin's Lane is located within the Ward she represents, St James's Ward. She stated that she was able to consider the application with an open mind and had no connections with anyone involved with the application.

San Carlo Fumo, Basement And Ground Floor, 37 St Martin's Lane, WC2 16/07372/LIPV

1. Vary, add or amend conditions

1. Replace condition 9(iv) with the following:

'where, in the area hatched yellow on the attached plan, intoxicating liquor shall not be sold, supplied or consumed on the premises other than to persons who are bona fide taking substantial table meals and provided always that the consumption of intoxicating liquor by such persons is ancillary to taking such meals.'

2. Remove condition 10 as this refers to a historic plan.

3. Add the following additional conditions:

- (i) There shall be no sales of draught beer on the premises.
- (ii) In the area on the plan attached to the licence where alcohol need not be ancillary to food, complimentary stuzzichini shall be available to customers at all times.

4. To amend condition 11 to read:

'The number of persons permitted on the premises at any one time (excluding staff) shall not exceed 134 persons'.

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 Lyons, representing the Applicant. He was asked whether he had any objection to Councillor Hyams sitting at the hearing as the Council's Rules of Procedure states that Members will 'not normally' consider applications in their own ward. Mr Lyons replied that he had no objection to Councillor Hyams sitting.

Mr Lyons stated that Carlo Distefano, his client, is a restaurateur and owns the family business, San Carlo. The selection of Italian restaurants he owns in London in addition to 37 St Martin's Lane, include Chicchetti establishments at 215 Piccadilly and 30 Wellington Street and Signor Sassi in Knightsbridge Green. There were a number of other San Carlo premises elsewhere in the country including Fumo premises in Manchester and Birmingham and also around the world.

Mr Lyons explained that the Applicant was proposing to have a bar area within the restaurant where alcohol was not ancillary to food and up to seven people could be seated. He was also hopeful that the Sub-Committee would permit up to five people standing in this area. Mr Lyons commented that he appreciated that this was contrary to the Council's policy as San Carlo Fumo is located in the West End Cumulative Impact Area. It was the Applicant's hope that whilst having a drink at the bar, customers would take a look at the food menu. The average spend at the premises was £35 per head. Mr Lyons stated that one of the reasons the Applicant was asking for alcohol not to be ancillary to food in the bar area was that they did not want to refuse service to customers who would like a drink during the day or pre or post theatre in the evening.

Mr Lyons put forward reasons why he believed the application could be considered an exception to the Council's policy. These were that the capacity would be reduced from 152 to 134 people or 129 in the cumulative impact area if vertical drinking for the five people was permitted, there would be no draft beer served, complementary stuzzichini would be provided at all times when alcohol was provided and no remaining residents' representations. He stated that the Covent Garden Community Association had originally objected to the application as they had not wanted the premises to morph into a bar. However, he advised that the CGCA had later withdrawn their representation as they were satisfied that due to what was being offered the application would not undermine the licensing objectives. Mr Lyons wished to emphasise to the Sub-Committee that San Carlo Fumo is a high quality restaurant and not a bar.

The Sub-Committee heard from PC Day on behalf of Metropolitan Police. He informed the Sub-Committee that his representation objecting to the application was based on cumulative impact area policy and the fact the Applicant was requesting a bar area for up to seven seated customers where alcohol was not ancillary to food. The Applicant was also requesting that there would be vertical

drinking for up to five standing customers in this area. PC Day was asked by the Sub-Committee whether he was aware of any issues at this location or in the locality of San Carlo's other premises in Westminster. He replied that there was anti-social behaviour at St Martin's Lane crossroads. There were no reported crime or disorder issues specifically relating to San Carlo premises.

Mr Nevitt addressed the Sub-Committee on behalf of the Council's Environmental Health department. He stated that San Carlo Fumo was well fitted out and had the necessary up to date public safety features following its refurbishment. He expressed the view that the San Carlo premises as a whole in Westminster were well run without any cause for complaint and this statement was accepted by the Sub-Committee. However, Mr Nevitt explained that the reason for his representation was specifically in relation to the application creating a "bar area" within the restaurant which was contrary to the Council's policy. He referred to the fact that he had quoted paragraph 2.5.3 of the Council's Statement of Licensing Policy in his written representation. The relevant sentences in this paragraph, he believed, were that 'The Council is particularly concerned that restaurant premises in the cumulative impact areas do not, even in part, come to operate as bars and particularly not as "vertical drinking" premises where customers consume alcohol standing throughout the eveningThe Council...is not minded to relax conditions for restaurants where alcohol may only be consumed by persons as an ancillary to their substantial table meal. However, it will prioritise its enforcement efforts at preventing a change of character of the premises towards bar use'.

Mr Nevitt made the point that the proposal was not limited to a customer being able to have a drink pre- or post-theatre. The application would, at all times, permit in the defined bar area seated consumption of alcohol which was not ancillary to a substantial meal and some vertical drinking, albeit limited. He believed that to refuse this aspect of the application would be consistent with the Sub-Committee's decisions in respect of bars in restaurants in the cumulative impact areas. The application struck at the heart of the definition of cumulative impact in that a small difference here or there makes a big difference overall. Mr Nevitt advised that the bar could easily be viewed from the street and had the potential to attract additional people. He added that he had no issues with the proposed varying of the layout or the additional conditions that there shall be no sales of draught beer on the premises and that complementary stuzzichini shall be available to customers at all times. However, the stuzzichini was not ancillary to alcohol and customers were not obliged to dine.

The Sub-Committee asked Mr Nevitt a number of questions. These included whether his view would be any different if the bar area was not so visible from the street or on entry to the premises or if the hours of the bar use when alcohol was not ancillary to substantial food were restricted. Mr Nevitt replied that in relation to the policy he was not of the view that such changes would make any difference. The Sub-Committee also asked Mr Nevitt whether he was aware of applications being granted for bars in restaurants including in the Piccadilly and Covent Garden areas where other San Carlo premises are located. Mr Nevitt replied that historically there were licences with bar use or later hours which existed prior to the cumulative impact policy being introduced. There were premises in Queensway for instance which had later hours which would now be

contrary to policy and would be unlikely to be permitted. This application at 37 St Martin's Lane was a current application. In response to a question from the Sub-Committee, Mr Nevitt advised that food on the menu such as meat, cheese and tapas could potentially constitute a substantial meal. However, if this application was granted there would be no onus on the customers within the defined bar area to eat it. In respect of whether the reduction in the capacity constituted an exception, Mr Nevitt stated it might be viewed as such but he was not of the view that what was proposed in the application addressed the issues raised in policy 2.5.3. It was a matter for the Sub-Committee to decide.

Mr Lyons was given the opportunity to respond to the representations made by the Responsible Authorities. He stated that Cicchetti in Covent Garden permitted eight customers to sit at a bar and drink without it being ancillary to substantial food and the Police had advised that it did not cause any issues. He expressed the view that the purpose of the cumulative impact policy had been to address concerns regarding anti-social behaviour and crime and disorder. The Police had indicated that the building gave a visible boost to the area. Mr Lyons commented that the bar would cater for customers who would not cause a problem. He queried how many bars would not offer draught beers or would offer stuzzichini. He also said that if the Sub-Committee was not minded to permit customers standing whilst they were drinking this would not be of great concern to the Applicant. He did not believe that five people standing and drinking equalled a 'vertical drinking premises' or that the policy should be considered an 'iron curtain'. It was not the intention of the Applicant to permit customers to drink at the premises all day. He added that if Members were minded to refuse the application in its entirety the Applicant would continue to run the premises on the basis of alcohol being ancillary to food throughout.

The Policy Adviser was asked by the Sub-Committee to advise on the Council's policy in relation to the current application. The Sub-Committee was advised that at the present time the premises operated as a restaurant as defined in the policy. When the premises licence had been granted in 2012, it had been on the basis that the entire premises operated as a restaurant. It could be seen in the reasons for the Sub-Committee's decision at the time that the fact it was a restaurant where alcohol was ancillary to a substantial table meal was a key consideration for the Members in granting the application. There had been no presumption against the granting of the application in 2012. There was a presumption in this case against aspects of the current application with alcohol not being ancillary to a substantial table meal in the bar area.

The Sub-Committee carefully considered the application. Whilst the Sub-Committee took the view that San Carlo Fumo is a beautiful restaurant and a good addition to St Martin's Lane as indicated by the Police, the application submitted was contrary to the Council's policy in that it was being proposed that alcohol should no longer be ancillary to substantial table meals in a defined bar area. The Applicant had put forward four reasons as to why the application should be considered an exception to the Council's policy and these are set out below:-

- The reduction in capacity of the premises.
- The exclusion of draft beer being served.

- Complementary stuzzichini provided at all times when alcohol is sold.
- All remaining residents' representations have been withdrawn.

The Sub-Committee considered that the cumulative impact area policy deals with the wider environment than this premises alone. As set out in paragraph 2.4.2 of the Statement of Licensing Policy, the policies are 'intended to be strict and will only be overridden in genuinely exceptional circumstances'. Members of the Sub-Committee in determining the matter did not consider that the exceptions advanced by the Applicant were sufficient and robust enough to override the Council's policy. The application would if granted, add to cumulative impact.

The Sub-Committee noted Mr Lyons' point regarding the reduced capacity that as set out in paragraph 2.4.7, it 'might be a reason for an exception to policy'. However, Members shared Mr Nevitt's view that the reduction in capacity was not sufficient to grant the aspect of the application which proposed the consumption of alcohol that was not ancillary to substantial table meals. Paragraph 2.5.3 clearly states as referred to by Mr Nevitt the position that 'The Council is particularly concerned that restaurant premises in the cumulative impact areas do not, even in part, come to operate as bars and particularly not as "vertical drinking" premises where customers consume alcohol standing throughout the evening' and that conditions should not be relaxed in respect of restaurants where alcohol may only be consumed by persons as an ancillary to their substantial table meal.

The Sub-Committee having considered all relevant issues by the parties therefore refused the proposal to replace condition 9 (iv) on the existing premises licence where permission for alcohol not to be ancillary to a substantial table meal in the bar area was sought. The Sub-Committee granted the new layout but requested that a new plan was submitted which did not include the hatched bar area as alcohol would still be ancillary to a substantial table meal at all times. Members also granted the removal of condition 10 on the existing premises licence as this refers to a historic plan.

Having established that the Applicant was proposing to reduce the capacity in condition 11 on the existing premises licence only in the event that condition 9 (iv) was granted, the Sub-Committee asked Mr Lyons and his client whether they now wished to withdraw the amendment to the capacity condition. Mr Lyons confirmed this was the case and the capacity therefore remained at 152. The Sub-Committee also decided that having not granted the replacement of condition 9 (iv) it was not necessary for the two new conditions to apply that 'there shall be no sales of draught beer on the premises' and that 'in the area on the plan attached to the licence where alcohol need not be ancillary to food, complimentary stuzzichini shall be available to customers at all times'.

2. Vary the layout

This is in accordance with the plans submitted with the application (Ground Floor – FCOV1203B & Basement FCOV1214).

	<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 granted the new layout but requested that a new plan was submitted which did not include the hatched bar area as alcohol would still be ancillary to a substantial table meal at all times.</p>

Conditions attached to the Licence

Mandatory Conditions

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

- (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
- (a) a holographic mark, or
 - (b) an ultraviolet feature.
7. The responsible person must ensure that—
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following

measures—

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

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

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

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

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

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

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

Where -

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

alcohol under such a licence;

- (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

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

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

Additional Conditions

9. 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 intoxicating liquor 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 intoxicating liquor by such persons is ancillary to taking such meals.
10. The number of persons permitted on the premises at any one time (excluding staff) shall not exceed 152 persons.
11. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
12. No entertainment, performance, service, or exhibition involving nudity or sexual stimulation which would come within the definition of a sex establishment in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Greater London Council (General Powers) Act 1986 (whether

or not locally adopted), shall be provided.

13. No striptease, no nudity and all persons to be decently attired at all times.
14. All sales of alcohol for consumption off the premises shall be ancillary to a person taking a table meal.
15. 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.
16. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
17. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
18. No rubbish, including bottles, shall be moved, removed or placed in outside areas between 0000 hours and 0800 hours.
19. No deliveries shall be made to the premises between 00:00 and 08:00 hours.
20. The pavement from the building line to the kerb edge immediately outside the premises, including gutter/channel at its junction with the kerb edge, shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.
21. 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
22. 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 shall be able to show Police recent data or footage with the absolute minimum of delay when requested.
23. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to nuisance.

8 CHRISTIE'S, 8 KING STREET, COVENT GARDEN, SW1

LICENSING SUB-COMMITTEE No. 5
Thursday 20th October 2016

Membership: Councillor Angela Harvey (Chairman), Councillor Louise Hyams and Councillor Aziz Toki

Legal Adviser: Horatio Chance
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon

**Christie's, 8 King Street, Covent Garden, SW1
16/09132/LIPN**

The application was granted under delegated powers as all representations had been withdrawn.

9 THE WALDORF HILTON, ALDWYCH, WC2

LICENSING SUB-COMMITTEE No. 5

Thursday 20th October 2016

Membership: Councillor Angela Harvey (Chairman), Councillor Louise Hyams and Councillor Aziz Toki

Legal Adviser: Horatio Chance
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon

**The Waldorf Hilton, Aldwych, WC2
16/11040/LITENP**

The Police and Environmental Health had originally objected to a Temporary Event Notice for an event at the premises on 27 October 2016. However, their concerns were addressed and they withdrew their representations prior to the hearing.

10 TAKEOVER, BASEMENT, 12-13 GREEK STREET, W1

LICENSING SUB-COMMITTEE No. 5

Thursday 20th October 2016

Membership: Councillor Angela Harvey (Chairman), Councillor Louise Hyams and Councillor Aziz Toki

Legal Adviser: Horatio Chance
Policy Adviser: Chris Wroe
Committee Officer: Jonathan Deacon
Presenting Officer: Nick Nelson

Present: Mr Graham Hopkins (Licensing Consultant, representing the Premises User), Mr Oscar Flohr (Premises User), Mr Nathan Lowry (Owner of business), Mr Anil Drayan (Environmental Health) and PC Sandy Russell (Metropolitan Police).

**The Takeover, Basement, 12-13 Greek Street, W1
16/10943/LITENP**

The Applicant had submitted a Temporary Event Notice for sale by retail of alcohol (on sales), provision of regulated entertainment and provision of late night refreshment until 03:30 on 27-29 October. The Police and Environmental Health had objected. Following a time limited application for the premises (16/08347/LIPN) having been granted until 6 January 2017 with hours which mirrored those of the landlord's premises licence, the Applicant withdrew the Temporary Event Notice.