



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (5)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (5)** Committee held on **Monday 30th October, 2017**, Room 3.1, 3rd Floor, 5 Strand, London, WC2 5HR.

Members Present: Councillors Peter Freeman (Chairman), Murad Gassanly and Karen Scarborough

1 MEMBERSHIP

There were no changes to the Membership. Councillor Murad Gassanly did not consider the application for Studio 88, 47 Whitcomb Street, WC2 as the application had been part heard on 3 October 2017 and he had not been a Member of the Sub-Committee at that meeting.

2 DECLARATIONS OF INTEREST

There were no declarations of interest

3 STUDIO 88, 47 WHITCOMB STREET, WC2

LICENSING SUB-COMMITTEE No. 5

Monday 30th October 2017

Membership: Councillor Peter Freeman (Chairman) and Councillor Karen Scarborough

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

Relevant Representations: Environmental Health, Metropolitan Police and Licensing Authority.

Present: Ms Suzanne Davies (Solicitor, Representing the Applicant), Mr Alan Lorrimer (Managing Director and Founder, Applicant Company), Mr Tristan Moffat (Operations Director), Mr Dave Nevitt (Environmental Health), PC

Toby Janes (Metropolitan Police) and Mr David Sycamore (Licensing Authority).

Studio 88, 47 Whitcomb Street, WC2H 7DH (“The Premises”) 17/08880/LIPN	
1.	Films (Indoors)
	Monday to Tuesday 10:00 to 01:00 Wednesday 10:00 to 02:00 Thursday to Saturday 10:00 to 03:00 Sunday 12:00 to 22:30.
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): The application was originally part heard on 3 October 2017 by the same two Members of the Licensing Sub-Committee, Councillor Freeman and Councillor Scarborough. It was proposed that the Premises would operate as a venue providing live music, dancing and private hire facilities. The capacity would be 400 people excluding staff with licensable activities being sought until 01:00 Monday and Tuesday, 02:00 on Wednesday, 03:00 Thursday to Saturday and 22:30 on Sunday. An additional 30 minutes was sought in respect of the closing time. The hearing had been adjourned to give the Applicant an opportunity to produce more specific proposals to demonstrate that the Premises would be entertainment and food led. The Sub-Committee had noted at the previous hearing that the Applicant was proposing a venue with a large capacity until beyond Core Hours in the West End Cumulative Impact Area. The Applicant had been advised that whilst the Council’s Statement of Licensing Policy did refer to that there should be greater diversity in the types of entertainment and cultural activity on offer and that a live music venue would potentially fit within this category, Policy MD2 in the Council’s Statement of Licensing Policy applied. It is the Licensing Authority’s policy in respect of MD2 to refuse applications for the Provision of music and dancing or similar entertainment or the provision of facilities for music and dancing or similar entertainment within the Cumulative Impact Areas, other than applications to vary hours within Core Hours. The Sub-Committee was addressed by Ms Davies at the hearing on 30 October 2017. She spoke about the style of the operation. The Premises would open to the public at 17:00 hours with two piano vocalists taking requests from the pre-theatre audience. They would be joined by two guitarists, a drummer and a horn player who play non-stop live music until closing time. Ms Davies clarified that the Applicant would employ up to 17 musicians every evening and that the

additional musicians would join the piano vocalists at 20:00. These were amendments to the document which had been submitted by the Applicant and had been included in the report.

Ms Davies made the point that the Premises did not directly fit any of the Council's policies. These included that Studio 88 was not purely a restaurant or a concert hall. It had elements of a number of different styles of operation and this was accepted by the Sub-Committee. She expressed the view that the licensing objectives would be promoted and that the types of entertainment sought by Westminster were all incorporated into the application.

Ms Davies stated that there had been an opportunity after the adjournment to liaise with the Responsible Authorities. An additional five conditions had been proposed which had been agreed with the Police. One of these was that the Premises would not operate as a nightclub and there would be no DJ playing recorded music at the Premises at any time. Another condition was that from 17:00 until closing time the Premises would only operate as a live music venue. All licensable activities would be provided as ancillary to the performance of live music.

Ms Davies said that she had also discussed the application with Mr Sycamore who had made a representation on behalf of the Licensing Authority. She believed his key concerns were the proposed hours of operation, occupancy, the dispersal policy and the food offer and these were the key areas she would focus on in her submissions to the Sub-Committee. She referred to there being a licence in place at the Premises which the Applicant was seeking to replace (the 'primary' licence for the premises had been revoked whilst the 'secondary' licence was held by the landlord of the premises). Ms Davies drew attention to the proposed hours mirroring those of the landlord's licence.

Mr Moffatt spoke about the customer demographic. He said that the Applicant was seeking later hours to be able to cater for people who work during the night time and typically finish at 23:00 to 02:30, including musicians, actors/actresses and also restaurant/bar workers. This could not be offered to patrons at a similar premises owned by the Applicant in Farringdon where the terminal hour was earlier. They had been catered for when Temporary Event Notices ('TENs') had resulted in the premises opening until later.

Mr Lorrimer provided the additional comments that in addition to the conditions that Studio 88 would not operate as a nightclub and could not sell it as a nightclub, alcohol would only be sold when the Premises was operating as a live music entertainment venue. It was stated that 350 people out of the 400 people would be seated at tables. Mr Lorrimer commented that the business model had been built around transferring the existing premises licence and conditions. Following a consultation with other parties to the application, the Applicant had decided to apply for a new premises licence. He added that the greatest threat to the Applicant was the loss of the licence and as at Farringdon the Applicant would work very hard to promote the licensing objectives. It was an opportunity to create a world class venue. He also referred to the Council's loss of income over the last two years as there was no business currently operating there.

Ms Davies stated that the capacity for the number of customers was the same as that which had applied when the Premises had been known as Press. She advised that the proposed capacity was the same as the Applicant's premises at Farringdon but that the trading area of 47 Whitcomb Street was 3000 square feet larger so there would not be limited space. Mr Moffatt added that there had never been issues with overcrowding at Farringdon.

Mr Moffatt spoke about the 50 patrons who would not be seated at tables. About 20 of them were due to be around a baby grand piano in the 'Friends' Bar'. The other 30 would be located around the stage interacting with the band of musicians. He made the point that there would be plenty of space for the patrons who were not seated.

The Applicant tabled a document with staff to customer ratios. This was based on Mr Moffatt's previous experience including being an assistant general manager at Tiger Tiger, an assistant general manager at Grace Bar and a manager at Sway Bar. The document had been produced in order to show that there was a significantly higher staff to customer ratio, including managers, waiter/waitresses, door supervisors and glass collectors than other premises Mr Moffatt had worked at. It was intended that there would be a security member of staff to every 27 patrons at Studio 88 which compared with 1 to every 31 at Farringdon. Mr Sycamore for the Licensing Authority did have some concerns that the document was being tabled without any opportunity to check whether the information was correct and whether the staff to customer ratio was still the same as when Mr Moffatt had been working at the venues. The Sub-Committee, exercised its discretion under the provisions of the Licensing Act 2003 (Hearings) Regulations 2005 ("The Regulations") and with the consent of all parties by allowing the submission of the document, attaching the weight the Sub-Committee felt was necessary to the document. Mr Moffatt wished to highlight that the same owners were in place at the premises he had previously managed and the business models still remained the same. The models involved discounting to bring patrons in which he believed contrasted with the Applicant's live music venue model providing table service.

Mr Moffatt also raised that whilst Farringdon had an 01:00 terminal hour, there had been a large number of TENS to extend the operation until 04:00 and there had been no issues. PC Janes confirmed Ms Davies' point that the Police had sought information on the record of the Farringdon premises and had found no issues with crime and disorder there.

The Applicant had agreed a proposed condition with the Police that the Premises would operate in accordance with a written dispersal policy supplied in advance to Police and the Licensing Authority. The Applicant then sought to table this document at the hearing. The Sub-Committee shared the concerns of Mr Sycamore that the document was being tabled, particularly as the late submission must be in accordance with the Regulations. However, the Sub-Committee after seeking advice from the Legal Advisor appreciated that the document was a significant element of the Applicant's case and that it would not assist the process if the evidence was not allowed or a further deferment of the hearing took place to a later date. The Legal Adviser reminded the Applicant the importance of disclosing such information on time to ensure that all parties are

on a level playing field. The hearing was therefore adjourned for a brief period of time to enable all parties to read the document.

Following the resumption of the hearing, Mr Moffatt said that at Farringdon when TENs had been operated there had been less than 50% of the capacity still at the Premises after 03:00. He was of the view that this would be the same at Whitcomb Street and it would not be necessary for all 400 people to disperse at 04:00 hours. This would mean that staff to customer ratios would then be higher. There would be 14 door supervisors, 2 managers and 2 staff acting as ushers/hosts. Mr Moffatt offered to have a manager and two staff direct those dispersing from the venue up Coventry Street and towards the nearest transport links. There would be senior staff and security directly outside the venue.

Ms Davies stated she had discussed the dispersal policy with PC Janes during the brief adjournment and he did not have any concerns about the policy. He was also not aware of any particular issues relating to dispersal when the previous Operators, Press, had been operating at this location.

The Sub-Committee was addressed by Mr Sycamore on behalf of the Licensing Authority. He referred to the presumption to refuse the application under the Council's policy MD2. This set a very high threshold in terms of the Applicant having to prove exceptional circumstances as to why the application should be granted in the West End Cumulative Impact Area. Mr Sycamore made the point that the Applicant's argument had been that the extension had been sought for commercial reasons and this did not justify an exception to policy.

Mr Sycamore said that the Applicant had mentioned that by 03:00 there could be 50% of the capacity still inside the premises. However, the Applicant had also mentioned that it was important to operate until later to accommodate other workers. The Applicant had not offered a staggered dispersal condition where the capacity decreased during the course of the evening/morning. It would be to the benefit of the Applicant for 400 people to be at the Premises until 04:00 hours to make it more commercially viable.

Mr Sycamore also expressed concerns that there was no last entry time proposed by the Applicant so that patrons would be drawn from other premises in the vicinity and would remain in the West End Cumulative Impact Area. After midnight the Council's policy demonstrated that incidents of crime were far higher.

Mr Sycamore stated that there was no formal definition of a nightclub. It was clear from the Council's policy that MD2 was relevant for any premises where the provision of music and dancing or similar entertainment is provided so the Premises fell squarely within Policy MD2. He did not believe that the Applicant had provided exceptional reasons for the application to be granted by the Sub-Committee.

Environmental Health and the Police had maintained their representations on policy grounds. Mr Nevitt on behalf of Environmental Health referred at the hearing to the policy implications having been set out by Mr Sycamore. It was for the Sub-Committee to determine in relation to the Council's policy. He

advised that Environmental Health had no objections to the Applicant's additional five proposed conditions as they set out to define and tighten up the operation. He recommended that any dispersal policy should include the mechanism/ability to review and amend it in light of experience of how it operated and following any requests by the Responsible Authorities. PC Janes confirmed that the Police's representation had been maintained with the hours being significantly beyond Core Hours in the West End Cumulative Impact Area. He advised that the Police was satisfied with the Applicant's additional conditions in respect of preventing crime and disorder. He was also content with the dispersal policy.

In response to a question from the Sub-Committee, Mr Moffat offered that in the event the application was granted the Applicant would increase lighting and CCTV in Whitcomb Court and clean an area around the block to Oxendon Street.

The Applicant had previously suggested that an alternative option could potentially be used to avoid any adverse problems arising from queuing. The Sub-Committee asked about this. Mr Moffat replied that he had investigated the idea of patrons in portable tunnels made from marquee material so there was no noise when queuing. The queue would be separated from the general public. He had concerns that any barriers used were knocked too easily by patrons. Mr Moffat clarified that there were six security staff at the front entrance in Farringdon.

The Sub-Committee noted that a high percentage of customers booked in advance. The Applicant was asked whether customers also booked food in advance. Ms Davies replied that there was encouragement given to customers to book food in advance. Mr Moffat stated that on an average Saturday night in Farringdon it was typical for there to be 250 restaurant bookings. The average spend was £40 a head and the average spend on food was £25 per person. He added that it was crucial to the business model to provide food. There would be fixed seating and food would be provided at all times.

The Sub-Committee gave Ms Davies the opportunity to respond to Mr Sycamore's representation. She re-iterated that it was an unusual type of Premises which did not fit into a specific policy. She also expressed the view that the Applicant's assertions were based on fact due to the experience of the existing premises at Farringdon. It was submitted that what had taken place there would be replicated at Whitcomb Street.

The Sub-Committee also gave Ms Davies the opportunity to summarise the exceptional reasons she believed the application should be granted in the West End Cumulative Impact Area. In reply she stated the following points:-

- Studio 88 would be a cultural venue and that the Council's policy welcomed these.
- Studio 88 was also very diverse with the target market being professional women. Ms Davies did not believe that the target market would be prone to conflict.
- There would be different styles of operation which the Policy welcomed

such as providing a restaurant and entertainment. Live music would be the main reason for patrons attending the venue.

- She believed that the Applicant had demonstrated that the application would not be drink led and it would promote the licensing objectives.
- Ms Davies also referred to the Applicant's proposals for cleaning and providing improved lighting and CCTV outside the premises.

The Sub-Committee carefully considered all the representations received in respect of this application. The Sub-Committee noted all the points made by the Applicant, including that Studio 88 incorporated different styles of operation. Whilst the Sub-Committee appreciated that food was available and that the Applicant had made the case that it was reliant on food sales, the application did not comply with the strict definition of restaurants in a cumulative impact area (RNT2). There was no requirement for patrons to have substantial food when drinking alcohol. The application also did not fit within Policy PVC2 for theatres, cinemas, other performance venues, and qualifying clubs in the Cumulative Impact Areas Policy. The PVC policy specifically excludes venues where facilities are included for a person to take part in the entertainment. The Sub-Committee was satisfied that Policy MD2 did apply and that as referred to by Mr Sycamore on behalf of the Licensing Authority there was a presumption against the grant of the application.

The Sub-Committee did not consider that there were reasons given by the Applicant that were sufficiently exceptional to justify granting the application. The Applicant was proposing a very late licence which permitted the sale of alcohol until 01:00 Monday to Tuesday, 02:00 on Wednesday and 03:00 Thursday to Saturday with the closing time being half an hour later. The scale in terms of numbers was also very sizeable. Whilst the Applicant had made the case that the numbers in the Premises might not be 400 at all times, particularly in the early hours of the morning, there was no proposal by the Applicant to limit the numbers whether this was with a last entry time or a staggered reduction in capacity. By definition alone, and by the sheer numbers attending the Premises at any given day of the week this would lead to cumulative impact. The Sub-Committee was satisfied that the Premises would significantly add to cumulative impact in the West End Cumulative Impact Area.

The Sub-Committee was very conscious that there are references in the Statement of Licensing Policy to the Council giving *'high priority to the development of greater diversity in the types of entertainment and cultural activity on offer and in the age groups attracted to them'*. The Sub-Committee had been open to the idea of a live music venue coming to Westminster as referred to at the adjourned hearing. However, the Sub-Committee considered that the sheer lateness and scale of the application meant that there were not the grounds for this application being deemed an exception to policy.

The sheer lateness and scale of the application had the capacity to undermine the licensing objectives. Whilst the Sub-Committee noted the Police's comments and that the Applicant was employing a significant number of security staff, they could not guarantee that people arriving and dispersing during the early hours of the morning would not cause public nuisance in particular. The Sub-Committee was not satisfied that all aspects of the Applicant's experience in

Farringdon would be replicated in the West End Cumulative Impact Area. The Sub-Committee did not doubt that the Applicant was an experienced operator and managed his premises well in Farringdon but the City of Westminster is a different part of London altogether with many challenges (notably during the night time) and the location of the two premises are not comparable in this respect, particularly when up to 800 customers are likely to consume alcohol inside the Premises and what potential affect that has on the cumulative impact area in terms of an effective dispersal of customers that will help promote the licensing objectives.

It is the role of the Sub-Committee to scrutinise the application having regard to the relevant policies contained within the SLP and Government Guidance taking a fair and balanced approach in the determination of the matter. However, the Sub-Committee must consider what impact the granting of such an application would have ultimately on the promotion of the licensing objectives. Whilst, the Applicant had put forward some conditions in relation to the management style of operation it was the Sub-Committee considered view overall that these proposals did not go far enough to promote the licensing objectives.

In order for the Applicant to demonstrate exceptionality they would have to show that these Premises were different and set themselves aside from others. Admittedly the nature of the venue is a mix of many uses which was not disputed by the Sub-Committee, however, it is for the Sub-Committee to be persuaded that what the Applicant was offering in terms of exceptional reasons was somehow unique in terms of the 5 additional conditions offered. The Sub-Committee did not consider that what the Applicant proposed was over and above any competent licence holder would do when promoting the licensing objectives, in terms of crowd control and a litter sweep (which if caused by customers leaving the Premises was a responsible attitude to take in any event). In all of the circumstances of the case the Sub-Committee felt that on balance it had no alternative but to refuse the application on this occasion, having taken an appropriate and proportionate approach in its full determination of the application.

2. Live Music (Indoors)

Monday to Tuesday 10:00 to 01:00
 Wednesday 10:00 to 02:00
 Thursday to Saturday 10:00 to 03:00
 Sunday 12:00 to 22:30

Amendments to application advised at hearing:

None.

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

The application was refused (see reasons for decision in Section 1).

3.	Recorded Music (Indoors)
	Monday to Tuesday 10:00 to 01:00 Wednesday 10:00 to 02:00 Thursday to Saturday 10:00 to 03:00 Sunday 12:00 to 22:30
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): The application was refused (see reasons for decision in Section 1).
4.	Performances of dance (Indoors)
	Monday to Tuesday 10:00 to 01:00 Wednesday 10:00 to 02:00 Thursday to Saturday 10:00 to 03:00 Sunday 12:00 to 22:30
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): The application was refused (see reasons for decision in Section 1).
5.	Anything of a similar description to live music, recorded music or performances of dance
	Monday to Tuesday 10:00 to 01:00 Wednesday 10:00 to 02:00 Thursday to Saturday 10:00 to 03:00 Sunday 12:00 to 22:30
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): The application was refused (see reasons for decision in Section 1).

6.	Late Night Refreshment (Indoors)
	Monday to Tuesday 23:00 to 01:00 Wednesday 23:00 to 02:00 Thursday to Saturday 23:00 to 03:00
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): The application was refused (see reasons for decision in Section 1).
7.	Sale by retail of alcohol (On)
	Monday to Tuesday 10:00 to 01:00 Wednesday 10:00 to 02:00 Thursday to Saturday 10:00 to 03:00 Sunday 12:00 to 22:30
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): The application was refused (see reasons for decision in Section 1).
8.	Hours premises are open to the public
	Monday to Tuesday 09:00 to 01:30 Wednesday 09:00 to 02:30 Thursday to Saturday 09:00 to 03:30 Sunday 12:00 to 00:00
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): The application was refused (see reasons for decision in Section 1).
9.	Seasonal variations / Non-standard timings

	<p><u>Films (Indoors), Live Music (Indoors), Recorded Music (Indoors), Performances of dance (Indoors), Anything of a similar description to live music, recorded music or performances of dance, Late Night Refreshment (Indoors), Sale by retail of alcohol (On), Hours premises are open to the public</u></p> <p>On the morning of the beginning of British Summer Time, the terminal hour will be 04:00.</p> <p>For the sub-basement only, from the end of the permitted hours on New Year's Eve to the start of the permitted hours on the following day.</p>
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The application was refused (see reasons for decision in Section 1).</p>

4 9 HALKIN STREET, SW1

LICENSING SUB-COMMITTEE No. 5
Monday 30th October 2017

Membership: Councillor Peter Freeman (Chairman), Councillor Murad Gassanly and Councillor Karen Scarborough

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

Relevant Representations: Environmental Health.

Present: Mr Thomas O'Maoileoin (Solicitor, Representing the Applicant), Mr David Balden (Club Secretary) and Mr Dave Nevitt (Environmental Health).

<p>9 Halkin Street, London, SW1 7DR ("The Premises") 17/09853/LIPN</p>	
<p>1.</p>	<p>Regulated entertainment (Exhibition of films, Performance of live music, Performance of a Play, Indoor sporting activities, Performance of Dance, Playing of Recorded Music (Indoors))</p>
	<p>Monday to Sunday 07:00 to 01:00.</p>

	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee heard from Mr O'Maoileoin, representing the Applicant. He explained that The Caledonian Club is a private members' club currently operating under a club premises certificate. The application was for the Premises to continue to be run as a members' club, with the same hours (until 01:00 every day of the week) and activities. However, it would operate under a premises licence so as to permit private functions for non-members to take place at the Premises.</p> <p>Mr O'Maoileoin stated that there had been a number of enquiries received by the Club over the years from non-members for private functions. These were particularly for wedding functions as the Premises has a marriage licence and also for corporate functions, with a significant number being from companies who have a historical link with Scotland. He advised that the Club was similar to some other private members' clubs which were often quiet during the summer months. It was submitted that the Applicant saw a window of opportunity during this time to hold three or four weddings during the summer period if the application was granted.</p> <p>Mr O'Maoileoin described the likely corporate events as being either cultural relating to Scottish heritage or arts or for events to companies based in the City. He referred to the fact that many of the banking/insurance fraternity has links to Scotland. There were membership links already with the chairman and directors in these professions and the Caledonian Club. However, the application would provide greater flexibility for the Applicant's business model.</p> <p>Mr O'Maoileoin made the point that there were limited conditions on the club premises licence and the conditions being offered would bring tighter controls. The conditions offered by the Applicant included that licensable activities would only be available to members of the Caledonian Club, their bona fide guests or those attending a pre-booked private function. He said it was the intention of the Applicant to remain first and foremost a private members' club and members' functions would take priority over non-members' requested functions. Any pre-booked private function would be vetted by the Committee and Club Secretary of the Committee, Mr Balden. A proposed condition had been agreed between the Applicant and Environmental Health regarding the capacity. Mr O'Maoileoin added that it was not envisaged that there would be more than one function in any of the rooms at any given time (the capacities of the eight rooms ranged from 35 to 200).</p> <p>Mr O'Maoileoin referred to the three proposed conditions which had been agreed with the Police. These had addressed the Police's concerns and they had subsequently withdrawn their representation. The three proposed</p>

conditions were that patrons would not be permitted to take drinks or glass containers with them (this was a rule of the Club already), a list of members and their guests would be kept at reception for 31 days with membership involving an interval of at least 48 hours between membership and admission and the provision of SIA registered door supervisors for private pre booked events would be subject to a written risk assessment.

Mr O'Maoileoin advised the Sub-Committee that Mr Nevitt and Mr Lynagh had given pre-application advice to the Sub-Committee (which had been included in the report) and they had visited the premises twice. He stated there were no residents in the immediate vicinity of the Premises. To the rear of the Club was the Belgian Embassy and to the right hand side was the Argentinian Embassy. He did not believe that there were any risks of public nuisance to residents created by the application.

Mr O'Maoileoin also mentioned that the risk of nuisance was further reduced as the entrance to the Club was manned at all times. There was an acoustic lobby and a reception area which was sealed off and manned. There was CCTV coverage of the entire outside area. All events would be strictly managed. Any function held would need to be in keeping with the fact that there were bedrooms for members at the Premises and that they were not disturbed by potential nuisance.

The Sub-Committee also heard from Mr O'Maoileoin that he believed the hours were similar to most private members' clubs and for a number of other clubs who had sought a premises licence, including the RAF Club which had been granted by the Sub-Committee.

In response to questions from the Sub-Committee, Mr Balden provided answers that there were just under 1300 members and that there were 39 bedrooms at the Club. Mr O'Maoileoin provided the information that there were currently no limits on guests per member at the Club.

The Sub-Committee was addressed by Mr Nevitt on behalf of Environmental Health. He advised that he had maintained his representation as the hours applied for were beyond Core Hours, albeit the Club was not located in one of the Council's designated cumulative impact areas. The capacities for the rooms had been agreed with the Applicant. Mr Nevitt was also satisfied that all matters had been covered to promote the public safety and prevention of public nuisance licensing objectives. He confirmed Mr O'Maoileoin's comments that there were no residents in close proximity to the Club with the embassies being the closest buildings. He also informed the Sub-Committee that there was no history of complaints from residents in relation to the Premises. Mr Nevitt expressed the view that the Club was suitable for events (it was used for weddings already) and it was well managed and maintained.

The Sub-Committee granted the application, subject to conditions as set out below. In reaching this decision, the Sub-Committee took into account that the Club was not located in one of the Council's designated cumulative impact areas. The Sub-Committee noted that the Club currently operated to the same hours under the club premises certificate without any reported issues and the

	<p>Sub-Committee considered that there were no reasons to believe that permitting some private pre-booked functions for non-members would result in the licensing objectives being undermined.</p> <p>The Applicant had agreed proposed conditions with the Police and Environmental Health. The Police had withdrawn their representation whilst Mr Nevitt for Environmental Health was satisfied that all measures had been taken to promote the public safety and prevention of public nuisance licensing objectives. The Applicant had processes and procedures in place to manage the events and there were no residents in close proximity to the Club.</p> <p>The conditions the Licensing Sub-Committee imposed on the Premises Licence are considered appropriate and proportionate.</p>
2.	Late Night Refreshment (Indoors)
	Monday to Sunday 23:00 to 01:00
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below (see reasons for decision in Section 1).</p>
3.	Sale by Retail of Alcohol (On and Off sales)
	Monday to Sunday 07:00 to 01:00.
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below (see reasons for decision in Section 1).</p>
4.	Opening Hours
	Monday to Sunday 07:00 to 01:00.
	Amendments to application advised at hearing:

	None.
	Decision (including reasons if different from those set out in report): Granted, subject to conditions as set out below (see reasons for decision in Section 1).
5.	Seasonal variations / Non-standard timings
	<u>Regulated entertainment (Exhibition of films, Performance of live music, Performance of a Play, Indoor sporting activities, Performance of Dance, Playing of Recorded Music (Indoors), Late Night Refreshment, Sale by Retail of Alcohol (On and Off)</u> All licensable activities to be permitted 24 hours a day for residents and their bona fide guests.
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): Granted, subject to conditions as set out below (see reasons for decision in Section 1).

Conditions attached to the Licence	
<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.

Additional Conditions

9. Licensable activities shall only be available to members of the Caledonian Club, their bona fide guests or those attending a pre-booked private function.
10. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.
11. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer

copies of recent CCTV images or data with the absolute minimum of delay when requested.

12. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
13. All windows and external doors shall be kept closed after or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.
14. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
15. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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. It must be completed within 24 hours of the incident and 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, searching equipment or scanning equipment
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.
21. The licence holder shall enter into an agreement with a hackney carriage and/or private carriage firm to provide transport for customers, with contact numbers made readily available to customers who will be encouraged to use such services.
22. No licensable activities shall take place at the premises until the club premises

certificate licence has been surrendered and is incapable of resurrection.

23. The maximum number of persons accommodated at any one time (excluding staff) in the following rooms shall not exceed:

Oval Room - 35

Members Bar - 60

Selkirk Room - 60

Stuart Room - 60

Jonny Walker Room - 200

Dining Room - 150

Morrison Room - 120

Library (including card room and Bowmore Room) - 80.

24. 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.

25. A legible list of members and their guests who have attended will be kept at reception for 31 days and shall be available for inspection by any of the relevant authorities. No person shall be admitted to membership of the premises without an interval of at least 48 hours between nomination or application for membership and admission. Members shall be able to identify their bona fide guests by name at all times.

26. The provision of SIA registered door supervisors for private pre booked events shall be subject to a written risk assessment, which shall be available for inspection by any of the relevant authorities upon request.

5 19 GANTON STREET, W1

LICENSING SUB-COMMITTEE No. 5

Monday 30th October 2017

Membership: Councillor Peter Freeman (Chairman), Councillor Murad Gassanly and Councillor Karen Scarborough

Legal Adviser: Horatio Chance

Policy Adviser: Chris Wroe

Committee Officer: Jonathan Deacon

Presenting Officer: Yolanda Wade

Relevant Representations: Licensing Authority.

Present: Mr Alun Thomas (Solicitor, Representing the Applicant), Mr Rory Buck (Director) and Mr David Sycamore (Licensing Authority).

19 Ganton Street, London, W1F 9BN ("The Premises")
17/0470/LIPV

1.	<p>To amend condition</p> <table border="0" data-bbox="240 208 1414 573"> <tr> <td data-bbox="240 208 815 573"> <p><u>From</u></p> <p>Condition 17 on the existing premises licence – ‘The number of persons permitted on the premises at any one time (excluding staff) shall not exceed 60 persons’.</p> </td> <td data-bbox="820 208 1414 573"> <p><u>To</u></p> <p>The number of persons permitted on the premises at any one time (excluding staff) shall not exceed 70 persons.</p> </td> </tr> </table> <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 heard from Mr Thomas, representing the Applicant. He stated that the landlords, Shaftesbury, had strict requirements of their tenants in terms of meeting the licensing objectives. Shaftesbury had onsite security and CCTV in Ganton Street. The change of layout had not received any objections. There had been no objections from residents to the increase to the internal capacity from 60 covers to 70. The one representation had been received from the Licensing Authority on the grounds that there were an additional ten people in the West End Cumulative Impact Area. He added that it was a question of whether ten additional diners would add to cumulative impact. There was no requirement for the Applicant to prove an exception to policy. The Council’s policy referred to restaurants not being associated with crime and disorder.</p> <p>Mr Thomas mentioned that there was no increase in the proposed hours in respect of licensable activities or the opening hours. The hours for licensable activities were within Core Hours with an additional half an hour in respect of the closing time. An existing premises covering 19 Ganton Street had been divided into two and the restaurant had retained the closing time of one half of the Premises. He also advised that the Premises would remain as a restaurant and be compliant with the Council’s Policy RNT2. He believed it was inconceivable that the application would lead to customers having an adverse impact. The proposal to increase the capacity had resulted from improved use of space.</p> <p>Mr Sycamore on behalf of the Licensing Authority confirmed that the representation was due to the ten additional people in the West End Cumulative Impact Area. Mr Thomas had commented that the restaurant had not opened as yet (it was due to open later that day with Environmental Health inspecting the Premises) and Mr Sycamore said that had the capacity not previously been set then it could have been argued that a 70 seat restaurant would not have been noticed in comparison to a 60 seat restaurant.</p> <p>The Sub-Committee appreciated that the Licensing Authority had maintained</p>	<p><u>From</u></p> <p>Condition 17 on the existing premises licence – ‘The number of persons permitted on the premises at any one time (excluding staff) shall not exceed 60 persons’.</p>	<p><u>To</u></p> <p>The number of persons permitted on the premises at any one time (excluding staff) shall not exceed 70 persons.</p>
<p><u>From</u></p> <p>Condition 17 on the existing premises licence – ‘The number of persons permitted on the premises at any one time (excluding staff) shall not exceed 60 persons’.</p>	<p><u>To</u></p> <p>The number of persons permitted on the premises at any one time (excluding staff) shall not exceed 70 persons.</p>		

	<p>their representation as it is the Council's policy for restaurants within the cumulative impact areas (RNT2) for applications to be granted provided it can be demonstrated that they will not add to cumulative impact (and that they promote the licensing objectives). The Sub-Committee granted the application for the change of layout and the increase in capacity from 60 to 70. The Sub-Committee took into account the minor impact of the application and the existing controls on the premises licence, including conditions such as the Council's model restaurant condition. It was noted that there was no increase in the proposed hours of operation.</p> <p>The Sub-Committee considered the conditions imposed on the Premises Licence to be appropriate and proportionate.</p>
2.	To change the layout
	<p>a) Changes to WC configuration b) Changes to position of servery and addition of bar area c) Changes to situation of kitchen d) Addition of banquette seating e) Changes to situation of entrance/exit f) Changes to back of house area.</p> <p>And to increase the internal capacity from 60 covers to 70.</p>
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>Granted, subject to conditions as set out below (see reasons for decision in Section 1).</p>

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.

Additional Conditions

9. The premises shall only operate as a restaurant:

- (i) in which customers are shown to their table,
- (ii) where the supply of alcohol is by waiter or waitress service only,
- (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery,
- (iv) which do not provide any take away service of food or drink for immediate consumption,

- (v) which do not provide any take away service of food or drink after 23.00, and
- (vi) where alcohol shall not be sold, supplied, or consumed on the premises otherwise than to persons who are seated in the premises and bona fide taking substantial table meals there and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

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

10. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.
11. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
12. All waste is to be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
13. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance
14. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police, which will record the following:
 - (a) all crimes reported to the venue
 - (b) all ejections of patrons
 - (c) any complaints received
 - (d) any incidents of disorder
 - (e) any faults in the CCTV system or searching equipment or scanning equipment
 - (f) any refusal of the sale of alcohol
 - (g) any visit by a relevant authority or emergency service.
15. No striptease, no nudity and all persons to be decently attired at all times except when the premises are operating under the provision of a Sexual Entertainment Venue Licence.
16. Notices shall be prominently displayed at exits requesting the patrons to

respect the needs of local residents and businesses and to leave the area quietly.

17. The number of persons permitted on the premises at any one time (excluding staff) shall not exceed 70 persons.
18. 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.
19. No licensable activities shall take place at the premises until premises licence 17/00557/LIPT and 17/01442/LIPT (or such other number subsequently issued for the premises) has been surrendered and is incapable of resurrection.
20. Save for persons using the external seating areas, 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.
21. 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
22. The variation of this premises licence 17/09470/LIPV will have no effect until the premises have been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from this licence by the licensing authority. If there are minor layout changes during course of construction new plans shall be deposited with the licensing authority when requesting removal of this condition.