



**CITY OF WESTMINSTER**

# MINUTES

## **Licensing Sub-Committee (1)**

### **MINUTES OF PROCEEDINGS**

Minutes of a meeting of the **Licensing Sub-Committee (1)** held on **Thursday 23rd August, 2018**, Room 3.1, 3rd Floor, 5 Strand, London, WC2 5HR.

**Members Present:** Councillors Angela Harvey (Chairman), Susie Burbridge and Jacqui Wilkinson

**Also Present:** Councillors

**Apologies for Absence:**

**1 MEMBERSHIP**

**2 DECLARATIONS OF INTEREST**

**1 BLACK STONE RED FIRE, BASEMENT & GROUND FLOOR, 84 WESTBOURNE GROVE, LONDON, W2 5RT**

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

*Thursday 23<sup>rd</sup> August 2018*

**Membership:** Councillor Angela Harvey (Chairman), Councillor Susie Burbridge and Councillor Jacqui Wilkinson

**Legal Adviser:** Horatio Chance

**Committee Officer:** Kisi Smith-Charlemagne

**Presenting Officer:** Heidi Lawrance

**Relevant Representations:** Environmental Health, Licensing Authority, Hereford Mansions Residents Association, Bayswater Residents Association & South East Bayswater Residents Association, The Hereford Road Association, Hereford Mews and SEBRA

Present: Ms Kate Allison (Licensing Agent, representing the Applicant), Mr Giovanni Interdonato (Applicant) Ms Sally Fabbricatore (Environmental Health), Daisy Gadd (Licensing Authority), Richard Brown (CAB Project Officer, representing Local residents) John Zamit (SEBRA)

<p><b>Black Stone, Red Fire, Basement and Ground Floor, 84 Westbourne Grove, London W2 5RT (Bayswater Ward/Bayswater Cumulative Impact Area ) (“The Premises”) 18/07535/LIPN</b></p>	
<p><b>1.</b></p>	<p><b>Sale by retail of Alcohol (On sales, Off sales or both):</b> Both</p> <p>Monday to Sunday: 10:00 to 23:30</p> <p><b>Seasonal variations/Non-Standard Timings:</b></p> <p>None</p>
	<p><b>Amendments to application advised at hearing:</b></p> <p>The Applicant withdrew off sales of alcohol from the application.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee considered an application from Mr Giovanni Interdonato, for a new premises licence in respect of Black Stone, Red Fire ,Basement and Ground Floor, 84 Westbourne Grove, London W2 5RT (“The Premises”). The Presiding Officer provided an outline of the application to the Sub-Committee, confirming the following agreement of conditions, that the Metropolitan Police had withdrawn its objections; further that a new premises plan had been circulated to all parties that morning. The Sub-Committee addressed the problems caused by late submissions. In this instance all parties confirmed they would accept the late submission of the updated premises plan on the understanding that the same was to be provided to the Licensing Authority within 14 days of its Decision should the Sub-Committee be minded to grant the application.</p> <p>Ms Kate Allison, Agent for the Applicant, advised the Sub-Committee that it had before them a new premises licence application for a pizzeria selling Sicilian style fish and meat dishes operating in the basement and ground floor areas of the Premises. The Applicant also sought to operate a food delivery service from the Premises. Ms Allison advised the Sub-Committee that the Applicant applied for: Playing of recorded music, from Mon-Sat 10:00 to 00:00 and Sun 10:00 to 23:30, Late night refreshments from Mon –Sun, 23:00 to 00:00, Sale by retail of alcohol from Mon-Sun from 10:00 to 23:30 and Premises opening hours, Mon-Sun from 10:00 to 00:00.</p> <p>Ms Allison advised that any alcohol served would be with a substantial table meal and there will be no takeaway service; however there will be a delivery service to the local area which is important to the Applicant’s business model. The Sub-Committee sought further clarification on what percentage of the Applicant’s business would be based on deliveries. Ms Allison confirmed that</p>

deliveries would make up 50% of the Applicant's business. Ms Allison also confirmed that the Applicant would amend the opening hours to the public to the WCC core hours and has accepted conditions proposed by the Police.

The Sub-Committee asked the Applicant to explain the changes from the old plan to the new plan submitted that morning. Ms Allison advised that the bar was the servery bar, with a waist height door and is only accessible to staff. Ms Allison then explained that further to Environmental Health advice, there had been changes to the basement layout with additional toilets, 5 available to the public, 1 for staff and staff rest room. The Sub-Committee queried the windows and existing shop front, Ms Allison advised that the new plans show the existing shop front, but that the Applicant will be seeking planning permission to change this, sometime in the future but has decided to postpone this until next year

Ms Allison then went on to discuss the seating area changes in the basement, which had been reduced in order to incorporate the new toilet facilities. Ms Allison advised that the new capacity numbers were 28 in respect of the basement and 46 on the ground floor. Ms Allison also informed the Sub-Committee that the Pizzeria kitchen on the ground floor and alcohol store in the basement will be slightly bigger to allow better operating areas. Ms Allison advised that the Applicant had withdrawn off sales and recorded music from the application and this was duly noted by the Sub-Committee. Ms Allison advised the Sub-Committee that the Applicant wished to create a beautiful restaurant, with great food with alcohol to accompany the food offer. She stated that the Applicant wants to work in partnership with the Responsible Authorities and local residents, by putting in place the necessary arrangements and is therefore happy to follow any recommendations.

Ms Allison advised that when considering deliveries, the Applicant would be happy to speak with delivery companies to dissuade them from using side streets to park as the Applicant did not want to cause any disturbance. Ms Allison stated that the Applicant wants to operate a decent and good business. Ms Allison addressed residents' concerns regarding the plant equipment, advising that the Applicant has permission until 23:30 hours for its use. As the restaurant is in the CIA the Sub-Committee sought clarity on how the Applicant would manage customers and address the impact on local residents. Mr Allison advised that the Applicant would provide signage with instructions to respect the neighbours and leave quietly, there would be a member of staff or management on the door on busy nights encouraging customers to disperse in an orderly manner.

Ms Allison also informed the Sub-Committee that speakers for background music would be fitted on anti-vibration stands, there would be a complaints book and any illuminated signage will be switched off at closing time. Ms Allison confirmed that smoking would be discouraged, but there would be a designated smoking area and smokers would be asked to be quiet, not to litter and no drinks will be allowed outside. Ms Allison advised that all the extraction ventilation systems would be maintained and serviced and acoustically treated to ensure there is no disturbance. Ms Allison confirmed that the Applicant had been working closely with the landlord to ensure the application went smoothly. The Premises will also have CCTV cameras as per the conditions proposed by the

Police.

The Sub-Committee then heard from Sally Fabbriatore, Environmental Health (EH), who explained that the EH welcomed the offer immediately prior to the Sub-Committee hearing, that recorded music has now been withdrawn and the opening hours are now within core hours. Ms Fabbriatore stated that she was content with capacity numbers and also welcomed the number and design of toilets and wash-handbasins. Ms Fabbriatore advised that the front concertina windows which many be proposed next year, while she had not proposed any condition, this was something that the Sub-Committee might consider conditioning. Ms Fabbriatore advised that her only remaining concern related to deliveries and how the public and operation will be managed.

The Sub-Committee then heard from, Daisy Gadd representing the Licensing Authority (LA), who confirmed that the Licensing Authority, EH and Police conducted a very useful site visit during which MC66 was agreed. Ms Gadd advised that this then brought the Applicant in line with WCC policy RTN2 which requires the Applicant to demonstrate that they will not add to the CIA. Ms Gadd explained that there would be another 74 people in the CIA and it would be for Sub-Committee to decide if the Applicant adequately demonstrated their capabilities in addressing those concerns. Ms Gadd advised that the Licensing Authority is concerned regarding the deliveries element of the application, given that the Applicant expects 50% of his business to be deliveries. Her concern is the way in which the Applicant will ensure the management and operation of this element of the business will not add to cumulative impact, but would promote the licensing objectives.

Mr John Zamit, SEBRA, advised the Sub-Committee that the entrance directly next to the restaurant has no door going into the flats, the residents enter the flats from Hereford Mews and the plant is located at the back of the flats. Richard Brown CAB Project Officer, representing the local residents from Hereford Road Association and Hereford Mews, addressed the Sub-Committee referred to photographs of the plant equipment located at the back of the Premises that the residents had submitted as part of their representations. The Sub-Committee asked the Applicant if the plant equipment would be replaced, Ms Allison advised that the plant equipment is in working order and they were intending to use the equipment in its current condition. However should the equipment need to be replaced or repaired this would be carried out by the Applicant.

Mr Brown described the proximity of the extractors to the residents of Hereford Mews and the potential for noise disruption, Mr Brown referred to the operation times of the plant equipment. Mr Brown acknowledged that the hours had been reduced to WCC core hours but felt that due to the close proximity and noise of the plant equipment at the back of the Premises and the noise generated from customers at the front of the Premises, this should be reduced by 30 minutes to below core hours; 23:00 hours on Friday and Saturday instead of 23:30 hours. Mr Brown raised concerns regarding the deliveries, advising that he was surprised that this would be 50% of the Applicant's business. Ms Allison conferred with the Applicant and advised that the earlier figure of 50% was too high and it was more likely to be in the region of 20%. Further clarification was

sought from the Legal Adviser to the Sub-Committee, and Ms Allison confirmed that up to 50% of the Applicant's business could be from deliveries.

Mr Brown advised that for deliveries to take place there needs to be some clarity on how this will operate in practice so as not to cause nuisance to local residents. Mr Brown advised that the businesses model for delivery companies is that they act as a third party to facilitate the order and the delivery drivers are one step removed. He thus queried where the delivery drivers will wait outside and inside the Premises, as in effect the Premises has no control over how delivery drivers will operate. Mr Brown then addressed concerns relating to the opening of windows and doors, suggesting that all doors and windows remain closed at 21:00 hours if the Sub-Committee were minded to grant the application. Mr Brown's final points referred to the delivery of stock advising that residents have requested that the times are amended and are therefore seeking 08:00 -20:00 hours Monday to Saturday and 10:00-16:00 hours Sundays and Bank Holidays. Mr Brown advised that residents were content with the waste and recycling arrangements.

The Legal Adviser to the Sub-Committee stated that model condition 12 related to noise nuisance and would cover all aspects of nuisance emanating from the Premises, including plant machinery. The Legal Adviser also stated that the City Council may use its statutory powers both under the Planning and Environmental Health regimes where the relevant enforcement action can be taken for such breaches. Residents can therefore contact the City Council's enforcement teams to make noise related complaints and any potential breaches of planning control. The Sub-Committee was mindful of the Home Office Guidance issued under section 182 of the Licensing Act 2003 which states that Licensing Authorities should not unnecessarily impose conditions on Licence Premises where there is appropriate legislation already in place which deals with such matters.

Mr John Zamit advised the Sub-Committee that the community welcomes the business as this was the site of a previous restaurant, and thus this did not impact on cumulative area. However, Mr Zamit felt the hours should be reduced by 30 minutes to limit the impact on the lives of residents and that this would be a small adjustment for the Applicant. Mr Zamit raised the concern regarding the plant at the back of the Premises advising that residents can complain if it is an issue. Mr Zamit then discussed his concerns regarding deliveries from the Premises, advising that up to 30% of trade can be deliveries, anything over 30% would change the nature of operation and would need to go back to planning. Mr Zamit queried where delivery drivers would park, as if not outside then they park elsewhere. Finally, Mr Zamit sought further clarification on where delivery drivers will safely wait, once inside the Premises. The Sub-Committee noted that any potential change of use of the Premises was a planning matter and not a consideration for this Sub-Committee. Ms Allison confirmed that delivery drivers will wait in the ground floor customer seating area by the stairs.

The Sub-Committee queried the distance deliveries may be made to from the Premises. Ms Allison advised that the Applicant wants to work with the local community and area and there is no intention to deliver too far out, and this is something that the Applicant will control. She advised that the deliveries are

	<p>designed to be a speedy process from order to delivery, and that customers receive their food speedily. The Applicant has a pre-set amount of time to make the food before the delivery driver arrives, the idea is to always have the order ready so that the delivery drivers are not hanging around, but would come in and go out quickly. Ms Allison advised the Sub-Committee that there is an ability within the Apps (from the restaurant's side) to stop the delivery service if it becomes too busy.</p> <p>The Sub Committed carefully reviewed all the information presented from all parties in light of the licensing objectives and decided to grant the licence with conditions. The Sub-Committee considered that granting the application would not add to cumulative impact: this had previously been a restaurant; the assurances the Applicant had given during the hearing to use his best endeavours to limit public nuisance; and the conditions imposed on the Premises Licence which together would promote the licensing objectives. The Sub-Committee was pleased to note that the Applicant will work with local residents to ensure that they are not impacted by the deliveries service However, the Sub-Committee was mindful of the fact that should the Applicant fail to work with the Responsible Authorities and local residents as stated, or breach any of its licence conditions, then a review of the Premises Licence can be made by either party.</p> <p>The Sub-Committee considered that the conditions imposed on the Premises Licence to be appropriate and proportionate that would help promote the licensing objectives.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted this application (see reasons for decision in Section 1).</p>
<p><b>2.</b></p>	<p><b>Late Night Refreshments: Indoors</b></p> <p>Monday to Sunday 23:00 to 00:00</p> <p><b>Seasonal variations/Non-Standard Timings:</b></p> <p>None</p>
	<p><b>Amendments to application advised at hearing:</b></p> <p>None</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted this application (see reasons for decision in Section 1).</p>
<p><b>3.</b></p>	<p><b>Hours premises are open to the public</b></p> <p>Monday to Sunday: 10:00 to 00:00</p> <p><b>Seasonal variations/Non-Standard Timings:</b></p> <p>None</p>

**Amendments to application advised at hearing:**

The Applicant amended the hours the premises are open to the public to WCC core hours:

Monday to Thursday 10.00 to 23.30  
Friday and Saturday 10.00 to midnight  
Sundays immediately prior to Bank Holidays 12.00 to midnight  
Other Sundays 12.00 to 22.30

The Applicant withdrew the playing of recorded music from the application

The Applicant withdrew Off-Sales of alcohol from the application.

**Conditions attached to the Licence**

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 will not permit drinking games or other activities which encourage individuals to consume alcohol within a time limit, or as much alcohol as possible. There will be no provision of unlimited or unspecified amounts of alcohol for free or for a fixed discounted fee.
10. There will be no selling or distributing of promotional materials in the premises considered to condone or glamorise anti-social behaviour or drunkenness. Free Tap water will be available on request.
11. The premises will ensure that customers are made aware of the availability of smaller measures of alcohol and measures will not be limited to larger measures.
12. 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
- 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.
13. An incident log shall be kept at the premises and made available on request to an authorised officer of the City Council or the Police. 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) any faults in the CCTV system
- (f) any refusal of the sale of alcohol
- (g) any visit by a relevant authority or emergency service.

14. Door supervisors will be used on busy nights or planned event nights.
15. Door supervisor to encourage customers not to loiter and to disperse in an orderly fashion.
16. The premises will join Pubwatch or similar membership where it exists in the area.
17. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
18. Entrance doors to be supervised to make sure no excessive noise breakout.
19. Speakers will be mounted on anti-vibration mountings and any amplification of music to be kept at a minimum so as to not disturb the neighbours, sound limits to be controlled by the duty manager.
20. No deliveries to the premises shall take place on Monday to Saturday between 20.00 and 08.00 on the following day and Sunday and Bank holidays between 10:00 and 16:00.
21. A complaints book to be held on the premises to record and respond to any complaints by neighbours.
22. 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.
23. 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.
24. Any illuminated signage will be switch off when closed to ensure no disturbance to the neighbours.
25. The premises will ensure staff are trained on the licensing objectives.
26. 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.
27. Children under 18 are only allowed inside the restaurant if accompanied by

an adult or known to the staff.

28. No sales of alcohol for consumption of the premises.
29. The number of seated persons inside the premises (excluding staff) shall not exceed 28 persons in the basement and 46 persons on the ground floor.
30. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
31. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 08.00hours on the following day.
32. 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.
33. 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.
34. The premises shall only operate as a restaurant
  - (i) in which customers are shown to their table,
  - (ii) where the supply of alcohol is by waiter or waitress service only
  - (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery,
  - (iv) which do not provide any take away service of food or drink for immediate consumption,
  - (v) which do not provide any take away service of food or drink after 23.00, and
  - (vi) where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

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

35. The licence holder shall use their best endeavours to ensure the deliver mechanisms used to undertake deliveries, do so in a manner that will not cause a nuisance, so as to promote the public nuisance licensing objective.
36. All doors and windows shall be closed by 21:00 except for egress and entry.
37. A revised premises plan shall be submitted to the Licensing Authority clearly marking the servery and cash desk areas, within 14 days from the date of this

decision (**This condition shall be removed once the revised plan has been submitted**).

The Meeting ended at 12.35 pm

**CHAIRMAN:** \_\_\_\_\_

**DATE** \_\_\_\_\_