



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (5)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (5)** held on **Thursday 4th July, 2019**, Rooms 18.01 & 18.03, 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Murad Gassanly (Chairman), Susie Burbridge and Aicha Less

1 MEMBERSHIP

1.1. There were no changes to the Membership.

2 DECLARATIONS OF INTEREST

Councillor Murad Gassanly declared an interest in respect of Item 1 Buddha Bar, 145 Knightsbridge, London, SW1X 7PA and informed that he had dined at the Restaurant with clients and also socially.

1 BUDDHA BAR, 145 KNIGHTSBRIDGE, LONDON, SW1X 7PA

LICENSING SUB-COMMITTEE No. 5

Thursday 4 July 2019

Membership: Councillor Murad Gassanly (Chairman), Councillor Susie Burbridge and Councillor Aicha Less

Legal Adviser: Horatio Chance
Committee Officer: Georgina Wills
Policy Officer: Kerry Simpkin
Presenting Officer: Kevin Jackaman

Relevant Representations: Environmental Health and Licensing Authority

Present: Mr Alun Thomas (Legal Representative, representing the Applicant), Mr Andy Hing (Applicant, Shaftesbury Chinatown Pic), Mr Shelford Resident, Mr David Nevitt (Environmental Health) and Ms Karyn Abbot (Licensing Authority)

1 Gerrard Place London W1V 7LL (“The Premises”)19/04659/LIPN

1. Sale by Retail of Alcohol – On and Off Sales

Monday to Saturday: 10:00 to 00:00

Sunday: 12:00 to 23:30

Seasonal Variations / Non-Standard Timings:

From the end of permitted hours on New Year’s Eve to the start of permitted hours New Year’s Day.

Amendments to application advised at hearing:

During the Hearing, the Applicant advised that the ‘sale by Retail of alcohol (off sales) was no longer required.

The Sub-Committee had before it two applications for a new premises licence by Shaftesbury Chinatown Plc. In respect of (i) 1 Gerrard Place London W1V 7LL and (ii) 9 Horse and Dolphin Yard, London, W1D 5BA. The Applicant sought to split the existing licensed space into two new restaurants. This Application relates to part ground and first floor of the Premises. The Applicant sought the sale by retail of alcohol both ‘off’ and ‘on’ sales from 10:00hrs to 00:00hrs Monday to Saturday and 12:00hrs to 23:30hrs on Sundays. Late night refreshment was also sought from 23:00hrs to 01:00hrs Monday to Sundays.

The Licensing Officer advised that representation for both Applications had been received from Environmental Health, Licensing Authority and two residents. The Applicant submitted additional documentation, and these were circulated to all parties on 1 July 2019. The Premises is situated in the West End Cumulative Impact Area.

Mr Thomas, the Applicant’s Legal Representative, advised that the Applicant, Shaftesbury Chinatown PLC was an established company which had over 300 Licensed Premises in their property portfolio and that the majority of these were restaurants. The Sub-Committee was advised that Shaftesbury Chinatown PLC had a reputation of having a strict lease and set of policies on how their premises should be managed and these were rigorously enforced. Mr Thomas advised that a previous tenancy had been forfeited and this was due to poor operational practices of the tenant. The Sub-Committee was reminded that Chinatown was in an area that had numerous theatres and was a designated spot for post theatre diners. The Sub-Committee was reminded that its locality was ‘restaurant led’ in nature and was unlike Soho which was ‘drink led’.

Mr Andy Hing, Applicant, Shaftesbury Chinatown PLC, advised that the Premises were frequented by an international clientele. The Sub-Committee was advised that cuisines in the Asian Continent had evolved and preferences of the younger international clientele had altered, and it was aimed to reflect these market changes. Mr Hing advised that clienteles used the Premises as a ‘meeting place’ and not necessarily for purchasing alcohol.

Mr Thomas advised that 13 CCTV cameras were to be installed in the locality and this would help to address Anti-Social Behaviour in the vicinity. Mr Thomas advised that there were changes to the Application and commented that Recorded Music and Private Entertainment had been reduced to reflect the Premises' opening hours. These licensable activities are currently unrestricted in the Premises current Licence. The Sub-Committee advised that the 'Off' sales of alcohol were to be withdrawn as the external seating area was within the boundary of the Premises licensed area. Mr Thomas advised that the Bar Area would be restricted to seating customers only and operate within core hours. The Bar Area will be restricted to 20 persons and this accounts for 5% of the total capacity of each Premises.

Mr Thomas advised the Sub-Committee that the hours sought were the same as the existing licence and commented that the Application would not change the nature of the area. He advised that the hours proposed for the bar were within core hours and those for the restaurant mirrored what was currently granted under the existing licence. Mr Thomas referred to Pg. 91 of the Agenda which contained a list of establishments located near the Premises and their operational hours and commented that they were varied and ended at late hours.

Mr Thomas advised that pre-application advice had been sought from Environmental Health and the District Surveyor. He stated that the District Surveyor had advised that the capacity for the existing floor space of the Premises was between 540 to 660. He commented that the existing premise licence stipulated the capacity to be for 480 persons and this was in relation to late night refreshments only and not for the sale of alcohol. He advised that the existing license was a 'Grandfather Licence'. Mr Thomas advised that capacity would have been higher if the 'sale of alcohol' capacity was included. Mr Thomas advised that the capacity of 480 was being sought and that this number would be split between the two Premises, thus 300 for Gerald Place and 180 for 9 Horse and Dolphin Yard. He advised that the numbers sought was a reduction and was lesser than the figure of the combined capacity of the 'sale of alcohol' and 'late night refreshments'.

The Sub-Committee advised that there had been a reduction of 'regulated entertainment'. Mr Thomas advised that several model conditions had been adopted and this was to ensure that the licensing objectives were promoted, and that the Premises would not add to cumulative impact. He advised that the Council's RNT2 Policy under the City Council's Statement of Licensing Policy ("SLP") for new restaurants in the cumulative impact area did not apply to the application as it mirrored what was currently licensed. Mr Thomas advised that the area of application which fell outside policy was the Hatched Bar and commented that policy on bar usage stipulated that the hours of operation and the extent of use should be considered when assessing cumulative impact. Mr Thomas commented that the stated area was small and would have a capacity of 20, was seated, would operate within the core hours and was ancillary to restaurant use.

Mr Thomas referred to the policy on 'substituting' existing licensed activities and

	<p>highlighted that in the Application there was a reduction in capacity, reduction in the sale of alcohol and the inclusion of model conditions which were not present in the existing licence. Mr Thomas commented that the licensable areas fell within two parts of the SLP and that only the bar area came under the 'exceptional rule'.</p> <p>Ms Karyn Abbot, Licensing Officer advised that representation was maintained as the Premises was in the West Cumulative Impact Zone and came under Policy RNT 2. The Applicant was noted to have agreed to several Model Conditions which included Model Restaurant Condition 66 ("MC 66"). There were concerns on how the black hatched area of the Premises was to be operated and controlled and this needed to be considered under Policy PB2 of the SLP Ms Abbot commented that the Applicant had agreed that the mentioned area would be for seated customer and that this would negate the concerns of vertical drinking.</p> <p>Ms Abbot noted that the Applicant had agreed to reduce the capacity, remove off sales and reduced the outside operating hours to 22:00hrs for 9 Horse and Dolphin Yard and would be surrendering their existing license. The Sub-Committee was advised that it needed to be persuaded by the Applicant that the Premises would not add to negative cumulative impact in the West End cumulative Impact area.</p> <p>Mr David Nevitt, Environmental Health officer advised that representation had been maintained and this was in relation to the use of the Premises bar and the proposed capacity for the establishment. Mr Nevitt advised that capacity was 480 and it was preferred that this figure remain as the overall maximum capacity for both Premises. Mr Nevitt advised that all bar usage was opposed in the Cumulative Impact Area and that the reduction in the bar's capacity was preferred and this would result in an overall reduction of the Premises capacity.</p> <p>Mr Nevitt raised concerns over the operational hours for the courtyard at Dolphin Yard. He commented that the vicinity was surrounded by residential buildings and suggested that the table and chairs should be removed at an earlier time. This would help to prevent noise nuisance. Mr Nevitt confirmed that pre-application advice had been sought by the Applicant and that the proposed conditions by the latter were appropriate.</p> <p>Mr Shelford, local resident advised that he resided in a flat which contained 117 apartments and over 300 residents. He raised concerns about the changing character of Chinatown and the vicinity becoming a drink led destination. Mr Shelford advised that many restaurants located in the vicinity were 'family run' and only a few operated within their full licensable hours. The Sub-Committee was advised that restaurants within the locality largely closed at core hours. Mr Shelford advised that residents would be affected by patrons leaving the Premises and therefore had issues with dispersal.</p> <p>Mr Shelford commented that the creation of the new premises licence from an existing licence could still lead to additional cumulative impact. He further raised concerns about the use of the ancillary bar and advised that 218 seats had been counted at 9 Horse and Dolphin Yard. Mr Shelford commented that</p>
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<p>Council Policy on the impact of the Night time economy requested that the needs of residents, business and visitors should be taken into consideration when promoting the Applicant's proposed plans for the Premises. Mr Shelford advised that all operation and alcohol sales should be within core hours and that the refusal for the ancillary bar in combination would be a better reflection of the past usage of the restaurant.</p> <p>Mr Thomas commented that the application site and residents building were separated by a Fire Station and advised that there was not a direct impact from the Premises, but however noted that there could be concerns over dispersal and related public nuisance. The Sub-Committee noted that the resident's flats were surrounded by three streets. Mr Shelford commented that some residents' flats were short building and overlooked Dolphin Yard. Mr Hing advised that that New World restaurant in Chinatown was a community building and held numerous functions which included weddings and film nights. He advised that events would continue up to the licensed operational hours.</p> <p>In response to questions from the Sub-Committee, Mr Thomas commented that there had been an overall reduction of capacity in the Premises and highlighted that the District Surveyor had advised that the venue had a capacity of 560. The Sub-Committee noted that the bar operated within core hours and that after these hours, the venue would be reduced by 40 patrons. The Sub-Committee commented that mentioned patrons may remain in the Premises.</p> <p>The Policy Officer advised that the Application would be considered as two new applications, and these fell under Policies RNT2 and PB2 of the SLP. The Sub-Committee noted that the existing Premise Licence was being surrendered and this could be part of the mitigating circumstances that there would be no additional cumulative impact and a relevant factor when considering exceptionality. Mr Thomas advised that a reduction in the capacity of the restaurant would be accepted if bar usage was granted.</p> <p>Mr Nevitt commented that the capacity of 560 which was advised by the District Surveyors was a notional figure on how the floor space could be used. Following questions from the Sub-Committee Mr Shelford advised that the Premises was not in operation and commented that residents were disturbed and that later operational hours would only increase nuisance in the area. Mr Nevitt commented that the Premises was located near a residential area and raised concerns about the cumulative impact at Shaftesbury. Concerns were expressed that the application may cause a precedent. However, the Sub-Committee has a duty to consider each application on its individual merits based on the evidence before it.</p> <p>Having listened to all parties the Sub-Committee granted the Application accordingly. The Sub-Committee acknowledged that the Premises was in the West End Cumulative Impact Area. The Sub-Committee commented that Shaftesbury China PLC had a proven record of having a strict lease and operational management policies for their Premises. In determining the Application, the Sub-Committee agreed to reduce the capacity of the ground floor and first floor from 480 to 260 and to limit the sale of alcohol within core hours. The Sub-Committee noted that the restaurant condition MC 66 had been</p>
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	<p>adopted and this would negate concerns that the Premises would become a drink led establishment. The Sub-Committee was of the view that exceptional reasons had been made by the Applicant and agreed that the Application was a better offer for the vicinity and the proposed usage of the Premises would help to reduce Anti-Social Behaviour thus having the overall effect of promoting the licensing objectives.</p>
2.	<p>Late Night Refreshment – Indoors and Outdoors</p> <p>Monday to Sunday: 23:00 to 01:00</p> <p>Seasonal Variations / Non-Standard Timings:</p> <p>From the end of permitted hours on New Year's Eve to the start of permitted hours New Year's Day.</p>
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the application (see reasons for decision in Section 1).</p>
3.	<p>Recorded Music – Indoors</p> <p>Monday to Saturday: 10:00 to 01:00 Sunday: 12:00 to 01:00</p> <p>Seasonal Variations / Non-Standard Timings:</p> <p>From the end of permitted hours on New Year's Eve to the start of permitted hours New Year's Day.</p>
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the application (see reasons for decision in Section 1).</p>
4.	<p>Hours Premises are Open to the Public</p> <p>Monday to Saturday: 10:00 to 01:00 Sunday: 12:00 to 01:00</p> <p>Seasonal Variations / Non-Standard Timings:</p>

	From the end of permitted hours on New Year's Eve to the start of permitted hours New Year's Day.
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): The Sub-Committee granted the application (see reasons for decision in Section 1).

Conditions attached to the Licence	
Mandatory Conditions	
1.	No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2.	No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3.	Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4.	<p>(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.</p> <p>(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—</p> <p>(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;</p> <p>(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</p> <p>(ii) drink as much alcohol as possible (whether within a time limit or otherwise);</p> <p>(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;</p>

- (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 premise 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 attached after a hearing by the Licensing Authority

9. Save for the area hatched black, 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.

10. 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.

11. 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.

12. All entrance doors and windows to be kept closed after 23:00hours or when regulated entertainment is taking place except for immediate access and egress of persons.
13. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
14. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
16. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
15. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 07.00 hours on the following day.
16. No deliveries to the premises shall take place between 23.00 and 07.00 hours on the following day.
17. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 07.00 hours on the following day.
18. 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.
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. 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.

- 21. 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.**
- 22. 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.**
- 23. The approved arrangements at the premises, including means of escape provisions, emergency warning equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.**
- 24. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.**
- 25. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.**
- 26. All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.**
- 27. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.**
- 28. Curtains and hangings shall be arranged so as not to obstruct emergency safety signs or emergency equipment.**
- 29. No fumes, steam or odours shall be emitted from the licenced premises so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated.**
- 30. Loudspeakers shall not be located in the entrance lobby or outside the premises building.**
- 31. 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 unless seated in an authorised external area.**
- 32. The premises licence holder shall ensure that any patrons smoking outside the premises do so on an orderly manner so as to ensure that there is no public nuisance or obstruction of the public highway.**
- 33. A direct telephone number for the manager at the premises shall be**

publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.

34. There shall be no striptease or nudity and all persons shall be decently attired at all times unless the premises are operating under the provisions of a Sexual Entertainment Licence.
35. The premises may remain open for the sale of alcohol and the provision of late night refreshment from the terminal hour for those activities on New Year's Eve through to the commencement time for those activities on New Year's Day.
36. Before the premises open to the public, the plans as deposited will be checked by the Environmental health Consultation Team to ensure they are an accurate reflection of the premises constructed. Where there are minor changes to the premises layout during the course of construction new plans shall be provided to the Environmental Health Consultation Team and the Licensing Authority.
37. No licensable activities shall take place at the premises until the works have 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.
38. No licensable activities shall take place at the premises until premises licence 17/13111/LIPT has been surrendered [and is incapable of resurrection].
39. All sales of alcohol for consumption off the premises shall be in sealed containers and shall not be consumed on the premises.
40. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed: Ground floor TBC persons; First Floor TBC persons.
41. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 260: Ground floor TBC persons; Hatched area TBC persons; First Floor TBC persons capacities shall be determined by Environmental Health.
42. In the hatched area the supply of alcohol shall be to seated customers only.
43. The sale of alcohol on the premises shall be limited to core hours.

2 1 GERRARD PLACE, LONDON, W1V 7LL

LICENSING SUB-COMMITTEE No. 5

Thursday 4 July 2019

Membership: Councillor Murad Gassanly (Chairman), Councillor Susie Burbridge and Councillor Aicha Less

Legal Adviser: Horatio Chance
Committee Officer: Georgina Wills
Policy Officer: Kerry Simpkin
Presenting Officer: Kevin Jackaman

Relevant Representations: Environmental Health and Licensing Authority

Present: Mr Alun Thomas (Legal Representative, representing the Applicant), Mr Andy Hing (Applicant, Shaftesbury Chinatown Pic), Mr Shelford Resident, Mr David Nevitt (Environmental Health) and Ms Karyn Abbot (Licensing Authority)

1 Gerrard Place London W1V 7LL (“The Premises”)19/04659/LIPN	
1.	<p>Sale by Retail of Alcohol – On and Off Sales</p> <p>Monday to Saturday: 10:00 to 00:00 Sunday: 12:00 to 23:30</p> <p>Seasonal Variations / Non-Standard Timings:</p> <p>From the end of permitted hours on New Year’s Eve to the start of permitted hours New Year’s Day.</p>
	<p>Amendments to application advised at hearing:</p> <p>During the Hearing, the Applicant advised that the ‘sale by Retail of alcohol (off sales) was no longer required.</p>
	<p>The Sub-Committee had before it two applications for a new premises licence by Shaftesbury Chinatown Plc. In respect of (i) 1 Gerrard Place London W1V 7LL and (ii) 9 Horse and Dolphin Yard, London, W1D 5BA. The Applicant sought to split the existing licensed space into two new restaurants. This Application relates to part ground and first floor of the Premises. The Applicant sought the sale by retail of alcohol both ‘off’ and ‘on’ sales from 10:00hrs to 00:00hrs Monday to Saturday and 12:00hrs to 23:30hrs on Sundays. Late night refreshment was also sought from 23:00hrs to 01:00hrs Monday to Sundays.</p> <p>The Licensing Officer advised that representation for both Applications had been received from Environmental Health, Licensing Authority and two residents. The Applicant submitted additional documentation, and these were circulated to all parties on 1 July 2019. The Premises is situated in the West End Cumulative Impact Area.</p> <p>Mr Thomas, the Applicant’s Legal Representative, advised that the Applicant, Shaftesbury Chinatown PLC was an established company which had over 300</p>

<p>Licensed Premises in their property portfolio and that the majority of these were restaurants. The Sub-Committee was advised that Shaftesbury Chinatown PLC had a reputation of having a strict lease and set of policies on how their premises should be managed and these were rigorously enforced. Mr Thomas advised that a previous tenancy had been forfeited and this was due to poor operational practices of the tenant. The Sub-Committee was reminded that Chinatown was in an area that had numerous theatres and was a designated spot for post theatre diners. The Sub-Committee was reminded that its locality was 'restaurant led' in nature and was unlike Soho which was 'drink led'.</p> <p>Mr Andy Hing, Applicant, Shaftesbury Chinatown PLC, advised that the Premises were frequented by an international clientele. The Sub-Committee was advised that cuisines in the Asian Continent had evolved and preferences of the younger international clientele had altered, and it was aimed to reflect these market changes. Mr Hing advised that clienteles used the Premises as a 'meeting place' and not necessarily for purchasing alcohol.</p> <p>Mr Thomas advised that 13 CCTV cameras were to be installed in the locality and this would help to address Anti-Social Behaviour in the vicinity. Mr Thomas advised that there were changes to the Application and commented that Recorded Music and Private Entertainment had been reduced to reflect the Premises' opening hours. These licensable activities are currently unrestricted in the Premises current Licence. The Sub-Committee advised that the 'Off' sales of alcohol were to be withdrawn as the external seating area was within the boundary of the Premises licensed area. Mr Thomas advised that the Bar Area would be restricted to seating customers only and operate within core hours. The Bar Area will be restricted to 20 persons and this accounts for 5% of the total capacity of each Premises.</p> <p>Mr Thomas advised the Sub-Committee that the hours sought were the same as the existing licence and commented that the Application would not change the nature of the area. He advised that the hours proposed for the bar were within core hours and those for the restaurant mirrored what was currently granted under the existing licence. Mr Thomas referred to Pg. 91 of the Agenda which contained a list of establishments located near the Premises and their operational hours and commented that they were varied and ended at late hours.</p> <p>Mr Thomas advised that pre-application advice had been sought from Environmental Health and the District Surveyor. He stated that the District Surveyor had advised that the capacity for the existing floor space of the Premises was between 540 to 660. He commented that the existing premise licence stipulated the capacity to be for 480 persons and this was in relation to late night refreshments only and not for the sale of alcohol. He advised that the existing license was a 'Grandfather Licence'. Mr Thomas advised that capacity would have been higher if the 'sale of alcohol' capacity was included. Mr Thomas advised that the capacity of 480 was being sought and that this number would be split between the two Premises, thus 300 for Gerald Place and 180 for 9 Horse and Dolphin Yard. He advised that the numbers sought was a reduction and was lesser than the figure of the combined capacity of the 'sale of alcohol' and 'late night refreshments'.</p>

The Sub-Committee advised that there had been a reduction of 'regulated entertainment'. Mr Thomas advised that several model conditions had been adopted and this was to ensure that the licensing objectives were promoted, and that the Premises would not add to cumulative impact. He advised that the Council's RNT2 Policy under the City Council's Statement of Licensing Policy ("SLP") for new restaurants in the cumulative impact area did not apply to the application as it mirrored what was currently licensed. Mr Thomas advised that the area of application which fell outside policy was the Hatched Bar and commented that policy on bar usage stipulated that the hours of operation and the extent of use should be considered when assessing cumulative impact. Mr Thomas commented that the stated area was small and would have a capacity of 20, was seated, would operate within the core hours and was ancillary to restaurant use.

Mr Thomas referred to the policy on 'substituting' existing licensed activities and highlighted that in the Application there was a reduction in capacity, reduction in the sale of alcohol and the inclusion of model conditions which were not present in the existing licence. Mr Thomas commented that the licensable areas fell within two parts of the SLP and that only the bar area came under the 'exceptional rule'.

Ms Karyn Abbot, Licensing Officer advised that representation was maintained as the Premises was in the West Cumulative Impact Zone and came under Policy RNT 2. The Applicant was noted to have agreed to several Model Conditions which included Model Restaurant Condition 66 ("MC 66"). There were concerns on how the black hatched area of the Premises was to be operated and controlled and this needed to be considered under Policy PB2 of the SLP Ms Abbot commented that the Applicant had agreed that the mentioned area would be for seated customer and that this would negate the concerns of vertical drinking.

Ms Abbot noted that the Applicant had agreed to reduce the capacity, remove off sales and reduced the outside operating hours to 22:00hrs for 9 Horse and Dolphin Yard and would be surrendering their existing license. The Sub-Committee was advised that it needed to be persuaded by the Applicant that the Premises would not add to negative cumulative impact in the West End cumulative Impact area.

Mr David Nevitt, Environmental Health officer advised that representation had been maintained and this was in relation to the use of the Premises bar and the proposed capacity for the establishment. Mr Nevitt advised that capacity was 480 and it was preferred that this figure remain as the overall maximum capacity for both Premises. Mr Nevitt advised that all bar usage was opposed in the Cumulative Impact Area and that the reduction in the bar's capacity was preferred and this would result in an overall reduction of the Premises capacity.

Mr Nevitt raised concerns over the operational hours for the courtyard at Dolphin Yard. He commented that the vicinity was surrounded by residential buildings and suggested that the table and chairs should be removed at an earlier time. This would help to prevent noise nuisance. Mr Nevitt confirmed that

	<p>pre-application advice had been sought by the Applicant and that the proposed conditions by the latter were appropriate.</p> <p>Mr Shelford, local resident advised that he resided in a flat which contained 117 apartments and over 300 residents. He raised concerns about the changing character of Chinatown and the vicinity becoming a drink led destination. Mr Shelford advised that many restaurants located in the vicinity were ‘family run’ and only a few operated within their full licensable hours. The Sub-Committee was advised that restaurants within the locality largely closed at core hours. Mr Shelford advised that residents would be affected by patrons leaving the Premises and therefore had issues with dispersal.</p> <p>Mr Shelford commented that the creation of the new premises licence from an existing licence could still lead to additional cumulative impact. He further raised concerns about the use of the ancillary bar and advised that 218 seats had been counted at 9 Horse and Dolphin Yard. Mr Shelford commented that Council Policy on the impact of the Night time economy requested that the needs of residents, business and visitors should be taken into consideration when promoting the Applicant’s proposed plans for the Premises. Mr Shelford advised that all operation and alcohol sales should be within core hours and that the refusal for the ancillary bar in combination would be a better reflection of the past usage of the restaurant.</p> <p>Mr Thomas commented that the application site and residents building were separated by a Fire Station and advised that there was not a direct impact from the Premises, but however noted that there could be concerns over dispersal and related public nuisance. The Sub-Committee noted that the resident’s flats were surrounded by three streets. Mr Shelford commented that some residents’ flats were short building and overlooked Dolphin Yard. Mr Hing advised that that New World restaurant in Chinatown was a community building and held numerous functions which included weddings and film nights. He advised that events would continue up to the licensed operational hours.</p> <p>In response to questions from the Sub-Committee, Mr Thomas commented that there had been an overall reduction of capacity in the Premises and highlighted that the District Surveyor had advised that the venue had a capacity of 560. The Sub-Committee noted that the bar operated within core hours and that after these hours, the venue would be reduced by 40 patrons. The Sub-Committee commented that mentioned patrons may remain in the Premises.</p> <p>The Policy Officer advised that the Application would be considered as two new applications, and these fell under Policies RNT2 and PB2 of the SLP. The Sub-Committee noted that the existing Premise Licence was being surrendered and this could be part of the mitigating circumstances that there would be no additional cumulative impact and a relevant factor when considering exceptionality. Mr Thomas advised that a reduction in the capacity of the restaurant would be accepted if bar usage was granted.</p> <p>Mr Nevitt commented that the capacity of 560 which was advised by the District Surveyors was a notional figure on how the floor space could be used. Following questions from the Sub-Committee Mr Shelford advised that the</p>
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	<p>Premises was not in operation and commented that residents were disturbed and that later operational hours would only increase nuisance in the area. Mr Nevitt commented that the Premises was located near a residential area and raised concerns about the cumulative impact at Shaftesbury. Concerns were expressed that the application may cause a precedent. However, the Sub-Committee has a duty to consider each application on its individual merits based on the evidence before it.</p> <p>Having listened to all parties the Sub-Committee granted the Application accordingly. The Sub-Committee acknowledged that the Premises was in the West End Cumulative Impact Area. The Sub-Committee commented that Shaftesbury China PLC had a proven record of having a strict lease and operational management policies for their Premises. In determining the Application, the Sub-Committee agreed to reduce the capacity of the ground floor and first floor from 480 to 260 and to limit the sale of alcohol within core hours. The Sub-Committee noted that the restaurant condition MC 66 had been adopted and this would negate concerns that the Premises would become a drink led establishment. The Sub-Committee was of the view that exceptional reasons had been made by the Applicant and agreed that the Application was a better offer for the vicinity and the proposed usage of the Premises would help to reduce Anti-Social Behaviour thus having the overall effect of promoting the licensing objectives.</p>
2.	<p>Late Night Refreshment – Indoors and Outdoors</p> <p>Monday to Sunday: 23:00 to 01:00</p> <p>Seasonal Variations / Non-Standard Timings:</p> <p>From the end of permitted hours on New Year's Eve to the start of permitted hours New Year's Day.</p>
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the application (see reasons for decision in Section 1).</p>
3.	<p>Recorded Music – Indoors</p> <p>Monday to Saturday: 10:00 to 01:00 Sunday: 12:00 to 01:00</p> <p>Seasonal Variations / Non-Standard Timings:</p> <p>From the end of permitted hours on New Year's Eve to the start of permitted hours New Year's Day.</p>

	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): The Sub-Committee granted the application (see reasons for decision in Section 1).
4.	Hours Premises are Open to the Public Monday to Saturday: 10:00 to 01:00 Sunday: 12:00 to 01:00 Seasonal Variations / Non-Standard Timings: From the end of permitted hours on New Year's Eve to the start of permitted hours New Year's Day.
	Amendments to application advised at hearing: None.
	Decision (including reasons if different from those set out in report): The Sub-Committee granted the application (see reasons for decision in Section 1).

Conditions attached to the Licence	
Mandatory Conditions	
1.	No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2.	No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3.	Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4.	(1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises. (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of

alcohol for consumption on the premises—

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

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

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

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

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

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

7. The responsible person must ensure that—

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

A responsible person in relation to a licensed premise 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

- (iii) sale or supply of the alcohol, and
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 attached after a hearing by the Licensing Authority

9. Save for the area hatched black, 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.

- 10. 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.**
- 11. 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.**
- 12. All entrance doors and windows to be kept closed after 23:00hours or when regulated entertainment is taking place except for immediate access and egress of persons.**
- 13. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.**
- 14. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.**
- 16. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.**
- 15. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 07.00 hours on the following day.**
- 16. No deliveries to the premises shall take place between 23.00 and 07.00 hours on the following day.**
- 17. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 07.00 hours on the following day.**
- 18. 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.**

- 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. 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.**
- 21. 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.**
- 22. 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.**
- 23. The approved arrangements at the premises, including means of escape provisions, emergency warning equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.**
- 24. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.**
- 25. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.**
- 26. All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.**
- 27. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.**
- 28. Curtains and hangings shall be arranged so as not to obstruct**

emergency safety signs or emergency equipment.

- 29. No fumes, steam or odours shall be emitted from the licenced premises so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated.**
- 30. Loudspeakers shall not be located in the entrance lobby or outside the premises building.**
- 31. 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 unless seated in an authorised external area.**
- 32. The premises licence holder shall ensure that any patrons smoking outside the premises do so on an orderly manner so as to ensure that there is no public nuisance or obstruction of the public highway.**
- 33. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.**
- 34. There shall be no striptease or nudity and all persons shall be decently attired at all times unless the premises are operating under the provisions of a Sexual Entertainment Licence.**
- 35. The premises may remain open for the sale of alcohol and the provision of late night refreshment from the terminal hour for those activities on New Year's Eve through to the commencement time for those activities on New Year's Day.**
- 36. Before the premises open to the public, the plans as deposited will be checked by the Environmental health Consultation Team to ensure they are an accurate reflection of the premises constructed. Where there are minor changes to the premises layout during the course of construction new plans shall be provided to the Environmental Health Consultation Team and the Licensing Authority.**
- 37. No licensable activities shall take place at the premises until the works have 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.**
- 38. No licensable activities shall take place at the premises until premises licence 17/13111/LIPT has been surrendered [and is incapable of resurrection].**
- 39. All sales of alcohol for consumption off the premises shall be in sealed containers and shall not be consumed on the premises.**
- 40. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed: Ground floor TBC persons; First Floor TBC persons.**

41. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 260: Ground floor TBC persons; Hatched area TBC persons; First Floor TBC persons capacities shall be determined by Environmental Health.
42. In the hatched area the supply of alcohol shall be to seated customers only.
43. The sale of alcohol on the premises shall be limited to core hours.

3 WEWORK, 1ST-7TH FLOORS, 5 MERCHANT SQUARE WEST, LONDON, W2 1AS

Withdrawn

4 9 HORSE AND DOLPHIN YARD, LONDON, W1D 5BA

LICENSING SUB-COMMITTEE No. 5

Thursday 4 July 2019

Membership: Councillor Murad Gassanly (Chairman), Councillor Susie Burbridge and Councillor Aicha Less

Legal Adviser: Horatio Chance
 Committee Officer: Georgina Wills
 Policy Officer: Kerry Simpkin
 Presenting Officer: Kevin Jackaman

Relevant Representations: Environmental Health and Licensing Authority

Present: Mr Alun Thomas (Legal Representative, representing the Applicant), Mr Andy Hing (Applicant, Shaftesbury Chinatown Pic), Mr Shelford Resident, Mr David Merrito (Environmental Health) and Ms Karyn Abbot (Licensing Authority)

9 Horse and Dolphin Yard, London W1D 5BA ("The Premises")19/04673 /LIPN

1. Sale by Retail of Alcohol – On Sales

Monday to Saturday: 10:00 to 00:00
 Sunday: 12:00 to 23:30

Seasonal Variations / Non-Standard Timings:

From the end of permitted hours on New Year's Eve to the start of permitted hours New Year's Day.

	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	<p>The Sub-Committee had before it two applications for a new premises licence by Shaftesbury Chinatown Plc. In respect of (i) 1 Gerrard Place London W1V 7LL and (ii) 9 Horse and Dolphin Yard, London, W1D 5BA. The Applicant sought to split the existing licensed space into two new restaurants. This Application relates to part ground and the Basement of the Premises. The Applicant sought the sale by retail of alcohol on sales from 10:00hrs to 00:00hrs Monday to Saturday and 12:00hrs to 23:30hrs on Sundays. Late night refreshment was also sought from 23:00hrs to 01:00hrs Monday to Sundays.</p> <p>The Licensing Officer advised that representation for both Applications had been received from Environmental Health, Licensing Authority and two residents. There was also representation from a resident who was supporting the Application. The Applicant submitted additional documentation, and these were circulated to all parties on 1 July 2019. The Premises is situated in the West End Cumulative Impact Area.</p> <p>Mr Thomas, Applicant's Legal Representative, advised that representation had only been received from Environmental Health, the Licensing Authority and two residents. He reminded the Sub-Committee that Off sales had been withdrawn for the external seating area as it was within the Premises' boundary. This area has a capacity of 60 persons and could operate to 22:00hrs and this was termed under a Planning Application. He commented that operational hours until 22:00hrs were requested for the external seating hours. Mr Thomas advised that Karaoke had been requested as part of the Application for the Basement area and these activities took place illegally under the previous tenancy. He advised that Environmental Health request for a sound limiter Condition for the vicinity had been accepted. Mr Thomas advised that a no smoking policy was also requested, and this was to deter smokers from using Dolphin Yard as a designated area for these purposes so as to prevent public nuisance.</p> <p>Ms Karyn Abbot, Licensing Authority Officer advised that the department's representation was maintained as the Premises was in the West Cumulative Impact Zone and came under RNT 2 of the City Council's Statement of Licensing Policy ("SLP"). The Applicant was noted to have agreed to several Model Conditions which included the restaurant Model Condition 66 ("MC 66") . There were concerns on how the black hatched area of the Premises was to be operated and controlled and this needed to be considered under Policy PB2 of the SLP. Ms Abbot commented that the Applicant had agreed that the mentioned area would be for seated customers and that this would negate the concerns of vertical drinking. Ms Abbot noted that the Applicant had reduced the outside operating hours to 22:00hrs and would be surrendering their existing licence. The Sub-Committee was advised that it</p>

	<p>needed to be demonstrated by the Applicant that the Premises would not add to negative cumulative impact in the West End cumulative Impact area.</p> <p>Mr David Merrito, Environmental Health advised that the department's representation had been maintained and this was in relation to the off sales of alcohol in Dolphin Yard and noted that this area came under the Premises boundary. Mr Merrito noted that all on sales operated under MC 66. Mr Thomas advised that proposed Condition 9 could be amended to ensure that the external seating areas is governed under this provision. Mr Merrito noted that the Dolphin Yard serviced the back of restaurant and there was uncertainty on whether there were to be new residential developments in the locality. Mr Merrito advised that the operational hours should be limited to 22:00hrs and this would negate any potential public nuisance. There are no concerns about the proposed activities for Dolphin Yard.</p> <p>Mr Pierce advised that the vicinity attracted a lot of anti-social behaviour and therefore required to be gated. It was stated that there had been investment made towards policing the area and this included working with key stake holders. He advised that introducing usage at Dolphin Yard would deter these activities.</p> <p>Mr Thomas commented that the application could be granted with existing hours, an ancillary bar which operates within the core hours and with conditions or that the existing licence be split into two. Mr Thomas advised that Shaftesbury was a responsible landlord and had made improvements to the area and this included investing in CCTV. He advised that the existing Application did not add to the cumulative impact.</p> <p>Having listened to all parties the Sub-Committee granted the Application. The Sub-Committee acknowledged that the Premises was in the West End Cumulative Impact Area. The Sub-Committee commented that Shaftesbury China PLC had a strict lease and operational management policies for their Premises and a proven record of enforcing them. The Committee noted that the Applicant had withdrawn 'off sales' for sale of alcohol. In determining the Application, the Sub-Committee agreed to limit the number of persons permitted at the Premises to 160, prohibit the 'off sale' of alcohol and restrict all alcohol sales within the core hours. The Sub-Committee agreed that the Application was a better offer for the vicinity and the proposed usage of the Premises would help to reduce Anti-Social Behaviour thus having the overall effect of promoting the licensing objectives.</p>
2.	<p>Late Night Refreshment – Indoors and Outdoors</p> <p>Monday to Sunday: 23:00 to 01:00</p> <p>Seasonal Variations / Non-Standard Timings:</p> <p>From the end of permitted hours on New Year's Eve to the start of permitted hours New Year's Day.</p>

	<p>Amendments to application advised at hearing:</p> <p>None</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the application (see reasons for decision in Section 1).</p>
3.	<p>Film and Recorded Music – Indoors</p> <p>Monday to Saturday: 10:00 to 01:00 Sunday: 12:00 to 01:00</p> <p>Seasonal Variations / Non-Standard Timings:</p> <p>From the end of permitted hours on New Year's Eve to the start of permitted hours New Year's Day.</p>
	<p>Amendments to application advised at hearing:</p> <p>None</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the application (see reasons for decision in Section 1).</p>
4.	<p>Hours Premises are Open to the Public</p> <p>Monday to Saturday: 07:00 to 01:00 Sunday: 12:00 to 01:00</p> <p>Seasonal Variations / Non-Standard Timings:</p> <p>From the end of permitted hours on New Year's Eve to the start of permitted hours New Year's Day.</p>
	<p>Amendments to application advised at hearing:</p> <p>None</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee granted the application (see reasons for decision in Section 1).</p>

Conditions attached to the Licence
Mandatory Conditions

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

on request to customers where it is reasonably available.

6.
 - (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
 - (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
 - (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
 - (a) a holographic mark, or
 - (b) an ultraviolet feature.
7. The responsible person must ensure that—
 - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml;
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
 - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

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

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

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

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

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

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

Where -

(i) P is the permitted price,

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

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

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

(i) the holder of the premises licence,

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

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

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

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

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

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

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

Additional Conditions attached after a hearing by the Licensing Authority

9. Save for the area hatched black (including external seating area) 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.
10. 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.
11. 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.
12. All entrance doors and windows to be kept closed after 23:00hours or when regulated entertainment is taking place except for immediate access and egress of persons.
13. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
14. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
15. All waste shall be properly presented and placed out for collection no

earlier than 30 minutes before the scheduled collection times.

- 16. 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.**
- 17. No deliveries to the premises shall take place between 23.00 and 08.00 hours on the following day.**
- 18. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 08.00 hours on the following day.**
- 19. 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.**
- 20. 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.**
- 21. The premises including any authorised external area 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.**
- 22. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. 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.**
- 23. 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.**

- 24. The approved arrangements at the premises, including means of escape provisions, emergency warning equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.**
- 25. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.**
- 26. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.**
- 27. All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.**
- 28. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.**
- 29. Curtains and hangings shall be arranged so as not to obstruct emergency safety signs or emergency equipment.**
- 30. No fumes, steam or odours shall be emitted from the licenced premises so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated.**
- 31. Loudspeakers shall not be located in the entrance lobby or outside the premises building.**
- 32. 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 unless seated in an authorised external area.

33. The premises licence holder shall ensure that any patrons smoking outside the premises do so on an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.
34. A direct telephone number for the manager at the premises shall be publically available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.
35. There shall be no striptease or nudity and all persons shall be decently attired at all times unless the premises are operating under the provisions of a Sexual Entertainment Licence.
36. The premises may remain open for the sale of alcohol and the provision of late night refreshment from the terminal hour for those activities on New Year's Eve through to the commencement time for those activities on New Year's Day.
37. Before the premises open to the public, the plans as deposited will be checked by the Environmental health Consultation Team to ensure they are an accurate reflection of the premises constructed. Where there are minor changes to the premises layout during the course of construction new plans shall be provided to the Environmental Health Consultation Team and the Licensing Authority.
38. 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.
39. No licensable activities shall take place at the premises until premises licence 17/13111/LIPT has been surrendered and is incapable of resurrection
40. All sales of alcohol for consumption off the premises shall a) be in sealed containers or b) consumed by persons who are seated in an area appropriately authorised for the use of tables and chairs on the highway
41. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed: Ground floor TBC persons; Basement TBC persons and External Area TBC persons.

- 42. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed 160: Ground floor TBC persons; Hatched area TBC persons; Basement TBC persons and External Area TBC persons should be determined by Environmental Health.**
- 42. The use of Horse and Dolphin Yard external area shall not be used beyond 22:00 hours (except for access and egress), at which time tables and chairs shall be rendered unusable or removed.**
- 43. There shall be no regulated entertainment or amplification of music in the external area.**
- 44. A noise limiter must be fitted to the musical amplification system set at a level determined by and to the satisfaction of an authorised officer of the Environmental health Service, so as to ensure that no noise nuisance is caused to local residents or businesses. The operational panel of the noise limiter shall then be secured by key or password to the satisfaction of officers from the Environmental health Services and access shall only be by persons authorised by the Premises Licence Holder. The limiter shall not be altered without prior agreement with the Environmental health Service. No alteration or modification to any existing sound system(s) should be effected without prior knowledge of an authorised officer of the Environmental health Service. No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.**
- 45. There shall be no off Sales of alcohol at the Premises**
- 46. The bar area shown hatched on the deposited plans shall be restricted to seated customers only.**
- 47. The capacity of the bar shown hatched on the Premises Plan shall be limited to 20 people**
- 48. In the hatched area the Sale of Alcohol on the Premises shall be limited to core hours**
- 49. In the hatched area the supply of alcohol shall be to seated customers only.**
- 50. There shall be no smoking by customers or staff in the external area of Horse and Dolphin Yard.**

5 TOKYO PIZZA, MAIDA VALE, LONDON, W9 1SD

Withdrawn

6 10 OLD COMPTON STREET, LONDON, W1D 4TF

Withdrawn.

The Meeting ended at 3.30 pm

CHAIRMAN: _____ **DATE** _____