



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (4)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (4)** held on **Monday 23rd September, 2019**, Rooms 18.01 -18.03, 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Karen Scarborough (Chairman), Jim Glen and Rita Begum.

1 MEMBERSHIP

1.1 There were no changes to the membership.

2 DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1 OPIUM, 21 RUPERT STREET, LONDON, W1D 7PJ

LICENSING SUB-COMMITTEE No. 4

Monday 23rd September 2019

Membership: Councillor Karen Scarborough (Chairman), Councillor Jim Glen and Councillor Rita Begum.

Legal Adviser: Barry Panto

Committee Officer: Toby Howes

Presenting Officer: Michelle Steward

Relevant Representations: Metropolitan Police, Licensing Authority and Landlord of the Premises

Present: James Rankin (Counsel, representing the Metropolitan Police), PC Reaz Guerra (Metropolitan Police), Philip Kolvin QC (Leading Counsel, representing the Premises Licence Holder), Lana Tricker (Solicitor, representing the Premises Licence Holder), Ramon Bordas Estany (Company Director, Premises Licence Holder), Ramon Bordas de Togores (Co-Founder and Company Director, Premises Licence Holder), Javier Bordas de Togores (Co-Founder and Company Director, Premises Licence

Holder), Eamonn Mulholland (Designated Premises Supervisor, Premises Licence Holder), Edon Krasniqi (General Manager, Premises Licence Holder), Richard Wormald QC (Leading Counsel, representing the Landlord of the Premises Licence Holder), Alun Thomas (Solicitor, representing the Landlord of the Premises Licence Holder), Cosmina Stan (Asset Manager, acting on behalf of the Landlord of the Premises Licence Holder) and Francis Keegan (Licensing Inspector, Licensing Authority).

Opium, 21 Rupert Street, London, W1D 7PJ (“The Premises”) 19/10730/L	
1.	Full Review of the Premises Licence
	<p>Summary of Application:</p> <p>An application was made by the Metropolitan Police Service on 28 August 2019 to review the premises licence for Opium, 21 Rupert Street, London, W1D 7PJ under the Section 53A(1)(b) of the Licensing Act 2003 (premises associated with serious crime or serious disorder or both).</p> <p>The Police made the application for the summary review based on a serious incident that took place at the premises and in the immediate vicinity of the premises during the early hours on Sunday, 25th August 2019. The police indicated that they want the licence to be suspended as an interim step and the licence holder did not contest that approach.</p> <p>A Licensing Sub-Committee was convened on 30 August to consider whether it was necessary to take interim steps pending the determination of the Review applied for. The Sub-Committee decided to suspend the premises licence held by Opium London Ltd until this Full Review hearing.</p> <p>On 11 September a representation was received from the Landlords, London Trocadero 2015 LLP, in respect of the crime and disorder licensing objective. On 12 September, a full representation was received from the Landlords indicating that they should be granted a “shadow licence” in order to exert control over their tenant and also submitting that the existing premises licence should not be revoked.</p>
	<p>Amendments to application advised at hearing:</p> <p>None.</p>
	Decision (including reasons if different from those set out in report):

Michelle Steward introduced the application and explained that the report did not include the correct information regarding the steps that the members could take when determining the review. The correct steps were set out in section 53C(3) of the 2003 Act as follows:

- (a) the modification of the conditions of the premises licence,
- (b) the exclusion of a licensable activity from the scope of the licence,
- (c) the removal of the designated premises supervisor from the licence,
- (d) the suspension of the licence for a period not exceeding three months, or
- (e) the revocation of the licence.

Where the authority takes a step within subsection (a) or (b) above, it may provide that the modification or exclusion is to have effect only for a specified period (not exceeding three months).

James Rankin (Counsel, representing the Metropolitan Police), began by confirming that the Metropolitan Police were maintaining their request to revoke the premises licence as set out in their application. The incidents on 25 August had involved one victim sustaining a stab wound to his abdomen within the premises before collapsing on a busy road outside. Another victim had sustained two gunshot wounds, again on the same busy street outside of the premises, with one gunshot wound to his back piercing his liver and the other gunshot wound to his arm. In view of the seriousness of these incidents, Mr Rankin felt that the only option was to revoke the premises licence. Furthermore, there was new evidence from CCTV within the premises and Mr Rankin requested that when this CCTV footage was shown, that the hearing go into private session with only the Metropolitan Police and their representative, the Premises Licence Holder and those connected with the premises being present. Richard Womald QC (Counsel, representing the Landlord of the Premises Licence Holder) on behalf of the Landlord and Francis Keegan (Licensing Inspector, Licensing Authority) did not object to this request. The members of the Licensing Sub-Committee agreed with that approach in accordance with their powers under Regulation 14(2) of the Hearings Regulations 2005.

Mr Rankin then referred to comments made at the expedited interim steps hearing on 30 August where it had been asserted that the gun used to shoot one of the victims had been retrieved from a car waiting outside of the premises. However the CCTV inside the premises now made it highly probable that the gun, as well as the knife, had been brought into the premises. This heightened the Police's concern about the way the premises had operated at that time. Mr Rankin referred to future events that were being promoted at the premises and stated that had it not been for the fact that the premises licence was suspended at the expedited hearing on 30 August, these events would have taken place. He contended that it was rare to see such a litany of failures such as those that had occurred on 24-25 August, including the breaching of a number of important conditions. Mr Rankin suggested that if those conditions had been adhered to, that might have prevented the serious incidents that took place. In particular, if the search conditions had been adhered to correctly, then the offending gun and knife would have been detected. Both the behaviour of the clientele on the night in question and the failures of staff at the premises were of major concern and even before the stabbing and shooting, patrons had been using bottles as

weapons.

Mr Rankin then referred to a letter from PC Bryan Lewis that had been sent to Lana Tricker (Solicitor, representing the Premises Licence Holder) on 19 January 2019, following a visit to the premises on the same day where he had observed breaches of conditions (Page 21 of the Police Information Pack). This included a male customer being observed to be pouring a spirit drink directly from the bottle, in contravention of condition 11 on the premises licence and the failure to produce the premises licence on request. The letter advised the premises licence holder to abide to the conditions and to ensure there were no future incidents of serious crime and disorder that had occurred under the previous operator, otherwise the Police would apply to review the licence. The letter also made it clear that the Police did not wish for the premises to operate in a similar manner to the previous operator, DSTRKT, where the restaurant and nightclub were separate. BC Bryan Lewis had also expressed concern that the Premises Licence Holder was using the same security company (Energiser) and Commercial Director as the previous operator.

James Rankin informed the Sub-Committee that the CCTV within the premises showed a man being stabbed inside the premises on 25 August, upon which the stabbed man leaves the premises via the fire escape and staggers and falls into the busy road outside. Meanwhile, fighting inside the premises continues for 14 minutes, with glass bottles used as weapons. Dash cams from passing vehicles show the gun man chasing the victim down the same busy road where the stab victim had collapsed, before the victim is shot twice, once in the liver and once in the arm. Mr Rankin advised that the stabbing victim had now been released from hospital, whilst the bullets still remained inside the shooting victim. Both of the victims had been unwilling to give any evidence to the Police, and whilst the gun suspect had been arrested, the knife suspect remained at large.

Mr Rankin referred to the conditions highlighted by PC Reaz Guerra (Metropolitan Police) that had been breached on 25 August and Lana Tricker's (Solicitor, representing the Premises Licence Holder) letter in response agreeing that some of the breaches had taken place. A promoted event had taken place that evening that had been organised by a member of staff who had been employed by the Premises Licence Holder for four months and he had since been removed from his position. James Rankin questioned the wisdom of the Premises Licence Holder in allowing the staff member to host an event at the premises when he had only been employed for such a short period of time and he felt that more care and consideration should have been taken on this matter.

The event was meant to be a launch of the "biscotti" brand but an entirely different clientele turned up on the night. The ID scan from the event had been checked by the Police and had identified that a number of the guests were listed as gang nominals under Operation Trident. James Rankin added that the ID scan had not been operated correctly on that evening. In respect of the event being a 'one off', he then referred to a number of advertised promoted events at the premises as shown in the Police's information pack. This included a rhino charity event on 5 September, which the premises licence holder had initially wanted to hold before agreeing to cancel the event prior to the suspension of the premises licence. Mr Rankin stated that a well-known DJ would have been

performing at this event. Commercial house music was to have been played at events on 10, 13 and 14 September and a Cass Business School Welcome Party was due to take place on 3 October. Mr Rankin queried why these events were being advertised as taking place at the premises and he suggested that these had been arranged in negotiation between the Premises Licence Holder and the promoters concerned and therefore events like that of 24-25 August were likely to have been regularly held at the premises. Mr Rankin stated that the premises had been open after the end of June, contrary to what was understood of the Premises Licence Holder's intentions, and a Council officer had seen it trading in early July. There had been two incidents during that time, including a person collapsing outside the premises, whilst on the same night another person who had been a victim of robbery stated that they been in the premises earlier.

James Rankin then listed the conditions on the premises licence that had been breached on 24-25 August as follows:

- Condition 1 on the premises licence – the failure of a designated premises supervisor to be appointed for the premises. James Rankin added that the Premises Licence Holder's assertion that a letter of delegated authority from the designated premises supervisor had given the appropriate authority to other personal licence holders was not valid as the designated premises supervisor had left the organisation at the end of June and had not been replaced.
- Condition 11 in respect of drinking vessels had been breached in a number of ways, and in particular with regard to glass beer bottles being served to customers.
- Condition 14 with regard to ID scanning – this activity had been undertaken but not to the full extent required by this condition, namely that there had been no photographs taken of any of the 392 customers who had entered the premises that night
- Condition 16 which has a maximum capacity of 250 persons for the nightclub and 250 persons for the restaurant. The ID count listed 392 persons as entering the premises, meaning this condition was likely to have been breached as the restaurant was not in use on the night in question. Although it was acknowledged that some customers would be leaving the premises during the course of the evening, the hourly log, which would be able to ascertain whether the capacity condition had been breached or not, had not been provided by the Premises Licence Holder despite requests for the log on three occasions from the Police.
- Condition 24 – condition breached as CCTV from a USB stick was not available immediately on request as it was controlled from Barcelona, although it was acknowledged that changes had since been made so that footage could be made available immediately. The incident log recorded that the CCTV was checked and was working but one camera was not recording the correct time as the time shown was one hour later than the correct time.
- Condition 26 – glass bottles were taken outside the premises thus breaching this condition.
- Condition 48 relating to ensuring capacity limit was not exceeded through

maintaining hourly logs seemingly breached as logs have not been supplied, as mentioned in relation to condition 16 above.

- Condition 50 breached as there is CCTV evidence of customers leaving on a temporary basis and then re-entering the premises without them or their bags being searched. In addition, electric wands were not used which otherwise would have detected the gun and knife.
- Condition 54 breached as the incident log not been completed correctly.
- Conditions 59, 61, 62 and 63 relating last entry and re-entry times; requirement of security industry approved (SIA) door supervisors in the basement lounge when the VIP toilets located there are in use; the requirement for a qualified medic to be on duty on Friday and Saturday nights; and no measures being taken to preserve the crime scene following the serious incidents on 25th August were all respectively breached.

Mr Rankin then referred to paragraph 28 of the statement from Ramon Bordas Estany (page 20 of the additional bundle) in which an explanation was given as to the arrangements in place for the event on 24th and 25th August. It is mentioned that the promoter was informed of the need to comply with the conditions on the licence and was given a copy of the licence as was the security company. This was obviously disregarded, and the members of the Licensing Sub-Committee thought that this once again reflected on the very poor management arrangements that were in place in the absence of the Designated Premises Supervisor.

James Rankin concluded his initial submission by emphasising the need to revoke the premises licence because of the serious incidences of crime and disorder and the numerous breaches of important conditions that had taken place on 24-25 August. He added that revocation would deter other premises from operating in a similar manner.

At this point in the proceedings, the Chairman requested the Landlord of the Premises Licence Holder and their representatives, the Licensing Authority and any other members of the public to vacate the room whilst the confidential CCTV footage was shown.

PC Reaz Guerra (Metropolitan Police) then showed the Sub-Committee three separate camera recordings, two from dash cams from motor vehicles and the other from CCTV inside the premises. The first dash cam recording showed a very busy Rupert Street with a number of people on the pavements and slow moving traffic. During the recording, the victim who was stabbed is seen coming out the premises before staggering and falling over in the middle of the road in front of a car. The second dash cam recording was from the rear window of car where the victim who was shot can be seen walking down the street before turning back and running before he is shot twice on the pavement where there were also a number of members of the public present. The CCTV recording appears to show a man continually fiddling nervously with his right trouser pocket where there is an obvious bulge. The man then removes the item from his pocket and hands to another man and PC Reaz Guerra stated that the recording at this point appears to be showing that the object in question is a handgun. Following the showing of these recordings, PC Reaz Guerra re-

confirmed his request that the premises licence be revoked.

The Landlord of the Premises, the Licensing Authority and any members of the public were then invited back into the room and the hearing once again resumed in open session.

James Rankin then referred to future planned events at the premises, including an event to be held on 28 September with the theme 'Hellenic Nights' that had been advertised on Facebook which appeared to show that the premises was once again available for events organised by external promoters.

The Sub-Committee referred to the CCTV footage and the Police report that showed that the premises was open on 5-6 July and asked if there was any evidence to show that premises was open at other times after these dates. The Sub-Committee also sought clarification that the letter from PC Bryan Lewis dated 19 January to Lana Tricker had been passed to the Premises Licence Holder.

In reply to the Sub-Committee's questions, James Rankin advised that the Police had still not received CCTV footage from the Premises Licence Holder from 5-6 July. He added that the Premises Licence Holder had confirmed that no other licensable activities had taken place at the premises since 6 July, other than the event held on 24-25 August. James Rankin confirmed that a door supervisor had contacted the Police on 25 August when the incident had happened.

Lana Tricker (Solicitor, representing the Premises Licence Holder) confirmed that she had passed the letter from PC Bryan Lewis dated 19 January to the Premises Licence Holder and she added that Ramon Bordas Estany (Company Director, Premises Licence Holder) had referred to this letter in his representations.

Philip Kolvin QC (Leading Counsel, representing the Premises Licence Holder) then addressed the Sub-Committee and he began by acknowledging that there were no excuses for the breaches of conditions that had occurred and the seriousness of the situation of events on 24-25 August that had been allowed to happen. He indicated that he wanted to make his submissions under 5 headings as follows: (1) The Licence, History and Standing of the Operators; (2) The acquisition and launch of Opium and their trading to July 2019; (3) the events on 24th and 25th August and their cause (once again acknowledging that there could be no excuses for what happened); (4) The aftermath and remedial steps taken; and (5) The future including some possible additional conditions that might be placed on the licence. He then invited the Premises Licence Holders to address the Sub-Committee.

Ramon Bordas de Togores (Co-Founder and Company Director, Premises Licence Holder) informed the Sub-Committee that he had formed the company with his brother, Javier Bordas de Togores (Co-Founder and Company Director, Premises Licence Holder) 35 years ago. The company operated over 50 premises, including high end restaurants, nightclubs and bars in Spain, as well as the premises in London. Three of the nightclubs in Spain had appeared in the

list of top 100 nightclubs in the World. There had been no such incidents that had taken place at any other of their premises other than the incidents that occurred at the London premises on 24-25 August. Ramon Bordes de Togores apologised to the Police, the Landlord of the Premises Licence Holder and all those who were at risk, including the public and staff, for the failures that had taken place at the premises on 24-25 August and also for the breaches of conditions. The clientele on that night were not the clientele the Premises Licence Holder sought. Ramon Bordas de Togores informed the Sub-Committee that his company had been searching for a suitable premises in London for five years and he felt that his company had the ability to improve the premises that they had acquired. The company was committed to fulfilling both existing and any new conditions on its' premises licence and felt that it could contribute to the improving the quality of the Trocadero development and working closely with the Landlord. He added that the premises would not re-open until the company were confident that all conditions could be fulfilled.

Ramon Bordas Estany (Company Director, Premises Licence Holder), the son of Ramon Bordas de Togores, then addressed the Sub-Committee and similarly apologised for the failures and breaches of conditions that had occurred on 24-25 August. He emphasised that the prime objective would be keeping customers safe and he understood that it was important to work with the Police and other responsible authorities. The Sub-Committee heard that the Premises Licence Holder was not concerned about the costs involved to ensure that all conditions were adhered to.

Philip Kolvin then addressed the Sub-Committee and referred to paragraph 12 of the statement on page 17 of the additional bundle. This was Ramon Bordas Estany's representations which advised that both Ramon Bordas de Togores and Javier Bordas de Togores had studied at the ESADE Business School at Barcelona, whilst Ramon Bordes de Togores and Ramon Bordas Estany had both qualified in Master of Business Administration (MBA). In addition, Javier Bordas de Togores was also a board member at Barcelona Football Club and the company was very much a family business. Ramon Bordas Estany had also obtained an MBA and joined the company two years ago after previously working for a bank in London for four years. The Sub-Committee heard that the company owned the majority of nightclubs in Barcelona. Philip Kolvin then referred to the photographs of the various premises the company owned in the late representations bundle (from page 69) which he stated illustrated that the restaurants, bars and nightclubs were high end. He added that all the premises were managed well and they were located in three cities in Spain and each of these cities had an Opium nightclub. The company employed around 1,200 staff and Philip Kolvin referred to an award that the company had won as "Best Nightlife Business Group. 2018". Philip Kolvin added that the company had not been subject to any prosecutions or licence reviews since it had been formed.

Turning to 24-25 August, Mr Kolvin stated that this was the first time the company had ever been involved in any incident like this. The clientele on the premises at the time were about as far removed from the Premises Licence Holder's target clientele as one could imagine. The company had spent a number of years planning and looking for the ideal premises in London. The company viewed London as effectively the "capital of Europe" and wished to be

active in the London market and expand its activities. The premises had been acquired on an 18-year lease at a rent of £800,000 a year and there were also other additional charges, including business rates, to be paid. The premises had been closed between January to December 2018 for an extensive refurbishment. The works included installing new noise insulation and the nightclub had been re-named. The one thing that they did not want to do was to operate like DSTRKT.

Philip Kolvin stated that the premises licence holder had made a big commitment to the premises in view of the length of the lease and the costs and investments involved. The Premises Licence Holder had recognised that operating the club as an R and B and hip hop venue in the West End of London, as it had been under the previous operator, was challenging both in terms of adhering to the licensing objectives and in being a successful business. The intention was to operate the premises as a nightclub and restaurant playing commercial pop music and the Premises Licence Holder wanted to build a mixed clientele of the age 25 years and above.

Philip Kolvin referred to the Premises Licence Holder's financial accounts for the premises in the late representations bundle (page 44) which showed that large monthly losses were being incurred, which the company had anticipated and planned for. Page 51 in the late representations bundle showed instances of where the Premises Licence Holder had refused bookings as they did not consider these appropriate. Philip Kolvin informed the Sub-Committee that Eammon Mulholland had been the designated premises supervisor from December 2018 to the end of June 2019. Eammon Mulholland was well regarded within the industry and by the responsible authorities and PC Bryan Lewis had commented that he was a good manager, whilst Francis Keegan (Licensing Inspector, Licensing Authority) also held him in high regard. Following PC Bryan Lewis's visit to the premises on 18 January, there had been two subsequent meetings where Ramon Bordas Estany had emphasised his intention to operate the premises differently to the previous operator. The problems identified following Francis Keegan's visit had also been rectified immediately.

The premises had subsequently operated without any issues recorded until the end of June. There had also been no concerns expressed by the Police in respect of crime and disorder up until this time and there had been no callouts to the Police. This was in contrast to the previous operator where there had been a number of incidents involving crime and disorder and callouts to the Police. Philip Kolvin asserted that the premises now operated quite differently to how it had been operating under the previous licensee and the only other occasion it had been used in August was for the filming of the TV series "Made in Chelsea." It was intended to fully re-open the premises for licensable activities in September, however it had been decided that there would be two events to be held over the August Bank Holiday weekend. The first one was on 24-25 August and because of the incidents that had taken place during that event, the second planned event had been cancelled by the Premises Licence Holder.

Mr Kolvin referred to page 88 in the late representations bundle where (at paragraph 23) Eammon Mulholland had set out the shortcomings of the

premises that he believed had occurred on 24-25 August. The security firm employed on that date had been Equalizer, who had also been employed on 5-6 July. Philp Kolvin advised that Equalizer was not associated with the previous operator, nor with the Premises Licence Holder. Eammon Mulholland had stated in his representation that he would not have personally recommended Equalizer, and management was seriously lacking on 24-25 August and a series of breaches had occurred. Philp Kolvin acknowledged the seriousness of the error in not replacing Eammon Mulholland with another designated premises supervisor before holding any future events. On 24-25 August, there had been three personal licence holders and 11 door supervisors on site. However, they had not worked together effectively on the night and this is why a number of conditions had been breached. The event on that date was a 'one off' as far as the premises licence holder was concerned as there was no intention to have future events of this type. The incidents during the event had reinforced to the Premises Licence Holder the challenges of operating a nightclub in Westminster. The CCTV footage from the premises would be looked at during the course of the criminal trial. The man bag of the gunman had not been seen to be inside the premises and the only CCTV footage of it was outside. The Premises Licence Holder accepted that the searches for customers entering the premises had not been undertaken properly on 24-25 August and this had presented a large risk. It was a matter of fact that some people carry knives and guns in London and so Premises Licence Holders should take appropriate measures to prevent such items entering their premises.

In respect of future events, Philip Kolvin explained that the events advertised for Friday and Saturday in September were normal club nights and the other two events were of a much lower scale. It was fairly common for promoters to sometimes advertise events before agreeing with the venue concerned. Mr Kolvin stated that the security company had kept the hourly door logs for 24-25 August which is why the Premises Licence Holder had been unable provide the logs to the Police. In respect of the ID checks, Mr Kolvin explained that the system worked through customers providing a valid form of ID, such as a passport, which was then cross referenced with the photograph taken before they entered the premises. This would identify if the customer had been banned from the premises, and where nightclubs shared ID data, would also show if they were banned from other nightclubs, although information sharing between these establishments was rare in the West End. The main reason why the ID checks had not been undertaken properly was the failure to photograph any of the customers before they entered the premises on 24-25 August.

Following the serious errors committed on 24-25 August, Philip Kolvin emphasised the remorse shown by the Premises Licence Holder and their determination to remedy the shortcomings. Following the shooting and stabbing incidents at around 3:00 am on 25 August, Lana Tricker had informed the Police on behalf of the Premises Licence Holder of the cancellation of the event the next evening at 11:00 am later that morning. A staff member at the premises had called the Police at 3.08 am on 25 August following the shooting and stabbing. There was no attempt to conceal the incident and there had been total co-operation with the police. Lana Tricker had subsequently advised the Police of the Premises Licence Holder's intention to close the premises until at least 10 September, in their recognition of the gravity of the situation. Furthermore, the

Premises Licence Holder had not contested the proposed suspension of the licence when the Police submitted their application for interim steps.

In addition, the Premises Licence Holder had initially wanted to host two early finishing events on 5 September and 12 September, however they did not contest the Police's objection to these events going ahead and did not apply to vary the interim steps which the Sub-Committee agreed to on 30 August to suspend the premises licence pending the full review hearing. Philip Kolvin commented that the Premises Licence Holder was keen to liaise with the Police and other responsible authorities before the premises re-opened. In addition, the Premises Licence Holder had also carried out its own investigation into the failures that had occurred and they did not wish for the Police to be burdened with having to carry out their own investigation into the shortcomings. The Premises Licence Holder had sought a meeting with the Police which occurred on 10 September where useful discussions had taken place and the Premises Licence Holder remained on cordial terms with the Police. The witness statements from the Premises Licence Holder also illustrated that they were dealing with the failures of 24-25 August in a frank manner, accepted full responsibility for what had happened and taken action to address the concerns.

Philip Kolvin then set out the future steps that the Premises Licence Holder would undertake to improve the operation of the premises, these being:

- The removal of the three personal licence holders who were on the premises on 24-25 August
- The removal of Equalizer as the security provider
- An enhanced management team to be put in place
- The return of Eammon Mulholland as the Designated Premises Supervisor, who had indicated his willingness to return and who would be given full control and also fulfil the role of Operations Director
- The appointment of Edon Krasniqi as General Manager. Edon Krasniqi was well respected by the responsible authorities and was an experienced operator, having worked as the DPS at the Cuckoo Club from 2006 to 2019. His details were set out at page 57 of the additional bundle.
- The appointment of Marcello Toscano who was also well respected by the responsible authorities. His details were set out at page 61 of the additional bundle.

Philip Kolvin then referred to paragraphs 25 and 26 on page 89 of the late representations which set out the reasons why Eammon Mulholland was returning as the designated premises supervisor and also set out what he thought had gone wrong on 24-25 August.

Eammon Mulholland (Designated Premises Supervisor, Premises Licence Holder) then addressed the Sub-Committee through answering a series of questions from Philip Kolvin. Mr Mulholland began by explaining that managing the doors of nightclubs could be challenging and it was imperative to ensure that staff were aware of how important their role was. He explained that he would often observe the doors of premises from the other side of the street and this

allowed him to see if customers had been drinking at other nearby premises before attempting to enter the premises. It was important that door staff carried out proper checks and searches and gauged how much customers had been drinking before allowing them into the premises. Multiple checks should be undertaken, including observing CCTV from both sides of the street and door staff should be made aware that they are answerable to the management of the premises, not the security firm in question. Mr Mulholland explained that he was returning as the designated premises supervisor as he knew both Ramon Bordas de Togores and Ramon Bordas Estany well and had huge respect for them. He had visited some of the company's premises in Spain and he felt that he premises could work effectively and be a success in London.

The Sub-Committee referred to PC Bryan Lewis's letter of 19 January and asked why the premises licence was not available when PC Bryan Lewis had requested to see in during his visit to the premises. The Sub-Committee also sought an explanation with regard to a security staff member being in possession of handcuffs, as observed by Francis Keegan (Licensing Inspector, Licensing Service) on 2 January. Clarification was also sought as to the reasons why Eammon Mulholland felt it necessary to leave the operators at the end of June.

In reply to the Sub-Committee's questions, Eammon Mulholland explained that there were now three copies of the premises licence, however copies had been lost following an office move from Poland Street at the time of the visit. He had not seen the incident when a security staff member was in possession of a pair of handcuffs, however he ensured that these were removed as soon as it was reported to him. Mr Mulholland advised that a different security firm would be used called Profile Protection who he had worked with at every other venue he had worked at since 2005. Profile Protection would work closely with him and would comply with his instructions. The previous security firm used at the premises, PSS, had not worked with Eammon Mulholland closely, meaning it was more difficult for management to control the door. Mr Mulholland added that there would be no future R and B and hip hop events at the premises and a completely different clientele consisting of modern Europeans who were well travelled were sought and commercial pop music would be played which was important in creating a more cordial atmosphere. The premises would offer club facilities and also a significant food offer. He informed the Sub-Committee that he had initially left the operator at the end of June as he felt there were certain individuals who were undermining his objectives, however they had since left the organisation.

Philp Kolvin then addressed the Sub-Committee again to elaborate on the further steps proposed and stated that Profile Protection was a highly regarded security firm in the West End. The event on 24-25 August was an externally promoted event which presented a risk as matters were in the hands of the external promoter to a certain extent. Mr Kolvin advised that the Premises Licence Holder was not prepared to take such a risk in future and so there would be no more externally promoted events at the premises and the Premises Licence Holder would be willing for a condition to be placed on the licence to this effect. A search arch would also be installed, and this was important particularly as there were times where high-level security was essential because there was

not only the risk of crime and disorder, but also of potential terrorist activity. Mr Kolvin advised that the Premises Licence Holder would be content for a condition to be added to the licence to this effect. Furthermore, body worn cameras would be given to staff as a further deterrent against undesirable behaviour and this could also be conditioned accordingly.

Philip Kolvin advised that the Premises Licence Holder was to commission an independent audit of the premises using Michael Watson, who was a highly experienced consultant. Following the independent assessment, the Premises Licence Holder would arrange for monthly audits for next six months after the premises has reopened and the assessments would be available for inspection by the responsible authorities on request. Mr Kolvin advised that Ramon Bordas Estany would remain in London for the next few months and was due to take his personal licence holder course on 24 October. There would also be additional training for SIA door staff and other staff which could also be conditioned. Mr Kolvin advised the Sub-Committee that because of the recruitment and training that needs to take place, this would take around three weeks to complete and so it would be around four weeks before the premises would re-open if the Sub-Committee determined that the Premises Licence Holder could retain their licence. In addition, the Premises Licence Holder would not seek to vary the interim steps that had suspended the licence in the meantime. Philip Kolvin added that, if necessary, the Premises Licence Holder would accept a suspension of the licence of up to three months if the licence was not revoked. This would have the effect of premises not re-opening until February 2020, as January was a quiet time of year not conducive to the re-opening of the premises. Such a suspension would also act as a significant sanction and a severe final warning to the Premises Licence Holder.

The Sub-Committee enquired about external events advertised in September, and asked whether the premises could use taxi services for customers to use on leaving the premises. Information was sought as to where the designated area for smokers would be located and what would the smokers' capacity be. The Sub-Committee noted that the Premises Licence Holder had breached conditions in January as well as on 24-25 August and asked how many warnings were required to ensure compliance. Although the Premises Licence Holder was an experienced operator, it was queried whether not having any future externally promoted events would exert commercial pressure on them.

In reply to questions from the Sub-Committee, Philip Kolvin confirmed on behalf of the Premises Licence Holder that all of the externally promoted events for September had been cancelled. He emphasised the importance of events being promoted in-house and for the Premises Licence Holder to retain control. With regard to private events, such as the Cass Business School welcome party, the school would be required to provide a guest list and Mr Kolvin re-emphasised that all promotions would happen internally and there would be no externally promoted events. With regard to breaches of conditions, he stated that Eammon Mulholland would now have full control as the designated premises supervisor and this would provide the resilience to ensure there were no further breaches. In respect of breaches of conditions under the previous operator of the premises, Mr Kolvin stated that the new operator should effectively start with a clean sheet, although it had been recognised that the premises needed to

operate differently. A number of failures had taken place on 24-25 August and in hindsight, the premises should have remained closed until September. With regard to commercial pressure, Mr Kolvin suggested that the logical course of action to take may be to leave London, however the Premises Licence Holder was determined to make a success of the premises and to build the clientele base, whilst having planned to sustain losses in the meantime which the company had the resources to absorb.

Lana Tricker added that the Premises Licence Holder had now appointed an independent medic to adhere to the condition on the licence relating to this.

Mr Mulholland advised that it was difficult to ensure that customers used a specific taxi firm because of the popularity of Uber, where taxis could be summoned on demand. However, there was a black cab taxi rank nearby and he stated that he would also personally recommend Addison Lee to customers. He advised that smokers would be directed to the opposite side of the road before 02:00am and outside the burger bar next to the premises after 02:00am and these customers would be re-searched on re-entry. Mr Mulholland suggested a capacity limit of 25 to 30 smokers at any one time.

Richard Wormald QC (Leading Counsel, representing the Landlord of the Premises Licence Holder) then addressed the Sub-Committee and began by stating that possible options for the Landlord included forfeiture of the lease with the Premises Licence Holder or to change the usage so that a nightclub was not permissible. However, the Landlord's vision for Trocadero was that there should be a nightclub on this site and Richard Wormald suggested that if a nightclub could not operate in a central area in the West End such as the Trocadero, then there was something fundamentally wrong with the customer offer to visitors to this area. Mr Wormald advised that there was a large, high end hotel on the site and its guests were wealthy. The guests would expect the same facilities to be available here as in places such as Barcelona, including nightclubs. He suggested that if the premises licence was revoked, the Landlord would have difficulty in obtaining a new premises licence for a nightclub at a location that was situated within a cumulative impact area (CIA). Furthermore, he added that the Landlord did not want to lose the Premises Licence Holder as its tenant which it regarded as an excellent tenant, notwithstanding the events of 24-25 August. The Sub-Committee heard that upon the previous operator vacating the premises, the Landlord had received higher bids than from the Premises Licence Holder, however it had taken into account the excellent reputation of the Premises Licence Holder in Spain and had met with the management and carried out due diligence before making its decision.

The Landlord welcomed the reappointment of Eammon Mulholland as the designated premises supervisor and Richard Wormald stated that the Landlord had forfeited two nightclub licences at the site and added three new hotels. This had led to the Trocadero site being transformed, whilst a root and branch review had also been undertaken. Mr Wormald emphasised that the Landlord shared the Council's wish to avoid causing potential for crime and disorder at the site. He referred to the application for a shadow licence that the Landlord had submitted which had recently been adjourned and he advised that the Landlord would wish to acquire the shadow licence if this licence was retained, in order to

give the Landlord more control over the premises.

Richard Wormald concluded by stating that the Landlord felt that it would be difficult to find a better tenant and, despite the concerning events of 24-25 August, the Premises Licence Holder was well resourced and well intentioned. Otherwise, because of the high rents and rates at this location, there was a danger that 'fly by night' operators would be encouraged to seek such premises.

Francis Keegan (Licensing Inspector, Licensing Authority) then addressed the Sub-Committee and stated that whilst he welcomed the return of Eammon Mulholland as the designated premises supervisor, it did not guarantee that he would be there for a lengthy period of time. In view of the seriousness of events that had taken place on 24-25 August, Francis Keegan confirmed that he supported the Police's request for revocation of the licence.

The Sub-Committee sought confirmation that there had been no issues that had arisen to give cause for concern to Francis Keegan after his 2 January visit up until when the premises closed in early July.

In reply, Francis Keegan confirmed that this was the case and he had not visited the premises again after receiving written assurances.

James Rankin then concluded the case for the Police and referred to the Home Office guidance on licensing reviews which stated that revocation of the premises licence should be seriously considered where crime and disorder had taken place in order to deter such activities in future. Mr Rankin considered that the shooting and the stabbing that had taken place on 25 August were about as serious as incidents of crime and disorder that could take place, also placing the public under considerable risk. In addition, a number of conditions had been breached which had contributed to the situation. James Rankin therefore reiterated that, in his opinion, revocation of the premises licence was the only course of action that could be taken.

PC Reaz Guerra emphasised the importance on preservation of life and added that it was only pure fortune that no-one had died on 24-25 August.

Francis Keegan felt that adding conditions to the licence would not be effective as the Premises Licence Holder was already failing to adhere to some of the many conditions on the licence.

Philip Kolvin then concluded the case for the Premises Licence Holder and emphasised that the Premises Licence Holder was not attempting to absolve themselves from blame for events on 24-25 August and that they were aware that they were fully responsible for the premises if their licence was retained. He also referred to the licensing review guidance and suggested that a three months' suspension of the licence was a more proportionate action to take, which would also act as a deterrent to the Premises Licence Holder.

After careful consideration of all the detailed evidence and the submissions of the parties, the Sub-Committee decided that the premises licence would be revoked. In determining the application, the Sub-Committee took into account

the seriousness of the incidents on 24-25 August involving injuries to two victims sustained through a shooting and a stabbing, which had also posed a serious risk to members of the public, both within the premises and on the busy road outside. In addition, there had been serious breaches of a number of conditions, which, if adhered to, may have prevented the incidents from taking place. The Sub-Committee also considered that the way the premises had operated on 24-25 August fell far below the Council's and the Police's expectations and the licensing objectives, particularly in relation to crime and disorder, had clearly not been met.

In reaching its decision the Licensing Sub-Committee had particular regard to Chapter 11 of the statutory guidance issued by the Home Office in April 2018. It was acknowledged that the remedial action to be taken should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review. However, paragraph 11.23 also states that, where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence. Moreover, the guidance further indicates that the licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder.

In this case, there were a large number of breaches of fundamental conditions on the licence, compliance with which might well have prevented the serious incidents that took place. Two people were seriously injured and could easily have died. Members of the public were also placed at serious risk, both inside and outside the premises. The management of the premises on the night was woeful as acknowledged by the premises licence holder. In view of the fact that so many conditions were breached, it was not considered appropriate to respond to the incidents on 25th August by adding yet further conditions. Mr Kolvin urged the Licensing Sub-Committee to consider the possibility of a three-month suspension of the licence on the basis that such a penalty would act as a suitable deterrent. The difficulty for the Licensing Sub-Committee was that the premises had already been closed for some considerable time and could clearly afford to be closed for those additional months. In the final analysis the most important question was the message that would be sent out to all other operators and potential operators of licensed premises in Westminster.

In all the circumstances, the Sub-Committee therefore considered that the seriousness of events involving crime and disorder and the breaches of a number of important conditions on 24-25 August meant that it had no real alternative other than to revoke the licence. It agreed with James Rankin in that regard. The Sub-Committee did take note of the additional submissions made by the freeholder of the premises and the trust that it was prepared to place in the tenant remaining as the premises licence holder but it also recognised that the freeholder had commercial interests to take into account and these had to be discounted by the Licensing Sub-Committee. It would sometimes be appropriate to give a licensee a second chance but that was not considered to be appropriate in this case.

In accordance with section 53D of the Licensing Act 2003, the Sub-Committee was also required to review the interim step of suspension of the premises licence that it had imposed on 30 August 2019. The Sub-Committee confirmed that the suspension would remain in place until the time for appealing against this review decision and, in the event of an appeal being lodged, until the date when that appeal is disposed of.
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The Meeting ended at 3.21 pm

CHAIRMAN: _____

DATE _____