



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (5)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (5)** held on **Tuesday 12th November, 2019**, Rooms 18.01 & 18.03, 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Murad Gassanly (Chairman), Louise Hyams and Aicha Less

1 MEMBERSHIP

2 DECLARATIONS OF INTEREST

1 100 WARDOUR, GROUND FLOOR, 100 WARDOUR STREET, LONDON, W1F 0TN

LICENSING SUB-COMMITTEE No. 5

Tuesday 12th November 2019

Membership: Councillor Murad Gassanly (Chairman), Councillor Louise Hyams and Councillor Aicha Less

Legal Adviser: Horatio Chance
Policy Adviser: None present
Committee Officer: Artemis Kassi
Presenting Officer: Michelle Steward

Relevant Representations: Environmental Health Service, Licensing Authority, Westminster City Inspectors and six local residents (all in support of the review application)

Present: Richard Brown (Westminster Citizen Advice Bureau on behalf of the Applicants for the review); David Steele, Andy MacKay, Lucinda MacKay, Alan Geeves and Issac Romanov (Applicants for the review); Mustafa Abdo (witness for the applicants); Anil Drayan (Environmental Health); Angela Seaward (Licensing Authority); Stephen Walsh QC (Counsel on behalf of the Premises Licence Holder); Elizabeth Southorn and Francesca Burnett Hall, Harris Hagan Solicitors (on behalf of the Premises Licence Holder); David Loewi, Chief Operating Officer and Deputy Chairman, Michael Farquhar, Operations Director and Leslie Kwarteng, Senior

General Manager and DPS, (all on behalf of D&D London Limited and the Premises Licence Holder, 100 Wardour Limited); Euan MacKenzie, Autograph Technical Audio Engineer (on behalf of the Premises Licence Holder), Richard Vivian, Big Sky Acoustics (on behalf of the Premises Licence Holder) and Lee Montague, Cole Jarman Acoustic Experts (on behalf of the Premises Licence Holder), Racheal Ejuetami (City Inspector).

Apologies: Jane Doyle (The Soho Society)

**100 Wardour, Ground Floor, Wardour Street London, W1F 0TN (“the Premises”)
19/02509/LIREVP**

1. On 1st March 2019 an application had been submitted by David Steele, Andy MacKay, Lucinda MacKay, Alan Geeves and Issac Romanov (the Applicants) for a review of the premises licence for 100 Wardour, Ground Floor, Wardour Street London, W1F 0TN (the Premises) on the grounds of prevention of public nuisance. The Premises were situated within the West End Cumulative Impact Area. Subsequently, there had been a hearing on 16th May 2019 where the Licensing Sub-Committee determined to adjourn for a period of not less than three (3) months to allow the Environmental Health Service to test sound equipment, including a noise limiter at the premises. The Licensing Sub-Committee had before it the application subsequent to the May adjournment.

Ms Michelle Steward (Presenting Officer) outlined the Application and confirmed that five local residents had applied to review the Premises Licence and that representations had also been received from Environmental Health Services, the Licensing Authority, Westminster City Inspectors and six other residents. Mr Richard Brown, (Westminster Citizen’s Advice Bureau) was representing residents. The Licensing Officer advised that late representations had been received from the Applicants, an objector and the Environmental Health Service and that all documentation had been circulated to all parties.

Mr Richard Brown addressed the Sub-Committee and introduced the residents who were present at the review hearing. Mr Brown advised that his representation to the Sub-Committee earlier in the week contained additional submission with four key points set out as follows:

1. That it was vital to resolution that residents and the Sub-Committee be able to understand what had gone on;
2. At what levels the noise limiters had been set;
3. Why they had been set at those levels; and
4. Whether residents and the Sub-Committee could have full confidence going forward that the levels set would be appropriate for inaudibility.

Mr Brown recapitulated for the Sub-Committee that the Applicants were all long-term residents, that their main residence was in Soho Lofts and that they had experienced noise nuisance for decades since the 1990s. He referred to the Applicants’ statements and the impact that the situation has had on them as a local community. Mr Brown also recapitulated the decision by the Sub-Committee at the May hearing that the Sub-Committee was determined to find a permanent solution to the issues and that any measures needed to be

embedded and tested.

Mr Brown advised that since the May adjournment there had been four sessions of noise testing. Mr Brown referred to the update from Mr David Steele at page 207 which set out the narrative of the testing and also referred to a meeting between David Steele, David Loewi, Michael Farquhar and Leslie Kwarteng. Mr Brown referred the Sub-Committee to the meeting on 23rd October 2019 and to the chronology at page 144 (Anil Drayan's memo). Mr Brown mentioned the differing levels required in different areas of the Premises, including for example in the atrium.

Mr Brown elaborated that at the first testing on 14th June 2019, levels were set for four areas on their own dedicated, separate sound systems and that Mr Crockford and other officers had been involved in that. Levels were set at 99 decibels for a live band and 98 decibels for a DJ, though Flat 38 was not tested. On 26th July 2019, officers reconvened as music had been heard and over a period of some months, there had been further complaints from residents. Further testing was carried out on 2nd October, undertaken by Anil Drayan and two other officers, focusing on the band in the basement and determining that band music noise was inaudible at 97 decibels with a buffer of 3 decibels to 94 decibels but that the DJ settings were different. On 4th and 5th October, further visits were made as nuisance had been heard at Flat 15. This resulted in a lengthy, final attempt to set the limiters on 23rd October. Mr Brown highlighted that two points of concern to the residents had emerged from all of this: namely at what level the limiters were set and the fact that the limiter appeared to have drifted from where it was set on 2nd October. Mr Steele believed that the level was 88 decibels and requested screen shots of messages between Mr Crockford and Mr Mackenzie. Mr Brown observed that Mr Steele was happy with levels at that point.

Mr Brown also raised the issue of whether the limiters were in fact fit for purpose and mentioned historic issues. Mr Brown referred to a further issue with noise outside on dispersal and referred to evidence from Mr Mackay. Mr Brown queried how the testing had advanced matters, noting that residents were initially pleased after the testing on 23rd October but that this dispelled. He further observed that the hearing in May had occurred after inconclusive testing and that the review application was now being heard after inconclusive testing. Mr Brown also observed that the levels of inaudibility and the integrity of the sound limiters were in question.

Mr David Steele addressed the Sub-Committee and mentioned that initial optimism had given way following random incidents of noise nuisance. Mr Steele referred to the precision setting of limiters so that if a limiter failed even once, then it was obvious that there was an issue; for it to fail six times was a serious issue. Mr Steele mentioned that he had first raised this with Westminster on 3rd July. Mr Steele then referred to the test results of 23rd October, which he found hard to understand particularly how the level went up to 93 decibels. He particularly referred to figures mentioned in the screenshots, including a figure of 97decibels, a figure which was not mentioned in a report. Mr Steele observed that even after the third test he could still hear noise and queried why the noise could not be heard after the second and fourth tests. Mr

Steele referred to levels jumping from 97 to 99 decibels after the alleged reduction, leading to overall inability to draw conclusions from the tests. He also queried whether the limiter had worked over the previous two years. Mr Steele had arrived at a point where he thought that they were on the brink of feeling that the problem was close to being resolved when it became clear that the limiter was not being set at the levels they had thought. Mr Steele observed that three decibels was a considerable leap. He also queried when the management had known that the limiter was not working.

The Sub-Committee requested information as to communication from the Premises with the residents over the six-month period. David Steele characterised responses as non-committal when faced with specific dates and times of noise occurrence. Mr Steele pointed out that he had worked with limiters and compressors over forty years. Mr Steele felt that the noise levels were evident.

The statement from Mr Steele in support of the review application appears at page 25 of the agenda papers.

Mr Alan Geeves addressed the Sub-Committee and advised that he resided in Flat 21, 2nd Floor, Soho Lofts. Mr Geeves advised that he considered the problem remedied only on the basis that he had installed triple glazing in his flat. He pointed out that as he considered the problem now remedied, he had not gone through the recent testing. He explained to the Sub-Committee that his bedroom faced onto the well, which was where most of the noise had originated. However, Mr Geeves commented that during the heat of the summer, he had had the windows open. This had led to recurrence of noise nuisance to such an extent that he would now be installing air-conditioning to avoid opening his windows in the summer. He explained to the Sub-Committee that this had left him feeling angry and without any trust in the process, as this had continued over many years with the Premises adjusting the noise levels.

The statement from Mr Geeves in support of the review application appears at page 33 of the agenda papers.

Mr Mustafa Abdo addressed the Sub-Committee and advised that he was the Maintenance Building Manager for Soho Lofts and resident in Flat 18. Mr Abdo explained his experience of the testing, including music being inaudible during the testing then audible when close to the window and inadequate levels being set. He observed that his wife's working patterns meant that rest was necessary and airflow in his flat meant that they needed to open the windows.

The statement from Mr Abdo in support of the review application appears at page 35 of the agenda papers.

Andy MacKay, resident of flat 38, 3rd Floor Soho Lofts, addressed the Sub-Committee and advised that there has been noise, and queried the testing being carried during the day when there were other background noises and during the night when there was no other noise. He referred to nuisance over the last six months. He stated that he did not know what level of sound proofing had been installed but that there had not been an expectation of a discotheque

there. He referred to further soundproofing of the Premises being a possibility and also referred to general problems in the street due to large drinking and music establishments in Soho.

The statement from Mr and Mrs MacKay in support of the review application appears at page 28 of the agenda papers.

Isaac Romanov addressed the Sub-Committee and advised that he resided in Flat 16 of Soho Lofts. Mr Romanov advised that he both reiterated and agreed with the review Applicants, that there were periods of improvement but that there would be periods of erratic breaching. He observed that during the periods when the music went up, there had to be ways of limiting the breach, either through technical means or a human monitor of the situation.

The statement from Mr Romanov in support of the review application appears at page 30 of the agenda papers.

The Chairman observed that the objective of the adjournment had been to find a compromise solution and that the purpose of the current review hearing was to assess what progress, if any, had been made in that time. The Chairman invited a summary of the situation since the May deferral from the residents, whether effort had been made by the management. David Steele opined that the Premises Licence Holders had not minded turning the volume down slightly but that, once they had discovered the levels of reduction that would be required, this had been less acceptable to them, particularly (he felt) when they discovered that noise levels would have to be less than 91 dB. Mr Steele referred to the levels of security protecting the limiter though it appeared not to work. He referred to assurances given 20 years ago that the limiters would work and solve the problem. The Sub-Committee queried the bypassing of the limiters. Mr Steele considered that the process was simply that of tweaking.

The Licensing Authority maintained its representations and support of the review and to support the historic enforcement. The Sub-Committee heard that it was accepted that there had been historic nuisance.

The Environmental Health Service, represented by Mr Anil Drayan, advised the Sub-Committee that the Premises had co-operated with officers in reducing the volume during testing and setting to go as far as necessary to achieve inaudibility. Mr Drayan corrected the record and stated that conversations (Anil Drayan/John Crockford) had been overheard and misunderstood, and that at no point had the level been at 88 decibels. Mr Drayan explained that Euan Mackenzie had used the limiter to reduce some speakers which were more prevalent. He also stated that since 23rd October there had been no reports to him or to the Noise Team about nuisance. Mr Drayan mentioned that there had been some frequency testing conducted, in trying to find noise leakage potentially in order to enhance any noise insulation measures. He particularly referred the Sub-Committee to his own statement at the second paragraph of page 151 (Wednesday 23rd October 2019) and emphasised:

“...experience has shown that nuisance can be caused by how loud music is played at, i.e. the average noise level during a certain time period and the

frequency at which it is played.”

Mr Drayan discussed the nuisance from bass frequencies, including how a bass frequency at 70 decibels could constitute nuisance and mentioned the discovery on 23rd October of a (previously unknown) subwoofer at the ground floor level when John Crockford had still been reporting nuisance, but nuisance related to bass frequency. Mr Drayan explained how this had led to turning off everything and turning on the sound systems individually and that this had allowed them to identify the subwoofer as a source of nuisance, even at 70 decibels. Mr Drayan stated that in his experience when establishing noise nuisance and sound limits, the way to proceed was to use bass-heavy music as this would establish what controls for any sound limiter were needed. Mr Drayan explained that the type of sound limiter being used was of an automatic volume control, which did not measure the sound levels but instead measured how much power was going through the amp and from the amp through to the speakers.

Mr Drayan also explained how a sound level meter would then be used to measure output from the speakers and that when the band had played, it had played mainly high frequencies. Mr Drayan further explained that when the sound meter level was set using the band music, it was at 94 decibels on 2nd October. He elaborated that when testing was carried out on 23rd October, they had used bass heavy DJ music so that as well as high frequencies, there were also low input frequencies which had raised the level from 94 decibels to 97 decibels. Mr Drayan explained that this had led to further discussions with Euan MacKenzie to determine what had led to the increase as Mr Drayan had thought that DJ music had featured in previous testing.

Mr Drayan provided the Sub-Committee with context, namely that he himself had only had involvement in this case since 30th September 2019 and due to this as far as he knew at the time the cause of nuisance was the acoustic drum set controlled by the sound limiter. He explained that, because of this, using the sound limiter, they had reduced the noise from the electronic drum set from 98 decibels to 94 decibels, but that straightaway, on the following weekend Mr Steele had reported noise nuisance again. Mr Drayan then sought detailed information from Mr Steele about noise incidents on 3rd and 4th October as well as on the previous six instances, including precise timings, of noise nuisance reported. Mr Drayan stated that, upon his examination of the information concerning the incidents of 3rd and 4th October, it was clear that the nuisance related to DJ music. He also stated that a further round of testing was arranged, with the earliest date being 23rd October due to availability of parties involved. This testing had started using band music and DJ music later, and Mr Drayan observed that variation in the band configuration from that of 2nd October led to variation in the sound levels measured. However, Mr Drayan added that, with sound levels which accounted for bass and high frequencies, he did not expect the sound level to vary greatly from the set level.

The Sub-Committee sought clarification about the level at which the limiter had been set and Mr Drayan confirmed that this had been set at 91 db. The Sub-Committee also sought clarification from the review Applicants whether noise had been heard since 23rd October. Mr Steele confirmed that noise had not been heard since 23rd October but observed that, over 20 years, there was

usually no noise prior to hearings and that the last time that there had been noise nuisance was 4th and 5th October. Mr Drayan added that previously there had not been configuration of the sound limiter for all the frequencies but that this had now been done. Mr Drayan also mentioned that discussions with the Police and that there had been no dispersal issues for these Premises in over a year.

Mr Stephen Walsh QC, (representing 100 Wardour Street Limited, the Premises Licence Holder) addressed the Sub-Committee and advised that D&D London Limited, the proprietor Company for 100 Wardour Street, had made efforts to facilitate testing within the Premises and resident flats, where possible, that the Premises had engaged a number of acoustic experts with different specialisms at a cost of £112,000, had liaised with the Environment Health Service, had written to all residents so that testing could be carried out in their flats with varied response. Mr Walsh also explained that the Premises Licence Holder had offered to pay for an acoustic expert consultant for Mr Steele. He stated that D&D London Limited was keen to work with residents, pay for an acoustic consultant and work with Environmental Health. He added that a contact telephone number for the Duty Manager had been provided as requested at the previous hearing and since that hearing, no complaints or contact had been made to the Premises using that number. He stated that this number was periodically tested. Mr Walsh stated that in addition as far as the Premises Licence Holder was aware, other than the complaints relating to 4th and 5th October there had not been any complaints to the City Council's Noise Team.

Mr Walsh advised that, whilst the Licence Holder was aware of issues, it was not accepted that the Licence Holder had not done all that it could to liaise with residents to resolve any noise differences. Concerning the setting of the limiter and testing, Mr Walsh advised the Sub-Committee that this was a longer process than a one-off setting and that there had been interruptions to the testing, including building works noises. Mr Walsh observed that because the issues had been addressed and assessed over time, it had been possible to identify and isolate individual issues, including the acoustic drums and stated that the Licence Holder was happy to comply with a condition removing acoustic drums. He stressed that testing history was extensive and had started on 14th June, 26th July, through July to September, 2nd October, 23rd October and 8th November.

Mr Walsh discussed resident concerns expressed about noises heard in July at 14:00 hours and 16:00 hours but stated that music does not begin in the venue until 20:00 hours. Mr Walsh further stated that acoustic consultants had examined issues again and that it was unfair to characterise the situation as arising from a failing system. The position of D&D London and its consultants had come to an identification of the exact problem, namely the live music/limiter issue, which had been resolved, and the recorded music played through the DJ desk, which had now been fully assessed. Mr Walsh stated that there was absolute confidence now that the noise limiting device could be set at a level which satisfied the Environmental Health Team that noise nuisance would not result and because the noise limiting device was in a position where there would be consistent, reliable results.

Mr Walsh introduced the Licence Holder's acoustic consultant, Mr Richard Vivian, who was familiar with the working practices of the City Council. Mr Vivian explained to the Sub-Committee that his expertise was specifically in music and entertainment noise. Mr Vivian stated that there was no question that all parties wanted the limiter to be set and work, that much ground had been covered in discussions of the irregularities and inconsistencies, and the need to remove acoustic drums and backline from the stage, and the need to reduce monitor levels on the stage through a comprehensive in-ear monitor system.

Mr Vivian clarified for the Sub-Committee points which had featured in the discussions. Mr Vivian clarified decibel measurements and changes in decibels and stated that under field conditions a three-decibel step would be audible, whereas 0.1 decibel was insignificant. Mr Vivian mentioned that every measurement mentioned during the review hearing, namely the A-weighted measurement, did not include bass, though this had been used as an indicator even though it filtered out bass and was not a measure of the primary problem, namely bass. Mr Vivian referred to and agreed with Mr Drayan's comment about testing, namely that when testing sound systems, this would be performed using the worst problem as the baseline for resolving the problem. Mr Vivian referred to the construction of the building, which was a conversion from the 1990s and observed that it had not been subjected to certain building regulation tests that would now be carried out and included a number of elements that made it more vulnerable to noise transmission, including bare steel and bare brick walls, in part due to the heritage nature of the site. Mr Vivian stated that, because of these structural considerations, it was essential that the operation of the Premises by the Licence Holder was to the gold standard of these limiters. It was stated that the limiter specified here was a BSS sound web limiter, a piece of hardware into which software is programmed. Mr Vivian had seen the limiter on 23rd October, set at the 'silver standard', perfectly adequate for most applications, but stated that because of the nature and complexity of this building there was an extra safety net, namely a two-stage limiter system which was now in place. Mr Vivian concluded that it was unfortunate that this had gone on, though not unique, but that observed that his suggestion of the two-stage limiter, which had now been implemented, was the 'gold standard'.

The Sub-Committee clarified that the new system in place used the gold standard two-stage limiter, as described by Mr Vivian, which could not be bypassed and that there would be no use of drums. The Legal Adviser to the Sub-Committee queried whether the industry had a definition of the 'gold standard' referred to. In reply Mr Vivian stated that there was not an industry definition as such but that this system was considered best practice and observed that he provided training to officers from other boroughs on how limiters are set and configured. Mr Vivian opined that it was his "tried and tested" gold standard. The Sub-Committee queried whether this two-stage limiter could be tampered with and who had access to it. The Sub-Committee also referred to images at page 55 of the Agenda papers, which indicated that some bands would bring in their own amps and mixing systems. The Sub-Committee was assured that management policy stipulated that no additional amplifiers would be brought inside the Premises. Mr Drayan referred to special conditions to overcome this problem, including management sign off that the

band had been informed of the maximum music noise level for the audience, all amplified music to be played through the in-house sound system, any acoustic equipment to be limited to low-sound volume instrumentation: all this was to be assessed and signed off by management. Mr Walsh confirmed that bands were informed of conditions and could not bring their own equipment in at all for the purposes of amplification and that this had been the situation for some considerable time at the venue and explained that this was why the existing sound system had been invested in at a cost of £80,000 and why the management was happy to comply with the proposed condition. On the point of whether the limiter system could be by-passed, Mr Vivian further advised and assured the Sub-Committee that the limiter was a plain steel box in the equipment rack located away from any bands or DJs, there were no external control buttons, it was only accessible by a network interface to a PC with dedicated software and password protected, and that it was unlikely for interference or by-pass to be possible. Mr Walsh advised that this specific point had previously been made at the hearing in May and that Autograph had given evidence on this.

The Sub-Committee requested clarification as to the number of limiters. Mr Vivian advised that one limiter controls everything, namely the ratios, maintaining the controlled sound-levels throughout the areas under discussion. The Sub-Committee queried whether other measures existed, such as soundproofing, and whether more could be done. Mr Vivian and Mr Neil Jarman advised that following a fire, additional lining was put in and cladding of columns had been done, whilst noting that this was not to the level of a recording studio. Anil Drayan explained the difficulties of sound-proofing and noise escape. Mr Vivian advised that soft furnishings do not reduce the level of noise transmitted to other areas but that the building had functioned and could continue to function as a multi-use building with structurally connected operations. Anil Drayan observed that the base transmission was the cause of the issues in this review.

Mr Walsh presented the Sub-Committee with a set of Conditions and commented that the first condition listed reflected the provisions which had been requested by the Applicant and the Environmental Health Officer. He advised that a condition removing the deregulation provisions contained in section 177A of the Licensing Act 2003 would be accepted and the request to replace Conditions 15, 16, 17 and 41 of the Premises Licence had been addressed within the proposed conditions. He advised that it was accepted that 'inaudibility' should be the appropriate condition, referring to the City Council's Model Condition 11 and confirmed that advice would be sought from Environmental Health on appropriate sound levels.

Mr Walsh discussed compliance with, breach and enforcement of conditions, including noise abatement notices. Mr Walsh offered conditions, which had been proposed by schedule at the previous hearing, including no noise on orderly dispersal. He noted that the Police did not have concerns on this issue and that the Premises had amended its queuing, dispersal and smoking policies so as to ensure that there was SIA supervision of queues and that smoking was supervised in the designated area. Mr Walsh advised that a dedicated telephone number had been made available and would continue to be available.

Mr Walsh expressed concern about the enforceability of the condition concerning acoustic instrumentation and following discussions this was amended to require no playing of acoustic drums. Mr Walsh stated that a condition which required the password for the noise limiter to be held solely by the installers would be acceptable and this measure would safeguard the Licence Holders from being accused of tampering with the device.

The Applicant referred to the testing conducted on 23rd October and pointed out that the highest live peak average was 96.4 decibels (at page 159). Mr Steele stated that it was live peak playing which would constitute nuisance. Mr Anil Drayan discussed testing figures versus live peak averages, which explained the use of the LEQ levels, not peak levels. Mr Drayan observed that in the weekends since the October testing there had been no nuisance reported and that Mr Steele's flat was above the double-woofers. He explained that noise was not travelling through the building but was generally airborne sound and that this had complicated matters but stated that he was confident that they had resolved the issue now. Mr Drayan stated that, if these new measures were not effective, then the Premises would need to see with the residents whether additional measures were necessary over time.

The Applicant queried why the limiter had failed to limit in the past and Mr Drayan discussed the operation of the limiter. Mr Vivian explained that the limiter existed as a physical piece of hardware and that it needed to be programmed, in essence with a 'music store' of equipment. Mr Vivian explained that the new configuration contains a super limiter which will control everything, using the reference levels signed off on 23rd October.

Mr Brown observed that the resources which had been required for this matter had been onerous, including council officer time. Mr Brown referred to the Cole Jarman reports that there were different levels for different areas of the Premises and also to the 2017 levels, including for the Billiard Room, which had been lower. Mr Brown observed that the video clip evidence submitted had been for the atrium area. Mr Brown queried whether the music on the ground floor could be overridden. Mr Brown also summarised the testing history going back over decades and observed that there had been previous assurances that measures would result in resolution for the residents. He opined that using conditions would require trust, when there was evidence that certainty of resolution was necessary. Mr Brown stated that the Applicant would not want to lose Condition 14 of the Premises Licence under any circumstances and that whilst matters have improved it was still not resolved. He observed that it was taking too much on trust for a system that in his opinion only two or three people present understood. Mr Steele observed that there were limiter failings over many years and reported on 4th July.

The Sub-Committee considered the interests of residents as well as wider policy implications and noted that there had been a loss of live music venues in the West End. The Sub-Committee noted the assurances given by the Applicant as to the functionality of the limiter and the ongoing commitment that this was to be kept in proper working order and continually monitored so as to prevent nuisance.

Decision:

Having listened carefully to the evidence from all parties, the Sub-Committee considered that the review application had been both a difficult decision and a complex review. The Sub-Committee noted the technical evidence given by all parties in respect of the noise sound limiter but realises that it has to strike the right balance which will ultimately have the effect of promoting the licensing objectives as well as improving the lives of local residents. The Sub-Committee recognised the seriousness of the issues before it and that these issues had direct impact on residents' quality of life in terms of noise nuisance they have suffered. The Sub-Committee took the view that the condition it imposed regarding the sound noise limiter (condition 42) would give some comfort to local residents that this is to be properly maintained and monitored by the operator and if there were any potential difficulties in the operator fulfilling their obligations under this specific condition Environmental Health should be advised of this.

The Sub-Committee had considered the evidence before it on its merits, in accordance with paragraphs 11.1-11.23 on pages 89-92 of the Revised Home Office Guidance (2018) and the promotion of the licensing objectives. The Sub-Committee had also considered technical evidence from Environmental Health and sound experts and, on the whole, was satisfied that the operator had taken proportionate and credible steps to deal with the issue of noise nuisance that residents had clearly endured for some considerable time. However, the Sub-Committee has to strike the right balance when considering what remedial action should be taken so as not to disadvantage either party and, on this occasion, felt that it was appropriate to impose conditions on the licence having regard to the powers it has available to it under section 52 (4) of the Licensing Act 2003.

It was the Sub-Committee's considered view that the tests undertaken in Mr Steele's home had revealed some elements of noise break out from the Premises whilst that test was being undertaken. However, the Sub-Committee was reassured by Mr Drayan's evidence that appropriate levels had been firmly applied to the sound limiter and was reassured by the operator that these would be correctly applied hereafter and monitored in all areas of the Premises. The Sub-Committee having regard to all of the circumstances decided to impose additional conditions on the premises licence so as to ensure the promotion of the public nuisance licensing objective as set out below.

The Sub-Committee encouraged the operator and the residents to continue dialogue and work to improve the ongoing relationship. The Sub-Committee further stated that the Committee, the Council, Environmental Health, the wider Licensing team would be paying careful attention to ensure that the conditions now imposed on the premises licence were strictly adhered to. The Sub-Committee understood the strength of residents' feelings and expressed the hope that the conditions set the standard, resulted in immediate improvement and strengthened the monitoring regime.

The Sub-Committee decided to impose a number of additional conditions on the

Premises Licence that it considered appropriate and proportionate that would help promote the licensing objectives.

LICENCE

Licensable activities authorised by the licence:

Performance of Dance
Performance of Live Music
Playing of Recorded Music
Anything of a similar description to Live Music, Recorded Music or Performance of Dance
Late Night Refreshment
Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit
Sale by Retail of Alcohol

The times the licence authorises the carrying out of licensable activities:

Performance of Dance

Monday to Wednesday: 09:00 to 02:00
Thursday to Saturday: 09:00 to 03:00

Performance of Live Music

Monday to Wednesday: 09:00 to 02:00
Thursday to Saturday: 09:00 to 03:00

Playing of Recorded Music

Anything of a similar description to Live Music, Recorded Music or Performance of Dance

Monday to Wednesday: 09:00 to 02:00
Thursday to Saturday: 09:00 to 03:00

Late Night Refreshment

Monday to Wednesday: 23:00 to 02:30
Thursday to Saturday: 23:00 to 03:30

Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit

Sale by Retail of Alcohol

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

For times authorised for Christmas, New Year and Good Friday see conditions

The opening hours of the premises:

Monday to Wednesday: 09:00 to 02:30

Thursday to Saturday: 09:00 to 03:30
Sunday: 12:00 to 23:00

Where the licence authorises supplies of alcohol, whether these are on and/or off supplies:

Alcohol is supplied for consumption both on and off the Premises.

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.

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

Conditions relating to regulated entertainment

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

11. On New Year's Eve the premises can remain open for the purpose of providing regulated entertainment from the time when the provision of regulated entertainment must otherwise cease on New Year's Eve to the time when regulated entertainment

can commence on New Year's Day (or until midnight on New Year's Eve where no regulated entertainment takes place on New Year's Day).

12. Notwithstanding the provisions of Rule of Management No. 6, the premises may be kept open under this licence from 23:00 on each of the days Monday to Wednesday to 02:00 on the day following and from 23:00 on each of the days Thursday to Saturday to 03:00 on the day following.

13. An attendant shall be on duty in the ground floor Cloakroom the whole time it is in use.

14. Music levels shall be maintained at such level as is specified by Environmental Health from time to time so as to ensure that music shall not be audible nor otherwise cause nuisance to occupiers of the residential properties above.

15. Without prejudice to condition 14 above, a noise limiter shall be fitted to the musical amplification system in agreement and to the satisfaction of officers from the Environmental Health noise section. The operational panel shall be secured and the system shall not be altered without prior agreement with the Environmental Health Officer.

16. No alteration or modification to any existing sound system(s) should be effected without prior knowledge of an authorised Officer of the Environmental Health Department.

17. Any additional sound generating equipment shall not be used on the premises without being routed through the sound limiter.

18. That on the ground floor music is limited either to:

- (a) The playing of pre-recorded music until 01:00 only; or
- (b) Premises management through the dedicated DJ station until 01:00 only; or
- (c) Live performance of unamplified acoustic music (not to exceed five musicians at any one time) until 00:00 midnight only.

19. All refuse is stored off the public highway outside of designated collection hours.

20. Bottles and glass shall not be deposited outside the premises after 22:00 and before 08:00.

21. The pavement from the building line to the kerb edge, and to include the gutter/channel at its junction with the kerb edge, in the vicinity of the premises is swept at regular intervals whilst customers are queuing to enter the premises, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.

22. At the close of business each day the premises are open for business, the licensee shall ensure that the pavement from the building line to the kerb edge immediately outside the premises, and to include the gutter/channel at its junction with the kerb edge, is swept and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.

23. No unauthorised advertisements of any kind (including placard, poster, sticker, flyer, picture, letter, sign or other mark) is inscribed or affixed upon the surface of the highway, or upon any building, structure, works, street furniture, tree, or any other

property, or is distributed on street to the public, that advertises or promotes the establishment, its premises, or any of its events, facilities, goods or services.

24. Any door supervisor employed at the premises shall be registered with Westminster City Council.

25. The number of persons accommodated at any one time (excluding staff) shall not exceed: Basement – 412, Ground Floor – 460.

Conditions for Sale of Alcohol

26. Substantial food and suitable beverages other than intoxicating liquor (including drinking water) shall be available during the whole of the permitted hours in all parts of the premises where intoxicating liquor is sold or supplied.

27. No striptease, no nudity and all persons on the premises to be decently attired.

28. There shall be no payment made by or on behalf of the licensees to any person for bringing customers to the premises.

29. There shall be no gaming on the premises, other than machines authorised by Part III of the Gaming Act 1968 or by the Licensing Justices in accordance with Section 6 of the Gaming Act 1968.

30. Where persons are admitted to the premises by prior invitation, to a bona fide function or as specifically invited guests of the proprietor, a list of their names shall be kept at reception for inspection by the Police.

Conditions which reproduce the effect of any restriction imposed on the use of the premises by specified enactments

31. Mondays to Saturdays:

(a) Subject to the following paragraphs, the permitted hours shall commence at 10:00 and extend until 02:00 Monday to Wednesday and to 03:00 Thursday to Saturday the following morning except-

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

(ii) on any day that music and dancing end between 00:00 midnight and 02:00 Monday to Wednesday and to 03:00 Thursday to Saturday the following morning, the permitted hours shall end when the music and dancing end.

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

(i) with the substitution of reference to 04:00 for reference to 03:00.

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

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

NOTE – The above restrictions do not prohibit:

a) during the first 30 minutes after the above hours, the consumption of alcohol on the premises;

b) during the first 20 minutes after the above hours, the taking of alcohol from the premises unless the alcohol is supplied or taken in an open vessel;

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

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

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

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

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

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

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

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

Sunday

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

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

(c) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, 00:00 midnight on 31st December.

NOTE – The above restrictions do not prohibit:

a) during the first 20 minutes after the above hours, the consumption of alcohol on the premises;

b) during the first 20 minutes after the above hours, the taking of alcohol from the premises unless the alcohol is supplied or taken in an open vessel;

c) during the first 30 minutes after the above hours, the consumption of alcohol on the premises by persons taking table meals there if the alcohol was supplied for consumption as ancillary to the meals;

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

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

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

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

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

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

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

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

32. No person under 14 shall be in the bar of the licensed premises during the permitted hours unless one of the following applies:

a) he is the child of the holder of the premises licence;

b) he resides in the premises but is not employed there;

c) he is in the bar solely for the purpose of passing to or from some part of the premises which is not a bar and to or from which there is no other convenient means of access or egress; or

d) the bar is in railway refreshment rooms or other premises constructed, fitted and intended to be used bona fide for any purpose to which the holding of the licence is ancillary.

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

33. If any entertainment is provided for children or if an entertainment is provided at which the majority of persons attending are children, then, if the number of children attending the entertainment exceeds 100, it shall be the duty of the holder of the premises licence:

- a) to station and keep stationed wherever necessary a sufficient number of adult attendants, properly instructed as to their duties, to prevent more children or other persons being admitted to the building, or to any part thereof, than the building or part can properly accommodate,
- b) to control the movement of the children and other persons admitted while entering and leaving the building or any part thereof, and
- c) to take all other reasonable precautions for the safety of the children.

34. The terminal hour for late night refreshment on New Year's Eve is extended to 05:00 on New Year's Day.

Conditions attached by the Licensing Authority after a hearing

35. 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.

36. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.

37. An accident log shall be kept at the premises and made available on request to an authorised officer of Westminster City Council or the Police, which will record the following:

- a) all crimes reported to the venue;
- b) all ejections of patrons;
- c) any complaints received;
- d) any incidents of disorder;
- e) all seizures of drug or offensive weapons;
- f) any faults in the CCTV system or searching equipment or scanning equipment;

- g) any refusal of the sale of alcohols;
- h) any visit by a relevant authority or emergency service.

38. On the Basement Floor, no glass drinking vessels shall be served and used within the Bar Area (shown marked on the licensing drawing L91 revision A dated 25 October 2005).

39. All glass bottles in the basement Floor Bar Area (shown marked on the licensing drawing L91 revision A dated 25 October 2005) are to be decanted into polycarbonate or non-glass vessels after 23:00 with the exception of champagne or bottles of spirits with a minimum size of 70cl supplied by waiter/waitress service to tables. Staff will clear all empty champagne and spirit bottles promptly. Customers shall not be permitted to carry bottles from the table/Bar Area.

40. The proposed new area shall be covered by no more than two CCTV cameras.

41. All speakers in the new area will be routed through the existing noise limiters in accordance with conditions 16 and 17 of the existing Premises Licence.

42. 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 Service 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.

43. 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.

44. All windows and external doors shall be kept closed after 21:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.

45. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.

46. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall be limited to three (3) persons at any one time monitored by one SIA door supervisor.

47. A direct telephone number for the manager at the premises shall be publicly

<p>available at all times the premises are open. This telephone number is to be made available to residents and businesses in the vicinity.</p> <p>48. The licence holder shall ensure that any queue to enter the premises which forms outside the premises is orderly and supervised by door staff so as to ensure that there is no public nuisance or obstruction to the public highway.</p> <p>49. 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.</p> <p>50. Anytime that a band plays at the premises, a member of management shall sign this off after assessing the following has been satisfactorily carried out:</p> <ul style="list-style-type: none">i) band informed of maximum music noise level for the audience;ii) all amplified music to be played through the in-house sound system;iii) any acoustic equipment shall be limited to low sound volume instrumentation (such as tambourines, flutes, etc);iv) a record of this sign-off shall be kept for at least six (6) months and made available on request to an authorised officer of the Council; andv) there shall be no playing of loud acoustic drums at the premises. <p>Condition on the disapplication of section 177A of the Licensing Act 2003</p> <p>51. Section 177A of the Licensing Act 2003 relating to the performance of live music will not apply.</p>
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The Meeting ended at 1.49 pm

CHAIRMAN: _____

DATE _____