



**CITY OF WESTMINSTER**

# MINUTES

## **Licensing Sub-Committee (2)**

### **MINUTES OF PROCEEDINGS**

Minutes of a meeting of the **Licensing Sub-Committee (2)** held on **Thursday 30th January, 2020**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

**Members Present:** Councillors Tim Mitchell (Chairman), Louise Hyams and Aziz Toki

#### **1 MEMBERSHIP**

1.1 There were no changes to the membership.

#### **2 DECLARATIONS OF INTEREST**

2.1 There were no declarations of interest.

#### **1 127 CRAWFORD STREET, LONDON, W1U 6BG**

The application was withdrawn by the applicant.

#### **2 BALLIE BALLERSON, BASEMENT AND GROUND FLOOR, 201 - 203 WARDOUR STREET, LONDON, W1F 8ZH**

### **LICENSING SUB-COMMITTEE No. 2**

*Thursday 30 January 2020*

Membership: Councillor Tim Mitchell (Chairman), Councillor Louise Hyams and Councillor Aziz Toki

Legal Adviser: Barry Panto

Policy Adviser: Kerry Simpkin

Committee Officer: Tristan Fieldsend

Presenting Officer: Michelle Steward

Relevant Representations: Environmental Health, Licensing Authority, The Soho Society, Goodman Derrick LLP (supporting the application) and two local residents (objecting)

Present: Mr Craig Baylis (Solicitor, representing the Applicant), Mr George Armstrong (Managing Director on behalf of the Applicant), Mr Ian Watson (Environmental Health), Ms Karyn Abbot (Licensing Authority), Mr James Dalglish (Nighlight Leisure Ltd – supporting the application), Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project, representing The Soho Society and Ms Ann McCaffrey) and Ms Ann McCaffrey (local resident – objecting to the application)

<p><b>Ballie Ballerson, Basement and Ground Floor, 201-203 Wardour Street, London, W1F 8ZH (“The Premises”) 19/12476/LIPV</b></p>	
<p><b>1.</b></p>	<p><b>Layout Alteration</b></p> <p>The changes sought to the layout of the premises are as follows:</p> <ul style="list-style-type: none"> <li>• Reconfiguration of the basement internal layout</li> <li>• Relocation of Bar Counter</li> <li>• New fixed seating</li> <li>• Creation of ball pit for entertainment purposes</li> <li>• Creation of main entrance to basement premises from Berwick Street on the basis that the pavement is wider than Wardour Street entrance and therefore capable of causing less congestion.</li> </ul>
	<p>Amendments to application advised at hearing:</p> <p>Mr Baylis advised the Sub-Committee that the changes sought to the layout of the Premises had been amended in order to withdraw the creation of the main entrance to the basement from Berwick Street. This had been withdrawn as the Applicant considered that the plans already specified Berwick Street as a main entrance.</p>
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee considered an application by Arturo Clis Holdings Ltd for a variation of a premises licence in respect of Ballie Ballerson, Basement and Ground Floor, 201-203 Wardour Street, London, W1F 8ZH.</p> <p>The Licensing Officer introduced the application.</p> <p>Mr Craig Baylis, representing the applicant, informed the Sub-Committee that the element of the application requesting the creation of a main entrance to the Premises, located in the basement, from Berwick Street had now been withdrawn. It was explained that a single premises licence covered both the ground floor and basement areas, however there were two separate operations on each floor. Ballie Ballerson operated from the basement area and it was this operation which was seeking the internal layout alterations requested. The Sub-Committee was advised that there was currently nothing on the licence which stated that Berwick Street could not be used as an entrance. The plans attached to the licence highlighted that the main entrance to the basement was from</p>

Berwick Street. No condition was attached to the licence restricting its use and therefore approval was not required in order to use it subject to the appropriate management of it. Therefore, it was explained that the only changes sought to the licence were the internal layout alterations requested. In terms of the issues raised regarding the application, Mr Baylis was of the opinion that the nature of them related to a potential review application and were not relevant to the proposed layout changes requested.

In response to a question from the Council's Legal Adviser, Mr Baylis confirmed that even though the application related to layout changes in the basement area, which had a different operator from the ground floor area, he was representing the client (Arturo Clis Holdings Ltd) who held the licence which covered both floors. Mr Baylis also confirmed that the plans attached to the licence stated that both entrances situated on Berwick Street and Wardour Street were highlighted as being main entrances as well as emergency escapes.

For the record, it was noted that the plan on the current licence that Mr Baylis was referring to, was the plan on page 54 of the Licensing Sub-Committee report. This was the plan of the ground floor and did show that there was a main entrance to the basement from both Wardour Street and Berwick Street. The current plan for the basement appeared at page 55 of the report and the proposed amendment to that plan (which was the subject of this application) appeared at page 42 of the report.

The Sub-Committee was informed by Mr Baylis that the current operators had taken over the basement area on 27 September 2019 and had spent a significant amount of money on upgrading the Premises. They currently operated a similar establishment in Hackney with 75% of the clientele consisting of females. The venue had two ball pits located within it, a small dance floor with a bar and a seating area. Mr Armstrong, on behalf of the applicant, explained it was a concept bar with a ticketing system used to ensure it never exceeded its capacity or that large queues never formed outside. Mr Baylis explained that the Premises already benefited from a late licence (to 06.00) but this was not utilised. Currently, the Premises closed at 02:00 on weekends and 12:00 on weekdays. Due to the nature of the operation, which involved ball pits, the permitted capacity of the venue was never reached with the ball pits supervised at all times. It was noted that the dwell time for customers was approximately two hours.

Mr Watson, representing Environmental Health, provided a brief overview of the Premises and detailed how the layout changes had originally been submitted as a minor variation. This has been rejected as a full variation was required to address public safety issues. Mr Watson had visited the Premises to advise on the layout alterations, the applicant had consulted on the changes and these had subsequently been approved as they satisfactorily dealt with the public safety issues raised. Mr Watson confirmed that the plans attached to the licence accurately reflected the current layout of the Premises. Mr Watson advised that a new sound system had been installed in the basement and a noise limiter had been set on 16<sup>th</sup> January 2020.

The Sub-Committee also noted the detailed evidence provided by Mr Watson at

Appendix 4 to the report. This provided a history of complaints relating to the premises, though it was noted that most of them related to a period before the current applicants were in occupation. Mr Watson also indicated in his written submissions that the Berwick Street entrance had not been used since the licence was granted in 2005 and a reference was made to the decision note relating to the application for Stringfellows, dated 3<sup>rd</sup> February 2006 (at page 69 of the report). The decision note stated that the applicants had agreed not to use the Berwick Street entrance.

Ms Abbot, representing the Licensing Authority, confirmed that their representation was maintained as the Premises was located within the West End Cumulative Impact Area (CIA) and issues had been raised by local residents over its operation. It was therefore a matter for the Sub-Committee to decide if it was satisfied that the application would not add to cumulative impact in a CIA.

Mr Dalglish, representing Nightlight Leisure Ltd, which operated the establishment called Simmons located on the ground floor then addressed the Sub-Committee. Mr Dalglish explained that Nightlight Leisure Ltd supported the application. It was acknowledged that the operation of a single licence covering two operations over two floors was unconventional, but it had operated in this manner for a significant period of time. The current operation in the basement had proven successful, providing a diverse offer in the area. Issues had been raised locally, however these could be addressed with appropriate management protocols.

In response to questions from the Sub-Committee Mr Armstrong explained that the operations on both floors used the same security company to ensure there was a consistent approach across the whole venue. In terms of the local residents, the Sub-Committee was advised that none had been in contact to raise any issues but he was happy for a direct telephone number to the venue to be circulated to them.

Mr Brown, explained that Ms McCaffrey who he was representing, had lived adjacent to the Premises for seven years. This was an important issue as one of her sons had been diagnosed with Aspergers and experienced difficulties with excessive noise. Mr Brown then highlighted how, despite Mr Baylis explaining that the relocation of the entrance had been withdrawn from the application, the Sub-Committee could still consider this aspect in accordance with the judgment in the Taylor vs Manchester City Council case (a decision of the High Court from 2012).

Mr Brown then highlighted what he considered to be the key issues arising from the application. The first issue centred on the licence plans, as Mr Brown considered these to be incorrect. If the Sub-Committee agreed that they were incorrect then the application would have to be considered on its merits. The plans before the Sub-Committee identified Berwick Street as a main entrance. However, when a minor variation for the Premises was submitted in 2018 the plans submitted did not identify Berwick Street as being a main entrance. It was unknown how the plans came to be changed to show that Berwick Street was a main entrance, but on the initial plans submitted previously they did not and therefore the current plans could be considered to be incorrect. The Sub-

Committee was also informed that a planning application to use Berwick Street as a main entrance had been withdrawn and in 2005 Stringfellows, who used to operate the Premises, had agreed not to use Berwick Street as an entrance as a condition on receiving a premises licence. Therefore it could be expected that permission to use this entrance was required if permission had been applied for previously. The Sub-Committee was also informed that a shadow licence granted in 2019 covered both the ground floor and basement on the same terms as the current licence. The plans submitted for the shadow licence showed the entrance at Berwick Street, however they just detailed Berwick Street as an emergency escape. The representations received from local residents clearly identified issues with the use of Berwick Street as an entrance. The noise issues were relevant to the application as the layout variation potentially could affect the acoustic integrity of the building.

Ms McCaffrey, a local resident, explained that she had suffered noise disturbance originating from the Premises through the disposal of glass bottles and staff members talking. She had complained to Simmons, who operated on the ground floor, but she had been advised that it originated from the basement operation. Under previous operations she had been able to contact the licence holders but this had proven difficult since Ballie Ballerson had been operating. She advised that her three sons lived adjacent to the Premises one of which had Aspergers which made him sensitive to noise and crowds. This was a particular problem as she advised that queues often did form outside the venue with customers congregating in the local vicinity and not being dispersed appropriately by members of staff.

Mr Baylis confirmed that the applicant would contact Ms McCaffrey and ensure she was provided with a contact number so she could raise with them any issues directly affecting her property. With regard to noise disturbance created through the disposal of glass bottles this could not have originated from Ballie Ballerson as they did not dispose of any glass containers externally. The application before the Sub-Committee concerned the basement area only with the plans attached to the licence clearly displaying Berwick Street as a main entrance. No conditions were attached to the licence either prohibiting this entrance from being used or requiring an alternative entrance to be used. Therefore, this aspect of the application had been withdrawn as it was superfluous to the application. No representations had been received from the Police and the issues raised by local residents had to be considered irrelevant as the application dealt with internal layout changes only. The Premises was located in a very busy area and levels of background noise could be expected to be higher than in other areas.

Mr Armstrong advised that because of the ticketing system used at the venue it meant it did not have large volumes of people arriving at the same time and therefore queues only formed on very rare occurrences. He wanted to ensure that the Premises was a good neighbour to local residents and efforts would be made to ensure this situation improved. The Sub-Committee was also informed that a glass crusher was used on site at the Premises and therefore any noise disturbance from glass bottles could not have originated from the venue.

In response to questions from the Sub-Committee, Mr Baylis confirmed that the Premises currently used Berwick Street as an entrance which was actually of

benefit to customers and residents as this pavement was wider than the entrance on Wardour Street. With some internal changes, the Wardour Street entrance could still be used. However, it was situated next to the entrance to Simmons and would therefore locate two busy entrances next to one another.

Mr Brown accepted that the Berwick Street entrance was currently in use but queried if it could lawfully be used based on the uncertainty of the plans. The applicant had asserted that only the current plans could be relied upon, however the difficulty was that residents should not be expected to suffer if the plans submitted were incorrect.

The Sub-Committee carefully considered the application and noted the concerns raised with regards to the plans and whether the applicant was permitted to use Berwick Street as a main entrance. It was not the responsibility of the Sub-Committee to determine which plans had been attached to the licence historically and therefore they had to base their decision on the current plans attached to the licence. These clearly showed that Berwick Street could be used as a main entrance by the applicant, which it was already doing and had apparently been doing for some time. The agreement not to use the Berwick Street entrance in 2005 did not appear to be legally binding as it was not incorporated into the licence and was merely an agreement with Stringfellows. The plan attached to the licence for the shadow licence was only applicable to that licence and not the licence held by the applicants.

In all the circumstances, therefore, the applicant's decision to withdraw this aspect of the application was considered to be an appropriate and understandable approach in the circumstances, resulting in only the internal layout changes to be decided upon. These internal changes were considered satisfactory by Environmental Health in terms of public safety and as such the Sub-Committee agreed to grant the application accordingly. Even if the Licensing Sub-Committee did have the power to prevent the use of the Berwick Street entrance, it did not think it was appropriate to do so in response to this variation application.

The Sub-Committee also recognised, however, that clear concerns, highlighted in the representations, had emerged with regards to the operation of the Premises. It was considered that local residents were experiencing disturbance through customers congregating outside the Premises in Berwick Street creating noise issues and possibly through the disposal of waste, in particular glass bottles. It was unknown whether the concerns about the disposal of glass bottles arose from either the ground floor or basement operations or whether the source may have been elsewhere due to a lack of clear evidence. In any event, however, there was evidence that a degree of public nuisance was being caused to residents which did arise as a result of either the operation of Simmons on the ground floor or Ballie Ballerson in the basement. Since both venues were covered by the same licence, both operators had to carefully consider how they operated in order to minimise their impact on residents. These concerns had been raised and if they were not addressed residents did have the option of bringing review proceedings if they considered it to be appropriate. The Sub-Committee welcomed the applicant's assurances that a direct telephone number for the Premises would be made available to local residents.

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### 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.
10. Admission of children to the premises must be restricted in accordance with the film classification recommended by the British Board of Film Classification or recommended by this licensing authority as appropriate

***Conditions Consistent with the Operating Schedule***

11. The following number of registered door supervisors and managers shall be on duty to ensure that all relevant conditions on the licence are being complied with:
- from 9pm, a minimum of 1 SIA and 2 managers;
  - from 10pm, a minimum of 3 SIA and 3 managers

In addition, there must be a sufficient number of such supervisors or managers to ensure a ratio of 1 supervisor or manager for every 40 customers on the premises. The ratio must apply by reference to the number of customers in the basement and on the ground floor.

12. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.
13. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
14. 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.

15. 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.
16. There shall be no striptease or nudity, and all persons shall be decently attired at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue licence.

***Conditions attached after a hearing by the licensing authority***

17. An attendant shall be on duty in the cloakroom during the whole time that it is in use.
18. The number of persons accommodated at any one time (excluding staff and performers) shall not exceed the following: Ground floor 300; Basement 350; with a maximum capacity of 600 at any one time. The number of person accommodated at any one time (excluding staff and performers) shall not exceed 50 after 04.30.
19. On any evening where the premises or part of the premises are open for public music, dance and entertainment, alcohol may not be sold or supplied to persons admitted after 23:00 other than to:
  - (a) Persons taking a table meal; or
  - (b) Persons who have paid a minimum admission fee of at least £5 for music, dancing and entertainment (not to be credited against consumables); or
  - (c) Persons who have paid a minimum annual membership fee of at least £150 payable in advance for music, dancing and entertainment (not to be credited against consumables) and their bona fide guests. A list of all persons who have paid an annual membership fee and their guests will be held at reception for inspection by relevant authority; or
  - (d) Persons given free membership and their bona fide guests where there has been an interval of at least 24 hours between application for membership. A list of all persons who have free membership will be held at reception for inspection by the relevant authority; or
  - (e) Persons who are bona fide guests of the licence holder or management, a list of whom shall be kept at reception for inspection by the relevant authorities; or
  - (f) Artistes and persons employed by the premises; or
  - (g) Persons attending a private function; the function organiser's name and address to be kept at reception for inspection by the relevant authorities.
20. Substantial food and non-intoxicating beverages, including drinking water, shall be available throughout the permitted hours in all parts of the premises where intoxicating liquor is sold and supplied for consumption on the premises.

21. No payment shall be made by or on behalf of the licensees to any persons bringing customers into the premises.
22. There shall be no gaming on the premises otherwise than machines authorised by Part III Gaming Act 1968.
23. A registered chauffeur service will operate for patrons. Patrons will be advised of this service when booking tables, when entering the premises and at time of departure. Customers will usually remain upon the premises whilst waiting for their transport and will then be escorted to the vehicle. A traffic controller will be employed at the premises to ensure that any disturbance remains minimal.
24. If there is a queue outside the premises it will be managed responsible to ensure that there is minimal disturbances and no obstruction is caused to the public highway.
25. The premises will offer substantial food at all times it is open to the public. There will be a large area set aside for formal dining on the ground floor. The purpose of patrons attending the venue will be for the style of entertainment and not to partake in irresponsible promotions of alcohol.
26. All deliveries will take place during appropriate times to prevent disturbance. Refuse will be collected by an approved contractor or the council.
27. The licensable activities will only take place within the domain of the premises and patrons will not be permitted to remove alcohol unless as part of an approved bona-fide off-sale. Drinking on the street will not be permitted.
28. Patrons will be encouraged to leave by an appropriate method of transport by door staff.
29. Accompanied children will only be permitted to enter the premises when there is a private function at the premises, for example family celebrations or corporate functions. On these occasions striptease and table-side dancing entertainment will not be permitted.
30. The hours for the sale of alcohol may be extended on New Year's Eve to commence at 10:00 on 31 December and terminate at 04:00 on 02 January.
31. The hours for the provision of regulated entertainment (recorded music; facilities for making music and similar; facilities for dancing) may be extended on New Year's Eve to commence at 10:00 on 31 December and terminate at 06:00 on 02 January when the 2nd January is any day of the week from Tuesday to Sunday inclusive .
32. The hours for the provision of late night refreshment on New Year's Eve may be extended until 05:00.
33. In relation to the morning on which British Summer Time begins, the hours for

the sale of alcohol and provision of regulated entertainment (recorded music; facilities for making music and similar; facilities for dancing) shall terminate at 05:00.

34. In relation to the morning on which British Summer Time begins, the hours for the provision of late night refreshment shall terminate at 05:00.
35. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police, which will record the following:
- (a) all crimes reported to the venue
  - (b) all ejections of patrons
  - (c) any complaints received
  - (d) any incidents of disorder
  - (e) all seizures of drugs or offensive weapons
  - (f) any faults in the CCTV system or searching equipment or scanning equipment
  - (g) any refusal of the sale of alcohol
  - (h) any visit by a relevant authority or emergency service.

### **3 PALM PALACE RESTAURANT, 84 EDGWARE ROAD, LONDON, W2 2EA**

#### **LICENSING SUB-COMMITTEE No. 2**

*Thursday 30th January 2020*

Membership: Councillor Tim Mitchell (Chairman), Councillor Louise Hyams and Councillor Aziz Toki

Legal Adviser: Barry Panto

Policy Adviser: Kerry Simpkin

Committee Officer: Tristan Fieldsend

Presenting Officer: Michelle Steward

Relevant Representations: The Metropolitan Police, Licensing Authority, Environmental Health, The Marylebone Association, Connaught Court Tenants Association and one local resident (objecting)

Present: Mr Nigel Carter (Agent, representing the Applicant), Mr Nadir Ali (Director of Applicant Company), PC Adam Deweltz (Metropolitan Police), Mr Dave Nevitt (Environmental Health), Ms Karyn Abbot (Licensing Authority), Ms Maria Johnson (Senior City Inspector) and Mr Richard Brown (Solicitor, Citizens Advice Bureau Licensing Advice Project, representing The Marylebone Association)

**Palm Palace Restaurant, 84 Edgware Road, London, W2 2EA ("The Premises")  
19/15290/LIPV**

1.	<p><b>Conditions being Varied, Added or Removed</b></p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p><u>Current Condition 13:</u></p> <p>“All tables and chairs in the outside area shall be removed or rendered unusable by 23:00 each day”</p> </td> <td style="width: 50%; vertical-align: top;"> <p><u>Proposed Condition 13:</u></p> <p>“All tables and chairs in the outside area shall be removed or rendered unusable by 01:00 each day”</p> </td> </tr> </table>	<p><u>Current Condition 13:</u></p> <p>“All tables and chairs in the outside area shall be removed or rendered unusable by 23:00 each day”</p>	<p><u>Proposed Condition 13:</u></p> <p>“All tables and chairs in the outside area shall be removed or rendered unusable by 01:00 each day”</p>
<p><u>Current Condition 13:</u></p> <p>“All tables and chairs in the outside area shall be removed or rendered unusable by 23:00 each day”</p>	<p><u>Proposed Condition 13:</u></p> <p>“All tables and chairs in the outside area shall be removed or rendered unusable by 01:00 each day”</p>		
	<p>Amendments to application advised at hearing:</p> <p>None.</p>		
	<p>Decision (including reasons if different from those set out in report):</p> <p>The Sub-Committee considered an application by Palm Palace Restaurant Ltd for a variation of a premises licence in respect of Palm Palace Restaurant, 84 Edgware Road, London, W2 2EA.</p> <p>The Licensing Officer introduced the application.</p> <p>Mr Carter, representing the applicant, explained that the Premises had been issued its current licence in May 2019 which had a condition attached to it requiring all external tables and chairs to be removed or rendered unusable by 23:00 each day. The addition of this condition was viewed at the time by the Sub-Committee as being a positive step in ensuring the licensing objectives were promoted. The Sub-Committee was informed that the area where the tables and chairs were located was a private forecourt. The application was seeking to amend condition 13 in order to permit the use of external tables and chairs located on the forecourt until 01:00.</p> <p>Before the current licence was issued the Premises did not benefit from a licence and, as such, tables and chairs were placed in the forecourt area until 01:00. Mr Carter advised that this had led to no detrimental effects on the local area. It was acknowledged that objections had been received to the application, but the Sub-Committee’s attention was brought to the fact that no representations had been received from residents living directly above the Premises. The residents had actually actively supported the application resulting in seventeen letters of support having been received. The residents located in the vicinity which had objected were considered to live closer to other premises which opened later than 23:00 and permitted the smoking of shisha outside.</p> <p>Mr Carter described the busy nature of Edgware Road which attracted large numbers of middle-eastern customers who tended to dine out at later hours. This was one of the reasons why many restaurants in the area traded to 01:00 or later. Mr Carter was not aware of any complaints having been made about the Premises or it giving rise to any issues regarding crime and disorder, therefore the extension in hours for the tables and chairs would have no negative impact on the licensing objectives. Since 2011 the number of licensed premises in the Edgware Road Cumulative Impact Area (CIA) had decreased therefore it could be expected that there would be a reduction in crime and disorder in the local area. Any concerns over dispersal at later hours had been alleviated through the</p>		

introduction of the 24-hour tube service, plus the area was heavily serviced through night buses.

It was acknowledged by Mr Carter that there was evidence that the applicant had not been applying with the conditions on the current licence. The applicant had placed tables and chairs on the forecourt for use by customers after 23:00 hours and was aware that this was not acceptable. If the Sub-Committee was minded to grant the application assurances were provided that external tables and chairs would be removed after 01:00 otherwise review proceedings could be brought against the Premises.

Mr Carter expressed the view that the application should be granted as it had not been demonstrated that permitting external tables and chairs to be used until 01:00 would adversely impact on the licensing objectives. Due to the limited number of tables and chairs it would not create any additional noise in what was already a noisy area. Other premises located in close proximity opened until 01:00 or later and provided shisha. Prior to 2019 the Premises had successfully provided external tables and chairs on the forecourt to later hours without any issues being reported. No residents located above the Premises had objected to the application and had indeed actively supported it. Finally, the Sub-Committee was advised that granting the application would actually allow more control to be exerted over the licence. In addition, the extended hours would help support the Premises financially in what were challenging times for licensed premises.

PC Deweltz, representing the Metropolitan Police, confirmed that their representation was maintained on the grounds of prevention of crime and disorder. The Premises was located within a CIA and as it provided late night refreshment until 01:00 it had the potential to be an attractive destination for people who had been consuming alcohol. If the application was granted the Sub-Committee was advised that it could lead to intoxicated persons congregating outside therefore leading to increased levels of crime and disorder. It was recognised that the Premises had not been a source of crime however it was located in close proximity to an area which did experience high crime levels.

Mr Nevitt, representing Environmental Health, confirmed that he had no specific concerns with regards to the Premises which he advised was a small, well run operation. The issues concerning the application was that it was situated within a CIA and that concerns had been raised about extending the hours of use for the outside area. It was considered that prohibiting the use of external tables and chairs for premises after 23:00 was usual because after this time they had the potential to become a nuisance for local residents. It was acknowledged that Edgware Road was a busy area and this application was unlikely to add to already high noise levels but the issues around being located within a CIA were wider than that. Increased levels of cumulative impact generally happened later in the evening and this application was seeking to extend the hours permitting the use of the external tables and chairs. The Council's Statement of Licensing Policy highlighted that CIAs could not sustain any further increase in late night activities. By extending the hours of use for the external tables and chairs it would attract additional people into the vicinity later at night which would then have the potential risk of increasing cumulative impact. Mr Nevitt also brought to the Sub-Committees attention that a common source of disturbance to residents

originated from premises removing external tables and chairs later in the evening.

Ms Abbot, representing the Licensing Authority, stated that the Premises was located within a CIA with the application proposing to permit the use of the external tables and chairs for two hours longer than was currently allowed. In reaching its decision, the Sub-Committee which granted the original licence on 30 May 2019 welcomed that the outside seating area would be rendered unusable at 23:00 everyday and considered this to be an improvement to the CIA. The previous Sub-Committee had also welcomed that the Premises was moving away from providing shisha but, based on the current operation, this did not appear to be the case.

Ms Johnson, a Senior City Inspector, was invited by Ms Abbot to address the Sub-Committee. The City Inspectors had submitted five witness statements with regards to the Premises which confirmed that hot food and drink had been offered to customers seated in the outside area after 23:00. In addition, the smoking of shisha by customers seated in the outside area after 23:00 had also been witnessed taking place (though it was acknowledged by the Sub-Committee that the smoking of shisha was not a licensable activity and this did not constitute a breach of the licence). The City Inspectors had spoken to the applicant about the breaches of the licence and were advised that these had potentially occurred due to the financial challenges the Premises was facing. Bearing in mind these breaches, Ms Johnson expressed no confidence that the applicant would abide by the conditions on the licence if the hours permitting the use of the external seating area were extended. The Sub-Committee was also informed that the Council's Planning department was currently taking enforcement action against the applicant for breaches of the Premises planning conditions.

The Sub-Committee was interested to learn from the applicant what assurances could be provided that the conditions on the licence would be observed if the application was granted? Mr Carter acknowledged that breaches of the current licence had occurred due to the financial difficulties the Premises was facing, which the granting of the two additional hours would help alleviate. Shisha was still being smoked in external areas as this helped attract customers to the establishment. The applicant was aware that breaches of the conditions could lead to review proceedings being brought against the Premises, but assurances were provided that from hence forth all conditions would be abided by. Removing external tables and chairs later in the evening would not be an issue as the applicant owned the next-door premises where they would be stored. In terms of crime and disorder, the Premises had previously operated to later hours with no reports of any issues arising. Finally, with the reduction in licensed premises in the Edgware Road area and the introduction of the 24-hour tube service the dispersal of customers to a later hour was unlikely to add to cumulative impact.

Mr Brown, representing The Marylebone Association, expressed concerns that the extended hours would create dispersal issues in the Marylebone area. In addition, breaches of the current licence had been evidenced which was not encouraging. The applicant had suggested that granting the licence would allow more control to be exerted over the Premises, however this would only be the

case if the conditions were complied with.

In response to a question from the Sub-Committee regarding the use of shisha, Mr Carter explained that the applicant owned the next-door premises. It was envisaged in the future that the two premises would be amalgamated into one establishment which would operate as a restaurant without the need to supply shisha. The Sub-Committee asked Mr Carter if the applicant would be content for a condition to be added to the licence to prevent smoking (including shisha) from taking place in the external area after 11 pm. Mr Carter stressed that currently shisha was a significant part of the business. Nearby premises provided it and their customers would expect it to also be provided, so it was requested no condition restricting its use be placed on the licence.

The Sub-Committee carefully considered the application and the evidence provided by all parties. The Sub-Committee gave particular weight to the evidence provided by the City Inspectors which detailed the applicant's lack of compliance with the conditions on the existing licence. The fact that, despite a warning having been issued to the applicant regarding breaches of the conditions observed in November 2019, four further breaches were evidenced in January 2020 was of great concern. These breaches took the form of allowing the external tables and chairs to be used by customers after 23:00 for the consumption of hot food and drink, contrary to condition 13.

The Sub-Committee took these breaches very seriously and considered that this lack of compliance with the conditions on the current licence provided no confidence that the amended hours requested in respect of the external tables and chairs would be observed. It was also noted that the Premises was located within a CIA, an area where it was considered that any further late night-time activity levels had the potential to accentuate the risk of a variety of harmful outcomes in the vicinity. Therefore, the fact that the Premises had been using the external tables and chairs to later hours than permitted was considered a significant breach of the conditions. The Sub-Committee therefore refused the application accordingly.

The Licensing Sub-Committee did also want to record its disappointment that the applicant had not acted in accordance with the submissions that it had made to the Licensing Sub-Committee on 30<sup>th</sup> May 2019, which had led to the current licence being granted until 1 am. The applicant had indicated that it would operate solely as a restaurant. Although the smoking of shisha was not a licensable activity, it could give rise to anti-social behaviour, and the applicant had indicated that the shisha products would be removed if they were granted a licence to provide light night refreshment inside the premises. It was partly for that reason that they had agreed to a condition being imposed to the effect that the tables and chairs would be removed or rendered unusable by 23.00 hours each day. The licensee needed to understand that the relationship between licensees and the licensing authority had to be based on mutual trust and confidence. If further breaches of the licence took place, it was highly likely that prosecution proceedings would be initiated and there was also a strong possibility that the existing licence would be reviewed, possibly resulting in the licence being revoked.

**4 BANJARAH 79-81 MORTIMER STREET LONDON W1W 7SJ**

The application was granted under delegated authority.

The Meeting ended at 1.25 pm

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

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