



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (4)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (4)** held on **Thursday 21st May, 2020**, This will be a virtual meeting.

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

1 MEMBERSHIP

There were no changes to the membership.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

1 AMAZONICO, 10 BERKELEY SQUARE, LONDON, W1J 6AA

WCC LICENSING SUB-COMMITTEE NO. 4

Thursday 21st May 2020

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

Officer Support: Legal Officer: Barry Panto
Committee Officer: Georgina Wills
Policy Officer: Amit Mistry
Presenting Officer: Kevin Jackaman

Application for a Variation of the Premises Licence [20/01396/LIPV]

Full Decision

Premises

Amazónico
Ground Floor and Basement
10 Berkeley Square

London
W1J 6AA

Applicant

Mosela Investments SL (Haig Didizian in attendance)
Represented by Stephen Walsh Q.C. and Alun Thomas

Cumulative Impact Area?

No

Ward

West End

Summary of Application

This is an application by Mosela Investments SL to vary the premises licence in respect of the premises known as Amazónico which operates from the ground floor and basement of 10 Berkeley Square, London W1J 6AA.

The restaurant was granted a licence in February 2019 and opened in November 2019. This application seeks to increase the hours for licensable activities in the basement only from Wednesday to Saturday and also seeks to increase the opening hours for an additional 30 minutes beyond the terminal hour for those licensable activities.

The increase in hours sought for the licensable activities is 90 minutes from Wednesday to Saturday (from 01.00 to 02.30). The applicant originally sought an increase of 60 minutes on a Sunday but that has now been withdrawn. There is a corresponding increase in the opening hours for 2 hours on Wednesday to Saturday (from 01.00 to 03.00).

For the avoidance of doubt, Mr Thomas clarified at the hearing that the applicants were no longer seeking to withdraw their existing permission to provide licensable activities on a Sunday before a bank holiday. They originally sought to do that because they had applied to extend the hours on a Sunday and would not have required the hours on a Sunday before bank holidays. Having withdrawn the extension of hours on a Sunday, they now wanted to retain the existing permission that they had for Sundays before a bank holiday. It seems that the existing permission actually permitted licensable activities to commence earlier on a Sunday before a bank holiday, namely 10.00 to Midnight.

The licensable activities for which an increase in hours is sought are the sale of alcohol, the provision of late-night refreshment and the provision of recorded music

and live music. The applicant indicated that the capacity that will apply in the basement after 01.00 would be reduced from 100 persons to 80 persons. In addition, there would be no entry or re-entry to the premises after 01.00 other than for persons temporarily leaving the premises to smoke.

A number of areas had been identified on the plans of the premises that were hatched in red. There were two such areas on the ground floor and the entire basement was also hatched in red. A full restaurant condition applied to the entire premises (in accordance with Council's model condition 66) but these areas hatched in red were essentially operating on the basis that they could be used as holding bars, where customers could drink alcohol before a table meal, or as a bar to which customers could retire for an alcoholic drink after a table meal, or as a bar in which customers could consume alcohol during a meal.

This application was essentially seeking permission to use the bar area in the basement for an additional 90 minutes from 01.00 to 02.30 on the days following Wednesday to Saturday. A proposed amendment to condition 11 had originally suggested that the area hatched in red in the basement could also be used without the necessity of also consuming a table meal. However, that was further amended by the applicant so as to indicate that the consumption of alcohol in that area also had to be ancillary to a table meal apart from alcohol served to what were described as bona fide guests of the management, not exceeding 15 persons at any one time. There was no requirement for these sales of alcohol to bona fide guests to be ancillary to any table meal. It was also noted that there was no requirement for any of the customers in the areas hatched in red to be served by a waiter or waitress and there was no requirement for the meals to be substantial meals.

The applicant was finally seeking to extend off-sales of alcohol to alcohol that is consumed at tables and chairs in external areas to the front of the premises. That was essentially an extension of the provisions that applied to the main restaurant within the premises. The consumption of alcohol in those external areas, therefore, would have to be ancillary to a substantial table meal and the customers would have to be seated and served by waiter or waitress service. The use of the tables and chairs would have to cease at 23.00 and would also be subject to the applicant being granted a tables and chairs licence by the authority (which would also require the applicant to obtain the necessary planning permission for that use).

Representations Received

- Environmental Health (represented by Anil Drayan)
- Metropolitan Police (WITHDRAWN)

- 7 local residents (some of whom are represented by Richard Brown from the CAB Licensing Advisory Service)
 - Mrs Jaleh Zand (Flat 9, 17 Berkeley Street) – in attendance.
 - Dr Ulrich Brandt-Pollmann (Flat 12, 17 Berkeley Street) – in attendance.
 - Pami Paall (Flat 3, 17 Berkeley St)
 - Jo-Anne & Benety Chang (Flat 1, 17 Berkeley St)

- Grant Bowler (17 Berkeley St)
- Gordon Yeoman (Berkeley St)
- Mike Dunn (Residents' Society of Mayfair and St James). Councillor Pancho Lewis was in attendance to speak on behalf of Mr Dunn.
- Mrs Jaleh Zand (on behalf of 17 Berkeley Street Residents Association)
- Philip Smith, Smith Waters LLP (Managing Agents for Leaseholders at Berkeley House)

Summary of issues raised by objectors

- Essentially, possibility of public nuisance and especially noise.
- Suggestion that the neighbourhood is already saturated with late night operators and the residents are suffering from noise, excessive traffic, and anti-social behaviour.
- The operator opened in late 2019 and has no track record. It is suggested that the application is premature.
- Claim that planning consent restricts the hours to 1am Monday to Saturday and midnight on Sunday.
- Concern that the basement will be operated as a late-night bar rather than a restaurant to 2.30 am.
- Concerns that granting this application will create a precedent whilst recognising that each case must also be dealt with on merit.

Policy Position

As the premises is not situated within a Cumulative Impact Area, there is no policy to refuse this application which must be determined on merit. The existing hours already exceed core hours so this application, if granted, will be allowing an additional period that exceeds core hours. The Council's policy is that it will typically grant to core hours subject to other policies, but that does not mean that there is a policy to refuse applications that exceed core hours.

It will be noted that a number of residents are asserting that they are already experiencing cumulative impact within their immediate area and they have produced a report from Philip Hadfield in support of their assertion that they should be regarded as a Cumulative Impact Area (CIA). Statutory guidance does allow objectors to assert that they are experiencing a type of cumulative impact and the Sub-Committee can take that into account in determining the application on its merits. However, that does not alter the fact that the Council has not itself defined the area as a CIA and that does mean that there is no policy to refuse the application and also that there is no requirement for the applicant to demonstrate that the granting of the application will not add to cumulative impact.

Members have noted that the operators might not have planning permission to operate to the hours sought in the application but that is not something that should be taken into account in deciding whether to grant or refuse the application. If the

application is granted, that will be without prejudice to the planning situation and the applicant then has the option to seek the appropriate planning permission.

SUBMISSIONS

Mr Stephen Walsh Q.C., the applicant's Legal Representative advised that Amazonico had been trading as a Latin American and Sushi restaurant since November 2019. The Premises comprises a restaurant on the ground floor and ancillary holding Bar in the basement. The Premises was reported to be a 'high quality' restaurant which was operated by the Dogus Group Restaurant Chain which currently operates several restaurants in the West End and internationally. These establishments have been closed following the Coronavirus COVID 19 pandemic and will be required to adhere to government advice on social distancing when reopened.

Mr Walsh explained that the Applicant sought to increase the hours for licensable activities in the 'holding bar' in the basement only on Wednesday to Saturdays until 02:30 hrs and to extend the terminal hour for closing by a further 30 Mins. The licensable activities sought were the sale of alcohol, the provision of late-night refreshment and the provision of recorded music and live music. In addition, the Applicant also sought to vary their existing Condition 11 to allow alcohol to be served to 'bona fide' guests of the management, not exceeding 15 persons at any one time in the same area without them being required to be served a meal. The capacity in the basement would be reduced from 100 persons to 80 persons after 01.00. The Sub-Committee was advised that 80% of these patrons would have been served a meal at the premises. There would be no entry or re-entry to the premises after 01.00 other than for persons temporarily leaving the premises to smoke. A full restaurant condition applied to the entire premises. There is no direct entry into the basement from the street.

The Sub-Committee was advised that the applicant also sought the variation of their existing Condition 13 to enable the 'off sales' of alcohol to be consumed at tables and chairs in external areas to the front of the premises. These sales would be subject to the full restaurant condition set out as proposed condition 10. The tables and chairs would be rendered unusable at 23.00. Mr Walsh advised that there were no proposed changes to the premise's operation between Sunday to Tuesday at all and no changes on the Ground Floor at any time. Members were advised that the whole premises were subject to the restaurant model condition (Condition 10) subject to condition 11.

Mr Walsh explained that condition 11 allowed patrons to be served alcohol in the Ground Floor in designated areas and in the 'holding bar' in the basement before, during and after being served a meal. The Sub-Committee was advised that the 'ethos and nature' of the premises would not be altered by the variation and would remain a high-quality restaurant. The extended use of the basement would be restricted to customers at the premises and 'bona fide' guest of managers. There would be a maximum of 80 people dispersing from the premises during the extended hours and this would inevitably be gradual as there would be no new entry after 01.00. There is no history of complaints about the premises.

The Sub-Committee was advised there were no residential buildings in the immediate vicinity and that the variations sought would not impact any parties. Mr Walsh advised

that the premises was located around 100 to 170 metres away from properties in Berkeley Street and the variations sought would not have an impact on residents based in this area. There was reported to be a taxi rank located near the premises and it was considered that its location led patrons away from the restaurant and also away from Berkeley Square without the need to go down Berkeley Street. Mr Walsh asserted that the conditions proposed by the applicant would regulate usage and alleviate the concerns raised by parties. This include a time limit on usage of the basement.

Mr Walsh highlighted that there were no concerns from the Metropolitan Police and Licensing Authority about the premises operational style and its cumulative impact in the local area. The Sub-Committee was advised that there was no policy to refuse any aspect of the application as the premises was not situated within one of the Council's Cumulative Impact Areas. Mr Walsh asserted that the application should be considered on it's on merits and alongside current published Policy. The Sub-Committee was advised that they were required to balance the needs of the applicant with that of objectors and were reminded that the premises was not located near to residential buildings nor in a Cumulative Impact Area. Mr Walsh advised that there was no evidence that the premises would cause any cumulative harm in the surrounding areas and highlighted that only a moderate number of persons will be exiting the building during the terminal hour.

In response to questions from the Sub-Committee, Mr Walsh advised that 'bona fide' guests of the Management would be shareholders of the group company, company associates and senior representatives of other companies and that such persons could only attend in response to invitations from the management team. Management could not simply invite persons in from the street. He advised that the variation was sought for 24 months (in relation to the use of the basement) and commented that following the implementation of Covid-19 restrictions, the premises would be operating to a reduced capacity. He further stated that the time restrictions would enable any concerns about the premises adding to cumulative impact to be limited and would require the applicant to make a new variation application thereafter. The Sub-Committee were reminded that the variation sought was only applicable to the basement and after a period of 24 months the License would revert to the current License apart from the extension of the external seating. Mr Walsh confirmed that all external seating would be subject to the model restaurant condition and it was proposed that seating be restricted to 12 persons and be removed at 23:00 hours.

Mr Anil Drayan, on behalf of the Environmental Health Service, advised that a representation had been maintained as the hours of operation sought by the applicant were beyond 01:00 and there were potential concerns over public nuisance. He advised that the nearest 'sensitive receptor' was located at least 75 metres away. Mr Drayan advised that he had visited the premises on several occasions and confirmed that there was no access to the basement from the street. He advised that the conditions proposed by the applicant should be adopted and that there should also be additional conditions on dispersal. In response to questions from the Panel he advised that the premises were on the route of a night bus and that Berkeley Street was not the only exit route from the premises. The Panel was advised that there were up to six

different exit routes in the surrounding areas, though it was also noted that Berkeley Street could be used as a main exit.

Mr Drayan confirmed that there were no residential buildings in the immediate surrounding area and the premises was situated next to other commercial properties. He advised that the basement was subject to Condition 11 which permitted patrons to consume alcohol prior, during and after a meal. The variation sought by the applicant would not remove the requirement for a meal to be consumed, apart from those “bona fide” guests permitted in the area by management. Mr Drayan advised that the Bar area in the basement would not be advertised and that patrons would have had to have visited the premises beforehand in order to know of its existence. He advised that the above was the operational style of the premises and that, in these circumstances, this area would not need to be further conditioned.

The Sub-Committee was advised that there would be no operational use of the Ground Floor Restaurant after 01:00 and was recommended that this be conditioned and for extended hours to be permitted in the basement only. The Sub-Committee noted the potential for the premises to become a destination venue but was reminded that patrons would need to be approved by management if entering after 01:00 and that these numbers would be limited. Mr Drayan advised that the premises had disability access.

Richard Brown, Legal Representative representing a number of objectors, including Mrs Jaleh Zand and Dr Ulrich Brandt-Pollmann, asserted that the variation sought by the applicant would harm the Licensing Objectives and would give rise to negative cumulative impact in Berkeley Square, Berkeley Street and Dover Street. Mr Brown reminded the Panel that objections could be made on the grounds of negative cumulative impact and these included areas which were not situated in the CIA. Mr Brown asserted that the evidence of negative cumulative impact was contained in the representations but also referred to Dr Hadfield’s Report that appeared in full in the supplemental agenda pack. He commented that it had found that there was a negative impact in Berkeley Square, Berkeley Street and Dover Street and that this arose from ‘hybrid premises’ that were restaurants which morph into bars during late hours. He expressed the view that the application came under this classification.

Mr Brown said that it was not correct to suggest that the residents had no concerns about the external use proposed but accepted that the main thrust of the objections was about the increased hours in the basement. With regard to the external use, he asserted that the proposal to operate until 23:00 hours was too late. The Panel were informed that these external seating areas attracted owners of ‘super cars’ who wish to parade their motor vehicles in front of the customers.

Mr Brown also commented on the assertion that the basement would be used as a holding bar. He said that such a description did not hold true after 1 am. Regulated entertainment was sought for the basement and this included live music and recorded music. A question arose about the time that would elapse between customers eating at, say, 22.00 and remaining in the basement until 02.00 on the following morning. Such customers might well have consumed a great deal of alcohol and that would

negate the effect of the table meal. A question arose as to whether any food would be consumed in the basement after 1 am.

The Sub-Committee was advised that the premises basement bar was described on their website as a 'high energy space' with guest DJs and great views'. He advised that there were concerns that the premises may evolve into a 'hybrid premises' as mentioned in Dr Hadfield's Report. There were concerns that the Premises would become a destination venue and that the basement might operate as a bar from 1 am to 3 am. Dispersal would then become a major concern, irrespective of the fact that many of the residents lived more than 75 metres from the premises. Cumulative impact could have an impact in a wider area.

Mr Brown advised that similar proposed amendments to a Licence sought from nearby premises at 19 Berkeley Street had been refused and this was on the grounds of negative cumulative impact. Whilst previous decisions do not set a precedent and are not binding, this application was very similar to the application for Amazonico. It was of material relevance because the application was strikingly similar and, once again, there was no police representation. However, the Licensing Sub-Committee on that occasion refused the application on the basis of cumulative impact. The granting of this application would drive a coach and horses through everything that had been achieved by the residents so far. It would also be inevitable that other operators might make similar applications. Whilst the previous decision was not binding, it was also important that licensing decisions were consistent.

Mr Brown then made further reference to the report from Dr Hadfield as he did rely on it. The report was a comprehensive study conducted following observation of the area over 12 nights between August and December 2017 and had concluded that Berkeley Square, Berkeley Street and Dover Street were primary candidates for a CIA.

There were also concerns over the dispersals policies as it was considered that the majority of patrons were unlikely to use the taxi rank and would leave the premises on foot or via personal motor cars. The Panel were advised that these vehicles were often 'super cars' and that their engine noise would cause a nuisance. Mr Brown advised the Panel that the amendments to the premises would affect the Licensing objectives and that the determination of the application must be based on whether the variation would cause negative cumulative impact and whether it would actually promote the licensing objectives. He quoted paragraph 2.1.6 of the Council's Statement of Licensing Policy in support of that proposition.

Dr Ulrich Brandt-Pollmann addressed the Sub-Committee and advised that the extension of hours at the premises would attract more owners of 'super cars' and increase nuisances experienced by residents. He advised that outside seating of the premises attracted these vehicle owners and was in an area which enabled these cars to be showcased. This will be exacerbated if seating was to continue until 23:00. Dr Brandt-Pollmann asserted that nuisance would be experienced despite the premises being situated 75 metres away. There were also concerns that the premises would turn into a 'hybrid premises' as described above. There were also reports of illicit transactions taking place in the area. Dr Brandt-Pollmann confirmed that nuisance had increased in Berkeley Square, Berkeley Street and Dover Street.

The Sub-Committee noted that the premises was located near several luxury car showrooms and surrounding by 'up market' premises and provided a stage for vehicle owners to parade their 'super cars'. Dr Brandt-Pollmann advised that 'up-market' restaurants and clubs were prime locations for parading these types of cars.

Councillor Pancho Lewis addressed the Sub-Committee and advised that he was the Ward Councillor for Mayfair Ward and was representing Mr Dunn and local residents. Councillor Lewis advised that there were serious concerns over cumulative impact in Berkeley Street, Anti- Social Behaviour, the granting of late-night licences and also with areas becoming increasingly chaotic and disorderly. He advised that these concerns were increasingly being raised by residents. He further stated that the premises being located 75 metres from an area of sensitivity did not alleviate stated concerns.

Councillor Lewis referred to the Licensing Act 2003 and commented that the Act stipulated that negative cumulative impact on any of the Licensing objectives could be taken into consideration in areas which were not situated in a CIA. He also asserted that, in his opinion, the premises' clientele was unlikely to use public transport and was more likely to use taxis or be owners of 'super cars' which had loud engine noises. He also made the further point that, whilst there was an awareness that local businesses should be supported in particular during the Covid-19 Pandemic, it was important to ensure that the licensing objectives were not undermined. The residents' views should be taking into consideration and, in the case of this application, he thought that the granting of the application would undermine the Licensing Objectives. The Sub-Committee noted that Councillor Lewis could only represent residents who have formally objected to the application.

In response to questions from the Sub-Committee, Councillor Lewis advised that he had not received any complaints from residents about the premise's operation, but he also commented that the restaurant had only been in operation for a short period. Councillor Lewis acknowledged that business premises had not been consulted with regard to the Hadfield Report, but said that the absence of such consultation did not preclude the Sub-Committee from taking into consideration evidence such as Dr Hadfield's Report. Councillor Lewis suggested that the members of the Licensing Sub-Committee had to ensure they achieved a balance of needs between commercial ventures and residents. He concluded that the granting of the application would affect that balance.

In response to the Legal Officer, Mr Drayan advised that the Basement of the Premises could operate to a capacity of 80 and that Condition 9 which required the assessment of works had been hindered due to the outbreak of Covid-19. Mr Drayan advised that the capacity of 80 was to remain until further assessment of works have been undertaken and this was due to the Basements' escape routes width being narrower than what was required for capacities up to a 100. He advised that the Applicant was advised of mitigation measures to put in place in order for the basement to operate in full capacity. Mr Drayan advised that it was preferred that Condition 9 remains.

Prompted by a number of questions raised by Mr Panto, the Legal Adviser to the Licensing Sub-Committee, there was a discussion about a number of conditions that might be applied to the licence in the event of the application being granted. Alan

Thomas, the Applicant's Legal Representative advised that the premises hours of licensing activities and operational opening hours if granted would be extended for 24 months. The Sub-Committee was advised that the variation which allows limited 'bona fide' guests could remain or be removed after this period. Mr Walsh advised that conditions which required for Dispersal Plans after 01:00 and these documents being available for inspection; a conditions which stipulates no re-entry to the Premises after 01:00 apart from smokers and that customer are not permitted to use the Ground Floor of the Premises after 12:00 on Sundays and 01:00 on Mondays and the days following would be accepted. The Sub-Committee was advised by Mr Drayan that a Condition should be imposed which informs of the date in which the extended 24 months period lies within.

Mr Walsh in response to the Sub-Committee advised that the Ground Floor and Basement Areas are Conditioned which allows patrons to consume alcohol prior, during and after meals. The Basement is also used for patrons to also retire after a meal. The Sub-Committee was advised that the Premises would continue to operate under this model. Mr Walsh advised that external seating would be an extension of the restaurant use within the premises building.

Mr Drayan advised the Sub-Committee that pedestrians using the nearby footfalls would be unaware that there was a basement bar in the premises. He advised that a Planning Application and a Street Trade Licensing Application would need to be applied for and that the latter required that external seating are rendered after 23:00hrs. He advised that a neighbouring premise had an external seating area and basement which was larger than the applicant. There have been no concerns raised about this Premises and the establishment operated at a later time than the applicant. The Sub-Committee was advised that Environmental Services were aware of the nuisance caused by 'super cars' and noted that owners of these motor vehicles were drawn to particular premises in Berkeley Street.

Mr Drayan advised that Condition 9 would remain and that the permitted capacity of 80 in the Basement would not alter until further inspection is carried out by the Environmental Health Team. With regard to the variation being time-limited for two years, he advised that any future variations of conditions should take account of the existing wording of conditions and that all conditions should be worded so that they include a clear time frame for their individual operation.

In closing, Mr Brown advised the Sub-Committee that the application was the fourth substantive Licensing Applications submitted by the applicant during a short period. If this application were to be granted it would be a game changer. The Sub-Committee was advised that past applications had resulted in the extensions of the operational hours until 01:00 which was already a very generous licence. The Sub-Committee was advised that the premises had started trading in November 2019 and this variation application had only been submitted a few months later in February 2020. The residents found it very difficult to keep abreast of all the Licensing Applications made by the applicant.

Mr Brown advised that the application if granted would result in Berkeley Square, Berkeley Street and Dover Street becoming a 'late night destination'. He advised that an extension of hours in the basement area also involved regulated entertainment until 02:30 and that there may not be a 'food offer' after 01:00 hours. There were concerns

that these factors may result the premises turning into a 'hybrid premises' as described above. He asserted that granting the application would not be in accordance with the licensing objectives and that the premises would cause a negative cumulative impact.

Mr Brown advised that any condition which limited the operation of the variation to 2 years would not provide any comfort to the objectors as any negative cumulative impact will not necessarily be referable to these specific premises. That is the nature of cumulative impact. Consequently, there were concerns that any future applications might be difficult to be refused if there are no specific issues with the premises operational style. Mr Brown further advised that Mayfair was an unusual location and that the applicant's Dispersal Plans did not take account of its unique character.

The Chairman asked Mr Walsh to respond to the suggestion that there might not be a food offer after 01.00 hours. Mr Walsh confirmed that substantial food had to be available in all parts of the premises where alcohol is consumed (condition 15). He could not be sure what the take up of that facility might be in the basement which was primarily being used as a holding bar, especially as that might be an area where customers were drinking alcohol after a meal. It was not anticipated that there would be that much take up of that facility but it was available.

In response to a question from Councillor Glen, Mr Brown said that the "insulated" nature of the bar in the basement did not provide any comfort to the objectors and that the 'global effect' of having a premises operating until 03:00 was of concern. In reality, he asserted, the basement area would not be used as a holding bar. It was more likely to operate as the hybrid type of operation referred to by Dr Hadfield where alcohol would be consumed without food after a meal and with the addition of live and recorded music.

Dr Brandt-Pollmann advised that the variation being limited for a 24 months period was not a compromise. There were also concerns with the terminal hour and scepticism that the holding bar would remain unknown to consumers other than management's 'bona fide' guests. The "bar area" being inaccessible from the streets did not alleviate concerns. Dr Brandt-Pollmann advised that external seating provided a stage for 'super cars' to be exhibited and that there were concerns that such use would add to the negative cumulative impact.

Mr Walsh noted that that representations based on cumulative impact were permissible even when there was no Policy in place. However, he wanted to emphasise the point that he had made earlier in the hearing to the effect that Council's current CIA Policy could not be applied to this application and that the determination of the application should be based on individual merit and relevant Policy Areas. The Sub-Committee were reminded that they were required to take into consideration the Licensing Objectives having regard to its current Statement of Licensing Policy, including policy PB1.

He stressed that the external seating would be subject to the model restaurant condition and asserted that that there was no evidence that these premises were a magnet for 'super cars' or that the 'external seating' would attract these vehicles. There were other premises in Berkeley Street that had a very different operational model and it was those premises, and possibly one specific premises, that was attracting the problem of super cars.

Mr Walsh said that the premises would not morph into a 'hybrid premises' which entailed a restaurant / late night bar as the existing operational style would remain during the extended hours and that the Basement capacity would be restricted to 80 persons. The only relatively minor exception to that was the potential for 15 persons to be admitted as 'bona fide' guests of the management.

Mr Walsh asserted that the premises would not have an 'entertainment vibe' or become a destination bar. He advised that the applicant was fully aware of the concerns regarding Berkeley Street and those who made representations about the application. He asserted that the location and style of the premises and the proposed conditions would not recreate the concerns which arise from larger premises with flexible licensing operations in the vicinity. Mr Walsh indicated that the application complied with all of the Licensing Objectives and urged the Sub-Committee to grant the application in full.

DECISION

The members of the Licensing Sub-Committee had regard to all the detailed submissions that had been made to them, including the submissions contained in the report and, therefore, all written submissions from those persons who had not been able to attend the virtual hearing. It was noted that there were no objections from either the metropolitan police or the licensing authority itself, though it was also noted that there was no policy to refuse any aspect of the application as the premises was not situated within one of the Council's Cumulative Impact Areas. The application had to be determined on its individual merits.

Representations about possible cumulative impact were considered very carefully. It was noted that everyone agreed that there was no policy to refuse the application but that it was also possible for residents to object on the grounds that these specific premises might give rise to a negative cumulative impact on one or more of the licensing objectives, subject to them providing relevant evidence of that cumulative impact. The members of the Licensing Sub-Committee, in reaching this decision, want to make it absolutely clear that the Council's cumulative impact policy does not apply and that this decision has been taken on merit so as to promote the licensing objectives.

Whilst the residential objectors did not live within the immediate vicinity of the premises, they did live very close to the premises and they asserted that their local neighbourhood was already saturated with late night operators and that they were already suffering from noise, excessive traffic, and anti-social behaviour. They pointed out that the licensed premises opened in late 2019 and had no track record but it was also suggested that the current licence was very generous and already allowed the applicants to operate beyond the Council's core hours. They were also concerned that the basement of the premises would actually be operated as a late-night bar rather than a restaurant to 2.30 am. Richard Brown, representing a number of the residents, made reference to a report produced by Dr Philip Hadfield in 2017 which was a detailed study of the evening and night time economy in parts of Mayfair. Mr Brown

suggested that these premises would operate as what Dr Hadfield described as a restaurant hybrid, i.e., a restaurant that would morph into a bar at later hours.

The Licensing Sub-Committee did acknowledge the point that had been made on behalf of the applicants that Dr Hadfield's report was only part of the picture and it was noted that his findings had not, so far, been incorporated into any amendment of the Council's licensing policy. However, combined with the evidence that the residents had given about the disturbance that they allegedly suffer as a result of the proliferation of licensed premises in their area, it was considered that was a justification for their belief that they were experiencing negative cumulative impact.

The main thrust of this application related to the basement which was an area that was hatched in red and which was not, therefore, subject to the primary restaurant condition referred to above. This area was already licensed to 01.00 hours. The granting of the application would allow 80 persons to use that basement area for an additional two hours (allowing for the extended opening hours) and it was considered to be highly likely that many customers would do so having already consumed a meal, especially as no new entries will be allowed after 01.00. That would potentially allow those customers to consume alcohol for a further period of two hours. Moreover, the premises would also be licensed for recorded music and live music during that period. There would be no requirement for any of those customers to be seated so vertical drinking would also be a possibility.

It was also noted that M Walsh had himself suggested that there might not be that much take up of the food offer after 1 am in view of the fact that many of the customers will have already eaten. In reality, therefore, the amendment to the licence would certainly allow the basement to be potentially used as a late-night bar until 3 am. There was no policy to refuse that specific use, but it was that type of use that was a concern to the residents. Mr Brown had made the point that, although all the customers would have been required to have eaten a table meal (apart from up to 15 guests of the management), this application did provide the means for a considerable number of patrons to drink alcohol and to experience live or recorded music after 1 am without the need for any further consumption of food.

In those circumstances, it was considered that the application for extended hours in the basement and to allow bona fide guests of the management to consume alcohol without a requirement for that consumption to be ancillary to any food at all was not appropriate as it was highly likely to cause the negative cumulative impact referred to by the local residents and their representatives. **That part of the application was refused.** The Licensing Sub-Committee wanted to also make it clear that this part of the application was refused on merit and not because of concerns that it would set a precedent.

The local residents had also expressed concern about the potential use of tables and chairs outside the premises until 23.00 hours. However, the members of the Licensing Sub-Committee thought that this aspect of the application was of much less concern provided it was restricted to no more than the 12 persons identified by the applicants when making their presentation. That proposed use was simply an extension of the existing restaurant use inside the premises and there was no suggestion that the current use was causing or was likely to cause a problem. Full restaurant conditions applied so that customers had to be seated and had to be served by a waiter or

waitress. There was no suggestion that this would actually cause any serious dispersal issues and there were no residents in the immediate vicinity of the premises who were likely to be disturbed.

The objectors had suggested that the tables and chairs outside the premises might attract noise problems from persons driving super sports cars around the area. However, the Licensing Sub-Committee was not determining whether tables and chairs could be provided on the highway. That was a matter for the planning and highway authorities. The Licensing Sub-Committee was simply determining whether alcohol could be sold for consumption at those tables and chairs and it was not considered that such activity would itself give rise to the concerns identified.

That aspect of the application was granted subject to a further requirement that the number of persons using the tables and chairs at any one time should not exceed 12.

The applicant had proposed to amend the existing condition 13 on the licence which read as follows:

13. All sales of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the premises.

The applicant had proposed the following variation to condition 13:

13. Save for alcohol consumed at the designated external seating area, all sales of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the premises.

The applicant had also proposed the insertion of model condition MC70A which reads as follows:

“The sale and supply of alcohol for consumption off the premises shall be restricted to alcohol consumed by persons who are seated in an area appropriately authorised for the use of tables and chairs on the highway and bona fide taking a substantial table meal there, and where the consumption of alcohol by such persons is ancillary to taking such a meal, and where the supply of alcohol is by waiter or waitress service only”.

In granting the application for tables and chairs, the Licensing Sub-Committee decided that it would prefer to impose just one condition dealing with all off-sales as follows:

The sale or supply of alcohol for consumption off the premises shall either be (i) in sealed containers so as to ensure that it is not consumed on or in the immediate vicinity of the premises or (ii) for consumption by persons (not exceeding 12 at any one time) who are seated in an area appropriately authorised for the use of tables and chairs on the highway and bona fide taking a substantial table meal there; and where the consumption of alcohol by such persons is ancillary to taking such a meal; and where the supply of alcohol is by waiter or waitress service only.

This would replace the current condition 13. It was noted that there was an existing condition on the licence stating that there shall be no sales of alcohol for consumption

off the premises after 23.00. However, the Licensing Sub-Committee decided that it also wanted to impose model condition 20 so as to ensure that “All outside tables and chairs shall be removed from the outside area by 23.00 each day”. This would ensure that the tables and chairs would not be utilised beyond 23.00 for any ongoing consumption of alcohol thereafter which might, itself, be a further cause of nuisance to the residents living nearby.

2 18 RUPERT STREET, LONDON, W1D 6DD

WITHDRAWN

The Meeting ended at 12.00 pm

CHAIRMAN: _____

DATE _____