



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (2)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (2)** held on **Thursday 26th November, 2020**, This will be a virtual meeting..

Members Present: Councillors Tim Mitchell (Chairman), Jim Glen and Aziz Toki

1 MEMBERSHIP

- 1.1. There were no changes to the Membership of the Sub Committee
- 1.2. For the purposes of this meeting, the Chairman proposed that Councillor Glen be appointed Substitute Chairman. Councillor Toki seconded the nomination and Councillor Glen was duly appointed substitute Chairman.

2 DECLARATIONS OF INTEREST

- 2.1. There were no declarations of interest.

3 LICENSING APPLICATIONS FOR DETERMINATION

a No. 3 Chippenham Road

LICENSING SUB-COMMITTEE (2)
Thursday 26 November 2020

Membership: Councillor Tim Mitchell (Chairman) Councillor Jim Glen
and Councillor Aziz Toki

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

Application for a New Premises 20/09100/LIPN

Present: Mr Peter Conisbee (Agent, PC Licensing), Vaqas Farook
(Applicant, Vm Leasing Limited), Mr E M (Local Resident), Ms M

D (Local Resident), Ms E B (Local Resident) and Maxwell Koduah
(Environmental Health)

Premises: 3 Chippenham Road, London W9 2AH

Applicant: Vm Leasing Limited

Cumulative Impact Area: The Premises is not located within area of Cumulative Impact Area

Ward: Harrow Road

Summary of Application

This is an application for a New Premises Licence under the Licensing Act 2003 ("The Act"). The Premises intend to operate as a Hot Food Takeaway.

Proposed Activities and Hours

Late Night Refreshment (Indoor)

Monday to Sunday 23:00 to 01:00 hours

Hours Premises are Open to the Public

Monday to Sunday 08:00 to 01:00 hours

Representations Received

- Metropolitan Police Service
- Environmental Health Service
- 12 Local Residents

Summary of issues raised by Residents:

- The kitchen for this establishment does not have adequate mitigation measures for the filtration of smells emanating from within. A large number of local residents are currently unable to open their windows due to an overpowering smell of frying food, which often lingers until late into the night. Numerous residents have complained about this, yet nothing is done. Extending the business' trading hours will result in residents being exposed to these smells until the early hours, which is unacceptable.
- The current extractor system for this business (although ineffective, as noted above) is incredibly loud and causes a significant noise nuisance to residents such as myself, and can be heard by residents living on Harrow Road, Chippenham Road and Chippenham Mews. I cannot leave my windows open at night, as the noise is so loud that it stops me from being able to sleep.
- The business attracts a large number of delivery riders well into the early hours. There have been numerous incidents of couriers creating noise nuisances on the surrounding streets, as well as urinating (or worse) on the doorsteps of residents of both Chippenham Road and Chippenham Mews.

- No local residents wishes to stifle business during these difficult precedent, if this business was allowed to operate under extended trading hours, and would have significant, detrimental impact on the life of the local residents, such as myself. Unfortunately, I do not believe there to be any acceptable mitigations other than limiting operating hours in this instance, as the business management do not appear to wish to engage with local residents to improve the situation.
- I would ask the licensing committee please to take into account the voice of residents such as myself. I would also note that most residents have a very good relationship with the other food preparation businesses nearby, who have made significant effort to mitigate the impact of their businesses and ensure they do not disturb residents.

Policy Position

- HRS1
- FFP1

FULL DECISION

The Committee has determined an application for a New Premises Licence in respect of 3 Chippenham Road London W9 under the Licensing Act 2003 ("The Act").

Kevin Jackaman, the Presenting Officer introduced the application and advised that the Premises intended to operate as a Hot Food Takeaway. The only licensable activity sought is that of Late-Night Refreshment for the following hours, Late Night Refreshment (Indoor) Monday to Sunday 23:00 to 01:00 hours. Hours Premises are Open to the Public Monday to Sunday 08:00 to 01:00 hours. There was representation from Environmental Health and 12 Local Residents. The Metropolitan Police withdrew their representation following agreement of Conditions with the Applicant. The Application is not situated within a Cumulative Impact Area.

Peter Conisbee, the Applicant's Legal Representative advised the Sub-Committee that the Applicant had acquired the Premises in late 2019 and started trading on 1 February of this year. The Premises like other businesses has been affected by the Covid-19 pandemic. Vaqas Farook, Applicant, was reported to be a good operator and had undertaken numerous remedial works following complaints regarding nuisances emanating from the Premises and these works had costed over £3000. Mr Conisbee advised that Mr Farook had been commended by Officers for being proactive and had only been recently aware of the two complaints which had been lodged about the Premises. He advised that the Applicant was surprised that other residents had similar concerns with the complainants. He informed that Mr Farouk was only aware of residents that supported the Premises. Mr Conisbee commented that residents would have lodged their support of the establishment if it was widely known that the Application was to be considered at a Licensing Sub-Cttee.

Mr Conisbee advised that Mr Farook had agreed to a raft of Conditions with the Metropolitan Police and Environmental Health. He advised that issues regarding odour being emitted from the Premises was first raised in August and this matter had been dealt with. Mr Farook had contacted the complainant after the issue was raised to ensure that concerns had been resolved and was reported not to have received a

reply from the resident. Mr Conisbee advised that six weeks after initial contact, Mr Farook had been advised that there were still concerns with odour in particular during 02:00 hours. He advised that the establishment did not operate until 02:00 hours and there was uncertainty in which Premises the odour was being emitted from. Mr Conisbee advised that notices had been displayed inside the Premises requesting for drivers to be quiet and that conversation with individuals had been held about this requirement. Mr Farook was reported to have requested evidence of drivers causing nuisances and has yet received any information. He advised that delivery drivers were not directly employed by the Applicant and were part of the Uber Group.

Mr Conisbee advised that concerns over noise and odour was dealt with by the proposed Conditions 20 and 28. He advised that the decibel levels for the extract fan was 51dB(A) and this level was reached following additional work that had been carried out to reduce the noise level of the machinery. He advised that a request for an Independent Noise Assessment had been made to the Council and that this had yet to be undertaken. He commented that Mr Farook had acted diligently and undertaken all the requirements stipulated under the Act.

Mr Farook confirmed that he started to operate from 1 February 2020 and that concerns regarding the Premises had been inherited. He advised that a number of works had to be carried out and that some had been delayed due to the Covid-19 Pandemic. He advised that the Premises food standard rate had been increased from 2 Stars to 4 Stars after taking over the operation of the Premises. There were no concerns raised about the Premises during the summer. Mr Farook advised that he met with a resident following a complaint and that this was regarding building works which was being carried out on the Premises in August. The works carried out included sound proofing extractor fans by installing cladding and silencers and replacing old extractor fans with newer models. He advised that he had contacted the resident after the initial contact to discuss any further concerns and that the resident had failed to respond.

Mr Farook advised that the Premises had to adapt during the Pandemic and that all purchases were done via delivery. He advised that delivery drivers were not directly employed and that concerns regarding individuals could be reported to their employers. The Sub-Committee was advised that CCTV had been installed in the Premises and that delivery drivers could be identified. He commented that 'the line of communication was always open' to residents and that concerns were always addressed, and that feedback was always sought. Mr Farook advised the Sub-Committee that he believed that the Premises was targeted and felt that there had been 'character assassination' on his part. He commented that the accusations regarding the Premises such as 'gas lightening', management being uncooperative, blackmailing were all unfounded. He advised that there had been accusations of 'fly tipping' and that various visits by Council Officers had been undertaken and it was found that the Premises was adhering to rules regarding waste management. The Sub-Committee was advised that there were no complaints regarding noise nuisances emanating from the Premises. Mr Farook advised that a complaint had been recently received by a resident regarding pigeons accessing areas on the Premises and that this issue had been addressed. He commented that all complaints were taken seriously and swiftly resolved.

Mr Farook advised that he was aware of the four licensing objectives under section 4 of the Act and commented that Council Officers had commended the works which had been undertaken to mitigate concerns of residents. He advised that he had used Temporary Event Notices (“TENs”) during the period between September to October 2020 and that no concerns had been raised during the extended operational hours.

In response to questions from the Sub-Committee, Mr Conisbee advised that delivery vehicles varied and these included mopeds, motor cycles, bicycles and the occasional motorcars. The delivery Companies Deliveroo and Uber Eats are used to deliver orders. Mr Farook advised that delivery drivers are instructed not to let their vehicles idle, to be quiet and to refrain from congregating in certain areas. He advised that delivery vehicles are required to be ‘spread out’ and that drivers only visit the Premises when an order had been placed.

Maxwell Kudoh, Environmental Health advised the Sub-Committee that Conditions which had been agreed by the Applicant was sufficient to address the concerns regarding noise emanating from the delivery drivers and patrons. Mr Kudoh highlighted that the Premises operated as a fast food establishment and that meals purchased would be immediately consumed. He commented that a Condition which had been agreed by the Applicant and the Police prohibited such activities and this matter needed to be clarified. The Sub-Committee was advised that the Premises had been operating until 23:00 hours and that TENs had been used. During the period between 9 September and 14 November there have been 8 recorded complaints received from residents in relation to noise and odour being emitted from the Premises ventilation system. Mr Kudoh advised that the Applicant had responded to these concerns by undertaking remedial works such as cladding the ventilation system with acoustic jackets and introducing silencers. He advised that these measures implemented would bring the noise levels from 75 dB(A) to 51dB(A) according to the manufactures of the ventilation system.

Mr Kudoh advised that the output information of the ventilation system was difficult to quantify as the prevailing noise levels in the surrounding vicinity was unknown. He advised that information about current noise levels was required in order to ascertain whether the remedial works would mitigate concerns regarding public nuisance. He commented that if the Sub-Committee were minded to grant the application then a Condition should be imposed which requires an Acoustic Report which confirms that the current noise output compared to the prevailing noise climate, noise from the area and noise from the extractor system would not arise to any public nuisance. Mr Kudoh commented that acceptable noise level should be no higher than 10 dB(A) than the minimum background noise level. Mr Kudoh confirmed that the Premises Ventilation System was compliant to the Council’s requirement.

In response to question from the Sub-Committee Mr Kudoh advised that out of the eight complaints received regarding the Premises, one was in relation to odour and the remainder was due to noise nuisance. He informed that on 23 September 2020 cladding and acoustic jackets had been installed and on 10 November 2020 Mounted Disk and anti-vibration mount was installed. Mr Kudoh advised that these treatments had been undertaken to reduce noise levels and commented that two complaints were still received after these works had been undertaken. He commented that the Applicant had been responsive to residents. Mr Kudoh advised

that noise levels between 23:00hrs to 01:00hrs would be lower than the earlier trading hours. Mr Kudoh advised the Sub-Committee that the Applicant would be required to submit an Acoustic Report and that document would need to meet the requirements of Environmental Health.

Mr E M, local resident advised the Sub-Committee that the Premises was perpendicular to Chippenham Mews and advised that the area was relatively quiet and that there was ongoing road works. He advised that double lines were to be put in front of the Premises. The Sub-Committee was informed that on Chippenham Road a number of resident's bedrooms faced the back of the Premises and were informed that noise emanated from the Premises from this area. Mr E M advised that there were no concerns with other Premises. He commented that a local Pizzeria had a wood fire and used a natural aspirated extractor. The resident advised that it was uncertain on whether remedial work to reduce noise levels on the ventilating system was adequate and that findings on dB(A) levels should be verified further to ensure that they were adequate. He commented that 75 dB(A) was equivalent to a vacuum cleaner being operated in a room. The Sub-Committee was advised that the World Health Guidance on Community Noise states that noise annoyance started at 30 – 35 dB(A) and serious annoyance at 55 dB(A).

Mr E M advised that the noise from the extractor fan was audible along the Chippenham Mews and could be heard in resident's properties. He advised that Council Officers had recognised this; he commented that further nuisance would be caused if the Premises operational hours were extended. The resident advised that during the summer significant building works had been undertaken at the back of the Premises and contact had been made with Mr Farook with regarding disturbance due to the construction works. Mr E M advised that he had forwarded Mr Farook's contact number to other residents and that his neighbours also experienced nuisance during later hours. The Sub-Committee was advised that some local residents were reluctant to complain, and this was due to language barriers and concerns that their complaints would not be considered. Mr E M commented that 12 local residents had made complaints. He further commented that couriers would congregate on the roof of the Premises around 02:00 hours and that individuals would use Chippenham Mews for their toilet needs. The Sub-Committee was advised that other premises in the locality would monitor their couriers and that no nuisance emanated from these establishments.

Mr E M advised that vibrations from the extractor fan could be felt in a neighbour's corridor and that the individual had a child with mild autism and commented that noise exacerbated the minor's symptoms. The Sub-Committee was informed that signatories of the Petition which had been submitted in support of the Application did not include their addresses and that listed persons properties were at a distance from the Premises. Mr E M commented that residents were not anti-business and were aware of the constraints of Covid-19 on businesses. He commented that the Premises was located in a residential area and that the properties did not have good sound installation. He further stated that residents wished to be able to retire during the later hours without experiencing any nuisances.

Ms M D local resident addressed the Sub-Committee and advised that she had resided in the area for 10 years. The resident advised that during the summer period she was unable to open her windows and use the patio and this was due to the noise

and odour emanating from the Premises. Ms M D commented that her property had double glazing and that nuisances were still experienced. She advised that the Council had been contacted in May about the extractor fan and nuisances emanating from the Premises and the mal effects these had on amenities. The Sub-Committee was advised that an extension of the operational hours of the Premises would increase nuisances and effect residents during the nocturnal hours. She raised concerns about a precedent being set and concerns over other establishments applying for their operational hours to be extended. She further commented that couriers would urinate on resident's properties, would congregate on the roads and that motor scooters would be driven in the wrong direction of traffic. Ms M D commented that residents felt vibrations in their properties and advised that the extraction plant had been installed in February without Planning consent. She commented that local residents were not anti-business.

Ms E B local resident addressed the Sub-Committee and raised concerns regarding noise from couriers. The resident advised that she had a daughter who was autistic and was sensitive to noises. She advised that the Premises had been contacted about the behaviour of couriers and the nuisances experienced. The Sub-Committee was informed that couriers could be heard in resident's homes and this included when windows had been closed. She advised that the Applicant had suggested that they contact Deliveroo and Uber Eats to express concerns about their employees. There was contact with both companies regarding couriers however issues raised have still not been resolved. The Sub-Committee was advised that representation had been made to the Licensing Sub-Committee and this was due to the mal effect on amenities and also to ensure that concerns are adequately addressed.

In response to questions from the Sub-Committee, Mr E M advised that nuisances had continued to be experienced despite the works carried out on the extractor plant in September and November. He commented that the boundary wall at the rear of the business had been demolished and that cladding had been installed and that noise was no longer audible in this area of the Premises. Ms M D and Ms E B conferred and advised that they continued to experience nuisances despite the remedial works being carried out on the Plant.

In response to further questions from the Sub-Committee Mr E M advised that the Premises previous occupiers did not frequently use couriers and on average had one collection per week. He commented that the previous owners did not regularly use the extraction plant, and this was due to the lack of orders being placed and that the former occupiers had given up the lease due to the poor performance of the business. The Sub-Committee noted that there was planning permission for the extractor plant and that this had been in place for 10 years.

Mr E M advised that nuisances from the Premises had started to occur following the change in ownership. He commented that the Premises had multiple kitchens and that there was a constant cycle of deliveries from the establishment. Ms M D advised that there was three extractor plants at the back of the Premises and that the largest of the three had been newly installed and caused disturbances. She advised that the largest extractor plant was new and was not present 10 years ago nor was it a replacement.

The Legal Advisor to the Sub-Committee discussed likely Model Conditions in particular Model Condition 87 which required a slight amendment in that the wording should read 'omitted'. The Legal Advisor also stated that any proposed wording of a Condition in respect of the use of the Extractor Plant would require approval from the Applicant. Mr Kudoh advised that any likely Condition would require the Applicant to ensure that the Extractor Plant noise levels would be below 10 dB(A) of the background noise should be included. The Sub-Committee noted that a Works Condition could be added onto the License which stipulating the accepted noise level from the extractor plant. This Condition will automatically fall once the appropriate measures are put in place. The Committee noted that the Applicant had agreed to a Condition which stipulates that no noise should emanate from the Premises.

Mr Kudoh advised that he held concerns regarding resident's submission about the nuisances which they were encountering until 23:00 hours and commented that these needed to be resolved and this was regardless of whether the Application was either granted or not. He commented that the Conditions listed should mitigate concerns and that residents could seek a Review of the Licence if they were not being adhered to.

Mr E M in his summary advised that noise and odour emanating from the Premises caused nuisances as well as the couriers. He commented that the double yellow line was to be placed in front of the Premises and this will cause difficulties as couriers would have to be stationed elsewhere. He advised that the residents were not anti-business and that the Premises attracted nuisance and commented that no mitigation could occur with the couriers as individuals were reported to not be the Applicants employees. Mr E M further stated that the extension of hours would result in nuisance being experienced during the nocturnal hours.

Ms M D in her summary advised the Sub-Committee that the noise and vibration of the extractor plant was affecting basic amenities and caused nuisances during nocturnal hours. She commented that the extension of the hours would cause further nuisances and advised that the Premises had installed new kitchens and the food preparation started before 08:00 hours and ended after 01:00 hours. Ms M D stated that she had concerns on how the Premises would be monitored to ensure that they are adhering to all set conditions.

Ms E B in her summary advised the Sub-Committee that nuisance emanating from the Premises was having a mal effect on amenities and that her disabled daughter's symptoms were exacerbated by the disturbances.

Mr Conisbee in his summary advised the Sub-Committee that the Premises was not a restaurant and that food sold was not for immediate consumption and was wrapped and placed in bags. He commented that Environmental Health had previously visited the Premises and had not had any concerns regarding the noise level of the extractor plant. Mr Conisbee stated that one of the signatories of the Petition lived in close proximity of the Premises and that he had advised individuals not to include their address on the document as it was to be made public. He commented that Mr Farook had requested for the CCTV footage which had captured anti-social behaviour of couriers and stated that this had yet been provided. He advised that there were three other Premises which used couriers and that all nuisance from the mentioned could not solely be attributed to the establishment. Mr

Conisbree informed that he was in agreement that an Acoustic Report should be commissioned and that the Temporary Condition would be accepted.

Mr Farook in his summary advised that the extractor plant was not new and had been present for over 10 years. He commented that previous occupiers of the Premises had operated until 03:00hrs. Mr Farook advised that the extractor had been replaced and this was primarily due to concerns raised by residents regarding nuisances. He commented that the Premises only operated until 01:00 and this was during TENS. Mr Farook advised that he had not have any communication with Ms M D and Ms E B. He commented that all complaints received were dealt with by Management. He advised that Environmental Health had visited the Premises and had raised no concerns regarding noise levels. A 'sound check' of the Premises had been delayed and this is due to the Pandemic. Mr Farook commented that he was in agreement that nuisances should not emanate from the Premises and noted that the majority of concerns were about anti-social behaviour in Chippenham Mews. He commented that complaints had been received regarding Premises when the establishment had finished operating.

Mr Farook advised that couriers who engaged in anti-social activities would be dealt with appropriately and that their employees would be informed about misconduct. He commented that nuisance from couriers could not just be attributed to the Premises and that service was used by other establishments in the locality. He advised that the Premises had not been served with any Notices by the Council or requested to cease operation. Mr Farook advised that a Temporary Condition would be accepted and that an Acoustic Report would be commissioned. He commented that he was willing to work with residents to resolve issues and stated that extensions of the Premises operational hours would ensure that the establishment remains viable. Mr Farook commented on the difficulties experienced in the hospitality sector during the Covid-19 Pandemic.

The Sub-Committee's reasons for the Decision

Having listened to all parties the Sub-Committee decided that the Applicant had not provided sufficient reasons as to why the granting of the application would promote the licensing objectives and therefore refused the application for the hours sought for late night refreshment. The Sub-Committee accepted that whilst the Premises was not located in the Cumulative Impact Area, the residents' concerns of public nuisance were taken into account in reaching this decision. The Sub-Committee was of the view that granting the application would have the potential to cause public nuisance into the late hours. This would be exacerbated by the congregation of delivery drivers outside of the Premises, noise and fumes from delivery bikes and unavoidable noise when delivering food within the surrounding areas to residential addresses which would undoubtedly affect residents.

The Sub-Committee was disappointed that the Applicant had not commissioned a Noise Acoustic Report and agreed that a report would have been helpful. The Sub-Committee considered the proposed conditions offered by the Applicant to mitigate the concerns of residents but was not persuaded by the Applicant that these would go to the heart of the problems associated with nuisance. The Application was therefore refused.

“The hours requested to provide late night refreshment may have the likely effect of causing an increase in Public Nuisance and may affect Public Safety within the area As presented, the application would have the likely effect of causing an increase in Public Nuisance and may affect Public Safety within the area”

The Sub-Committee decided that the Applicant had not provided sufficient reasons as to why the granting of the application would promote the licensing objectives and therefore refused the application for the hours sought for late night refreshment.

The Sub-Committee has to consider the evidence before it and whether the four licensing objectives will be promoted. The Sub-Committee heard evidence from all the respective parties and in the light of considering that evidence refused the application for the reasons outlined below: -

The Sub-Committee has a duty to consider each application on its individual merits and is not bound by previous decisions on licensing applications that may or may not have been granted within the area. The Sub-Committee noted that the Applicant acquired the Premises in late 2019 and started trading in February of this year. However, due to the current Covid-19 pandemic the Premises has been affected like all other businesses and this was duly noted by the Sub-Committee. The Applicant has used the TEN regime under the Act to increase the hours for closing during the period September to October 2020.

The Sub-Committee heard evidence from 3 Local Residents that attended the hearing, namely Mr Matthew, Ms Demetriou and Ms Badaoui who have lived in their respective homes in Chippenham Road and Harrow Road for a considerable time and therefore know the area extremely well. The Sub-Committee was advised that residents were suffering nuisance which included an extractor fan attached to the Premises causing noise and emitting cooking smells. This was said to be a bone of contention amongst residents because they felt that the Applicant had not taken sufficient measures to prevent the noise from the extractor fan and cooking smells leaving the Premises at all hours of the day and night. It was submitted by the residents that these issues were leading to on-going nuisance problems which affected their lives daily and was intolerable, particularly for those with young children and whom also have special needs.

It was also submitted by residents that delivery drivers collecting food deliveries and congregating in the area late at night contributed to noise nuisance although the Sub-Committee realised that the Premises could not be blamed single handedly for this due to other nearby licensed premises also using delivery vehicles which in turn lead to loud voices, engines revving and general disturbances caused by this activity.

It was the Sub-Committee's considered view, however, that the increase in licensable activity for the Premises would lead to public nuisance particularly when delivery vehicles are leaving the Premises amongst other things.

The Sub-Committee noted from the papers that the Applicant had undertaken remedial works to the extractor fan by engaging professional engineers in September 2020 by sound proofing it with cladding and silencers but these

improvement works have not alleviated the problems associated with vibrations being heard inside resident' homes and outside the Premises. It was confirmed by the Applicant that the nature of the works replaced the old extractor fan with a new model (Woods 500 Max Fan) and did not involve installing a completely new system as that most certainly would have required planning permission. The Sub-Committee noted however, that no planning enforcement action could be taken due to the passage of time but nonetheless regarded this as useful information as part of the history relevant to the Premises.

The engineer's comments to the Applicant in respect of the works revealed that the extraction fan emits 75 decibels in terms of noise break out. This can be the equivalent to the sound of a vacuum cleaner as alluded to by one of the residents.

Environmental Health stated that a Noise Acoustic Report is recommended to determine whether the noise levels are acceptable and if further adjustments were needed in order to prevent outbreak of noise and disturbance to residents. In this respect the Sub-Committee had to be satisfied that the public nuisance licensing objective was to be promoted.

The locality of the area was a crucial factor in the decision making of the Sub-Committee because whilst it is accepted the area is mixed with commercial premises and residential there are also residential properties in close proximity to the Premises. The Sub-Committee noted that there was a 231 residential count within the immediate area. With that specific issue in mind it could not ignore the fact that granting the application would exacerbate the problems residents already experienced with noise, loud voices, mopeds coming and going picking up of deliveries leading to vehicular traffic increase and greater footfall.

The Sub-Committee heard evidence from residents in respect of those with young children and those with special needs and what affect that may have on their ability to enjoy their homes and sleep. The Sub-Committee could not ignore these requests and has to consider in addition the human rights of those objecting under Appendix 6 on page 94 of the Statement of Licensing Policy ("SLP") which states **"The Council has a duty under the European Convention on Human Rights to protect the rights of a resident to privacy and family life (Article 8) and the rights of a licence holder to operate his business without undue influence (Article 1 of the First Protocol). These policies are intended to reflect the balance to be struck between interests where they conflict"**.

The Sub-Committee also considered its Public Sector Equality Duty under section 149 of the Equality Act 1990 when determining the matter.

In terms of the policy considerations, the Committee had regard to Policy HRS1 which states: **"Applications for hours within the core hours set out below in this policy will generally be granted, subject to not being contrary to other policies in the SLP"**.

The Committee also had regard to Policy FFP1 which states that "Applications will only be granted if it can be demonstrated that the proposal meets relevant criteria in Policies CD1, PS1, PN1 and CH1 as well as Paragraphs 2.5.18 and 2.5.19.

The Sub-Committee appreciated it has discretion when considering the merits of the application but took the view that granting the application would be contrary to other policies. The Sub-Committee had regard to all relevant policies under the SLP in particular Policy PN1; the prevention of Public Nuisance.

Policy PN1 states: **“To prevent public nuisance the Licensing Authority will apply the following criteria and take into account the following considerations, where relevant, in determining applications and reviews”**. Paragraphs 1-3 on pages 20-21 of the SLP sets out the various considerations the Sub-Committee should have regard to and the reasons for the policy are contained in paragraphs 2.2.9-2.2.16 on pages 22-24 of the SLP.

Referring to the Acoustic Report that EH recommended that should be carried out at the Applicant’s cost and expense the Sub-Committee had regard to Appendix 11 on pages 106-114 of the SLP – (Guidance on noise) in particular Paragraph 9 thereof which sets out the matters an Acoustic report should contain by way of criteria.

The Sub-Committee noted that there was a recurring theme echoed by residents during the hearing in relation to complaints of noise created by the extractor fan, smells from cooking and the nuisance caused by delivery drivers to the Premises. The Sub-Committee accepted that whilst the Premises are not located in the Cumulative Impact Area, the residents’ concerns of public nuisance were taken into account in reaching this decision.

The Sub-Committee felt that it needed to strike the right balance when considering the merits of the application and the evidence before it and did not arrive at the decision to refuse the application lightly having regard to the full set of circumstances of the case and the suggestion of a proposed works condition effectively meaning that the licensable activity applied for would not take effect until such time as the works condition was met by the Applicant. However, the Sub-Committee felt that the commission of a Noise Acoustic Report was fundamental and key to its decision making and in the absence of this document it could not consider granting the application as a responsible Sub-Committee would do in the circumstances having regard to its powers contained under the Act and the Home Office Guidance best practice on page 75 (paragraphs 9.42-9.44 refers) **“when determining actions that are appropriate for the promotion of the licensing objectives”**.

Conclusion

The Sub-Committee sympathised wholly with the Applicant that businesses are struggling in the current climate for obvious reasons and the financial implications for the business may not be good. The Sub-Committee could see that the Applicant was professional in his approach and appeared a good operator and wanted to help solve the current problems with residents, however, the Sub-Committee was surprised that given the uncertain times the hospitality sector is currently experiencing that the Applicant did not commission a Noise Acoustic Report as aforesaid and even more reason for such a report to have been provided to the Sub-Committee for consideration as this would have helped enormously. This would have given the Sub-Committee further confidence in its determination of the matter, by assessing

the noise break out from the Premises, notwithstanding the many concerns raised by residents regarding nuisance.

The Sub-Committee did not feel that it was in possession of the necessary evidence in order to make a proper and reasonable decision which was essential to this matter. It could not dismiss the overwhelming evidence the residents had given to the Sub-Committee.

The Sub-Committee was of the view that granting the application would have the potential to cause public nuisance into the late hours. This would be exacerbated by the congregation of delivery drivers outside of the Premises, noise and fumes from delivery bikes and unavoidable noise when delivering food within the surrounding areas to residential addresses which would undoubtedly affect local residents.

The Sub-Committee did properly consider whether the proposed conditions offered would mitigate the concerns of residents but was not persuaded by the Applicant that these would go to the heart of the problems associated with nuisance. In fact, the Sub-Committee came to the conclusion that any increase in hours would have the reverse effect by further compounding the fears of residents resulting in undermining the public nuisance licensing objective and this approach would not help the Applicant to achieve the promotion of the licensing objectives which ultimately is what the 2003 Act is designed to do. Accordingly, the Sub-Committee's stance to refuse the application is considered appropriate, proportionate and reasonable in all of the circumstances of the case.

The Licensing Sub-Committee
26 November 2020

b No's. 30-31 Kendal Street

LICENSING SUB-COMMITTEE (2)
Thursday 26 November 2020

Membership: Councillor Tim Mitchell (Chairman) Councillor Jim Glen
 and Councillor Aziz Toki

Legal Adviser: Horatio Chance
Policy Officer: Aaron Hardy
Committee Officer: Georgina Wills
Presenting Officer: Kevin Jackaman

Application for a New Premises Licence 20/07769/LIPN

Present: Mr Niall McCann (Agent, Keystone Law Solicitors), Steven Whibley,
 (Applicant: Brunchco Uk Limited), Richard Brown (Representing
 The South East Bayswater Residents Association, SEBRA -) and
 John Zamit, (Chairman, SEBRA),

FULL DECISION

Premises: 30-31 Kendal Street, London W2 2AW

Applicant Brunchco Uk Limited

Cumulative Impact Area: The Premises is not located within in any area of

Ward: Hyde Park

Summary of Application

This is an application for a New Premises Licence under the Act by the Applicant for a bakery/restaurant.

Proposed Activities and Hours

Sale by Retail of Alcohol (On and Off)

Monday to Saturday 11:00 to 20:30 hours

Sunday 12:00 to 18:30

Hours Premises are Open to the Public

Monday to Saturday 08:00 to 21:00 hours

Sunday 08:00 to 19:00 hours

Seasonal timings for the opening hours shall be from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

Representations Received

- John Zamit Chairman of SEBRA

Summary of issues raised by SEBRA

- "The South East Bayswater Residents Association (SEBRA) welcomes back the Le Pain Quotidien business to Kendal Street. We note that they have applied for a new Premises License and are please note many of conditions on previous licence on these premises have been incorporated in this application. However we object that there is no condition that alcohol should be ancillary to a table meal and this was on the previous Premises under Condition 14.
- We also would like a condition controlling the hours of refuse & recycling collections and suggest no collections between 0700 and 2000. We also note that commencement of sale of alcohol on Sunday is 11.00, not the usual 12.00 but is the 11.00 to cover "off sales' with sales inside to be from 12.00 to match WCC Core Hours Policy
- We believe these additional conditions are required in order to control any nuisance in the area, which is predominantly residential with flats above the premises. In connection with reference to the outside tables and chairs, we could not

see a plan and not clear if private or public but we note conditions to control their use. We are content for our representation and contact details to be sent to applicant.

- As always, SEBRA is willing to discuss this application with the applicant and/or their agent, with a view to resolving our concerns and hopefully avoiding the need to have a Licensing Committee hearing”.

Policy Position

There is no policy to refuse this application (as the Premises was not situated in a Cumulative Impact Area). The application must, therefore, be determined on merit. Policies HRS1 and PB1 apply.

SUBMISSIONS AND REASONS

The Sub-Committee considered an application by the Brunchco Uk Limited (The Applicant) for a New Premises Licence under the Licensing Act 2003 (“The Act”) in respect of 30-31 Kendal Street, London W2 2AW

Kevin Jackaman, the Presenting Officer introduced the application and advised that the Premises intended to operate as a bakery/restaurant and was not located in any area of Cumulative Impact. The Premises had the benefit of a premises licence from January 2011 until June 2020 when the licence lapsed due to the insolvency of the licence holder. The new operator of Le Pain Quotidien is headed by Steven Whibley who was the Managing Director of the business until 2011. The hours and activities sought are the same as those previously granted. Following consultation with the sole interested party, the Applicant has amended the opening hour on a Sunday to 12:00 in line with Westminster’s core hours.

Mr Niall McCann, The Applicant’s Legal Representative advised that the hours sought were the same as those previously granted and the Application’s aims was to reinstate a previous licence which was in place for 10 years. The concept of the business was to remain the same namely to operate as a bakery/restaurant. The Application would bring the Premises in line with other branches of Le Pain Quotidien who were permitted to serve alcohol with pastries. Mr McCann advised that the only contention between parties was whether the Model Restaurant Condition should be adopted by the Applicant. He advised that the other Branches based in the City did not have the Model Restaurant Conditions. There have been communications between the Applicant and South East Bayswater Residents Association (SEBRA) and the latter’s suggestions for the Model Restaurant Condition could not be accommodated as it would not fit the business model. The Branch in Covent Garden was reported to have a Condition which required the sale of alcohol to be ancillary with food after 20:00 hours.

Mr McCann advised that concerns that the Premises may transform into a Bar would be mitigated by the Applicant agreeing to the Model Condition 86 which would require licensable activities to be ancillary to the main function of the Premises which was namely a bakery / café. He advised that operational hours sought were modest and within core hours and that the Premises was not located within a Cumulative Impact Area. The Applicant had also proposed a number of Conditions which would

mitigate concerns. There was no history of complaints during the previous 10 years of trade and during TENs (Temporary Events Notices). The Sub-Committee was advised that there had been no objections from local-residents or responsible authorities and that the Applicant was a good Operator and had an impeccable track record. He commented that the Applicant had previously adhered to set Conditions and would promote all the Licensing Objectives.

In response to questions from the Sub-Committee, Mr McCain confirmed that the previous License had a Condition which required the sale of alcohol to be served with a substantial table meal. Mr McCain advised that there was confusion on what was to be considered as a substantial meal and the purpose of the Application was to ensure the Premises was brought in line with the other branches and enable patrons to be served alcohol with pastries.

Richard Brown representing SEBRA advised the Committee that there were no concerns regarding the Licensing and the main sticking point regarded the Applicants refusal to adopt the Condition which required the sale of alcohol to be ancillary to a substantial meal. He advised that a Model Restaurant Condition had been in place in the former Licence since 2011 and that this ensured that the Premises did not turn into a bar and also gave protection to residents. He commented that the proposed MC 38 did not refer to a substantial meal but only a table meal and was a 'lesser version' of what was required in the previous Licence. He acknowledged that there was no clear definition as to what constituted a 'substantial meal',

Mr Brown confirmed that there had been dialogue between the Applicant and Mr Zamit Chair of SEBRA. He advised that the role of the Amenity Societies was to ensure that its Members were protected. He commented that MC 86 as proposed by the Applicant would be acceptable. Mr Brown confirmed that SEBRA proposed timing for the collection of waste or recycling materials were between 20:00 to 07:00. He commented that clarification needed to be sought on whether the external area capacity was to remain at 20.

Mr John Zamit, Chairman, SEBRA advised that he was familiar with the Premises and had frequently visited the establishment for several years. He confirmed that there had been dialogue with the Applicant and SEBRA. Mr Zamit commented that he was unaware of the other Branches of Le Pain Quotidien and advised that the Premises was situated in a residential area. He commented that the Licence sought was a Premises Licence and that a future operator could potentially change the style and nature of the Premises making it become more 'bar led'. Mr Zamit advised that the former licence had a restaurant model condition and had operated without any concerns and no requests had been made for the Premises licence to be altered in order to mirror the business model of the other branches.

Mr Zamit commented that other objections may not have been lodged by residents and this could be because individuals were of the view that the old Premises Licence was to remain. Mr Zamit advised that the proposed Condition would act as a safeguard to ensure that the Premises does not become 'bar led' and ensure that the surrounding areas are not misused. Mr Zamit advised that Planning permission for external seating had been granted to the Premises and that the licence had to be renewed each year.

The Sub-Committee commended the work of SEBRA and raised questions on whether Model Condition 86 would mitigate concerns. In response to questions Mr Zamit advised that the said Condition did not address concerns and commented that the Premises could offer special concessions on alcohol and could become 'bar led'. He commented that the layout of the Premises was styled as a bar. He advised that during the summer periods there were concerns with vertical drinkers, smokers and potential nuisances being caused due to the Premises doors being left opened. Mr Zamit advised that MC 38 which was proposed was not as restrictive as the previous Condition which had been imposed on the former Licence.

In his summary, Mr McCann advised that the Premises could not become a bar and that only an application for a full variation of the Premises Licence could permit this. The Sub-Committee was advised that any perspective licence holder wishing to change the use of the Premises would need to apply for a variation in the usual way and demonstrate that the four Licensing Objections would be upheld. He commented that the Premises would close at 21:00 and these hours were not conducive for a bar. Mr McCann advised the Conditions proposed by the Objector did not meet the business model and would prevent patrons being able to be served alcohol with pastries for example. He commented that the Applicant would accept a Condition which limited the external area to 20 persons. Mr McCann commented that the other Premises were situated in areas which had residential properties that were in close proximity. He commented that the change of hours regarding the timings of waste collection and recycling that were earlier mentioned would be accepted.

Having listened to all parties the Sub-Committee granted the Application. The Sub-Committee decided that the Applicant had provided valid reasons as to why the granting of the application would promote the licensing objectives. The Committee noted that the Applicant was a good operator and had agreed to amend the opening hour on a Sunday to 12:00 following consultation with the sole interested party. The Applicant had agreed to Model Condition 86 which stipulated that all licensable activities should be ancillary to the main function of the Premises as a Bakery/Café. In determining the Application, the Sub-Committee limited the number of persons permitted to be seated in the outside area to 20 and restricted the times for deliveries and collections between 20:00 and 07:00 (on the following day). The Sub-Committee agreed that the Conditions imposed on the license would negate the concerns raised by the objector and ultimately have the effect of promoting the licensing objectives. The Sub-Committee therefore granted the Application accordingly. The Sub-Committee was of the view that granting the application was appropriate and would promote the licensing objectives.

The application is granted subject to the following conditions in addition to the Mandatory conditions applicable to this type of application:

Conditions imposed by the Committee after a hearing

1. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.

2. Customers temporarily leaving the premises to smoke will not be allowed to take drinks outside with them.
3. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of a Metropolitan Police Crime Prevention Officer. 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. Recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.
4. 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 to the public. This staff member must be able to show a Police or authorised council officer recent data or footage with the absolute minimum of delay when requested.
5. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
6. The supply of alcohol shall be by waiter or waitress service and to seated persons only.
7. All sales of alcohol for consumption off the premises shall be restricted to wine, shall be in sealed containers only and shall not be consumed on the premises.
8. Alcohol consumed outside the premises building shall only be consumed by patrons seated at tables.
9. 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.
10. A proof of age scheme, such as Challenge (21/25), shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence or passport.
11. There shall be no self service of spirits on the premises.

12. No supply of draught beer.
13. The highway and public spaces in the vicinity of the premises are kept free of litter from the premises at all material times to the satisfaction of the council.
14. All waste is to be properly presented and placed out for collect no earlier than 30 minutes before the scheduled collection times.
15. There shall be no deliveries to the premises or rubbish collection or recycling materials (including bottles) from the premises between 20:00 and 07:00 on the following day.
16. The maximum number of persons permitted in the premises at any one time (excluding staff) shall not exceed:
Ground Floor 44 persons (excluding retail area)
Outside Seated Area 20 persons
17. Outside tables and chairs shall be removed by 21.00 hours on Monday to Saturday and 19:00 on Sunday.
18. There shall be no striptease or nudity, and all persons shall be decently attired at all times.
19. No entertainment, performance, service, or exhibition involving nudity or sexual stimulation which would come within the definition of a sex establishment in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Greater London Council (General Powers) Act 1986 (whether or not locally adopted), shall be provided.
20. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
21. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
22. The pavement from the building line to the kerb edge immediately outside the premises, including gutter/channel at its junction with the kerb edge, is swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.
23. Seasonal timings for the sale of alcohol and opening hours shall be from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.
24. The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a Bakery/Café.

The Licensing Sub-Committee

26 November 2020

The Meeting ended at 4.10 pm

CHAIRMAN: _____

DATE _____