



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (1)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (1)** held on **Thursday, 19th November 2020**, This was a virtual meeting.

Members Present: Councillors Heather Acton (Chairman), Susie Burbridge and Maggie Carman

1 MEMBERSHIP

There were no changes to the Membership of the Sub Committee.

For the purposes of this meeting, the Chairman proposed that Councillor Susie Burbridge be appointed Substitute Chairman. Councillor Burbridge accepted the appointment.

2 DECLARATIONS OF INTEREST

There were no Declarations of Interest.

3 LICENSING APPLICATIONS FOR DETERMINATION

The following licence applications were presented to the Sub Committee for determination.

a WOK TO WALK: APPLICATION TO VARY PREMISES LICENCE

Present: Dror Appel (Applicant); Marcus Lavell (Counsel for the Applicant); Richard Brown (Citizens Advice Westminster, Licensing Advice Project); and Conrad Roeber (Objector).

Representations: Representations had been received from the Environmental Health Service; the Licensing Authority; and several residents.

Applicant: Mr Dror Appel

Ward: West End

CIA¹: West End

Summary of Application

The application was for a variation of the Premises licence to extend the hours for Late Night Refreshment and the opening hours of the Premises, as follows:

¹ Cumulative Impact Area

Monday to Wednesday: 23:00 hours to 04:00 hours
Thursday to Saturday: 23:00 hours to 05:00 hours
Sunday: 23:00 hours to 01:00 hours

The application also sought to amend Condition 3 of the licence to read “No amplified music shall be played within the Premises after 05:00 hours”.

INTRODUCTION

The Chairman welcomed everyone to the meeting and introduced the Members of the Sub Committee and the Council Officers who would be supporting the Sub Committee before explaining the procedure that would be followed at the meeting.

The Chairman then invited the Presenting Officer, Ms Jessica Donovan, to present the report that was before the Sub Committee.

PRESENTATIONS AND SUBMISSIONS

Ms Jessica Donovan, Licensing Officer

Ms Donovan, Licensing Officer, summarised the application as set out in the report before the Sub Committee, noting that several representations had been received, including representations from responsible authorities and local residents.

In conclusion, Ms Donovan confirmed that the Premises, which were in the West End Ward, were within the West End Cumulative Impact Area (CIA).

Mr Marcus Lavell On Behalf of the Applicant

Mr Lavell stated that, in presenting the application, he would address the following three themes:

1. The nature of the Premises and the application sought;
2. The concerns of residents; and
3. The wider policy considerations.

The Nature of the Premises

Regarding the nature of the Premises, Mr Lavell made the following points.

- (a) The Applicant had been operating several Premises in central London for 13 years, some of which traded to 5 AM.
- (b) The nature of Wok to Walk meant that it was not a destination venue and relied on passing trade in areas where there was a large footfall.
- (c) The Premises did not sell alcohol and food was made to order for dining in or takeaway. The current application proposed that customers would only dine in after 1 AM.
- (d) When ordering food, customers could choose from several bases and toppings. The present application sought to allow the hot toppings choice from the hot menu (which was more expensive than the cold menu) to be available after 1 AM.

- (e) The number of persons permitted in the Premises at any one time was 15 and, with social distancing being imposed, this had been reduced to nine customers.
- (f) The ability to sell hot food to the small number of customers would, over a period, make a significant difference to the revenue of the business.

Concerns of Residents

Mr Lavell addressed the concerns expressed by residents, as follows.

- (a) Potential Noise Impact: several conditions, as set out in the report, had been proposed to address this concern. It was proposed that there be a door supervisor to ensure that the door to the Premises remain closed when it was not in use.
- (b) No queueing would be permitted outside the Premises after 1 AM. This would be enforced by the SIA door supervisor.
- (c) No music would be played inside the Premises.

Mr Lavell proposed that the combination of a limited number of persons, the provision of a door supervisor, and the Premises being double glazed would reduce the risk of any significant noise escaping from the Premises.

As it was not the Applicant's intention to trade beyond 2:45 AM on weekdays and Sundays, Mr Lavell sought to amend the application accordingly.

Policy Considerations

Mr Lavell referred to Policy FFP2,² specifically Paragraph 2.5.18.³ He stated that it was Wok to Walk's business model to sell to passers-by as it was not a destination venue. The limited capacity of the Premises meant that, when it was full, passers-by would not be allowed to queue outside the Premises. Therefore, there would not be crowds of people outside the Premises causing a nuisance.

Mr Lavell noted that there had been no representations from the Police who would have made representations if they thought that the application would give rise to issues of crime and disorder.

Regarding the Policy's concern about fast-food Premises which sold hot food being more attractive to people who had been drinking i.e. customers preferred to eat hot food after leaving late-night Premises, Mr Lavell again referred to the limited capacity of the Premises, noting that the ability to sell hot food to even a limited number of customers significantly affected the economic viability of the business.

² It is the Licensing Authority's policy to refuse applications in the Cumulative Impact Area, other than applications to vary hours within the Core Hours under Policy HRS1

³ Paragraph 2.5.18 Fast-food Premises which are open after 23:00 hours can attract large groups of customers, many of whom have been consuming alcohol in pubs, bars, or nightclubs sometime some distance away. The congregation of people around these Premises leads to additional noise and disturbance and further congestion in the area. Although Premises which serve cold Food & Drink and not subject to licensing and may stay open all night, they are not so attractive to people who have been drinking as those providing hot food and drink. The Council considers that the addition of hot fast-food and hot drinks adds to the attractiveness of Premises to people who have been drinking and who are more likely to be involved in antisocial behaviour.

Given the unprecedented challenges of Covid-19, Wok to Walk had complied with the Government's regulations to manage the pandemic. Implementing these measures, along with the significantly reduced numbers of tourists and office workers in the West End, had not only affected Wok to Walk but had affected the West End stress area. He stated that the policy had been put in place to address circumstances which had since been displaced and which may remain displaced for the foreseeable future. Therefore, it was Mr Lavell's contention that, if the Sub Committee was not persuaded that the application, if granted would have no effect on the stress area, then time and circumstance could provide an exception to the Council's policies and provide a lifeline to the business.

In response to several questions by Members, Mr Lavell provided the following information.

- (a) That the Applicant now wished formally to amend the application as stated in his presentation.
- (b) The Premises did operate, but not consistently, given the circumstances of the pandemic, to sell cold food to the hours specified in the application.
- (c) Regarding the proposed condition that there would be no sales of hot food or hot drink for consumption off the Premises after 01:00 hours Monday to Saturday and 00:00 hours on Sunday, the door supervisor would be responsible for informing patrons that there was no takeaway food available after those hours.
- (d) Staff were suitably trained to deal with any disruption both within and outside the Premises including possible disruption by customers being told that takeaway food was not available after certain hours. In addition, there were regular staff meetings to discuss dispersal of customers and related issues.
- (e) The Applicant would be willing to prohibit the sale of cold food for takeaway after the prescribed hours if the Sub Committee so wished.
- (f) The Premises licence prohibited the playing of music after 11 PM.

Mr Kevin Jackaman On Behalf of the Licensing Authority

Mr Jackaman stated that the proposed Conditions put forward by the Environmental Health Service, as set out in the Additional Information Pack, were welcomed, as were the amendments to the application. However, it remained the Council's policy to refuse applications for Premises which were within a CIA, and that the policy would only be overridden if there were exceptional circumstances. Therefore, the Licensing Authority maintained its representations, noting that it was for the Sub Committee to determine whether the Applicant had established, to the Sub Committee's satisfaction, that there were exceptional circumstances that would allow the Sub Committee to grant the application.

Mr Maxwell Koduah On Behalf of the Environmental Health Service

Mr Koduah stated that, following discussions with the Applicant, the proposed conditions set out in the Additional Information Pack had been agreed with the Applicant. He noted that, following the amendment to the application by Mr Lavell, it would be necessary to seek clarification on the hours it was proposed that the Premises would be open on Sunday i.e., until 11:45 PM or 12 midnight.

Regarding the potential source of noise nuisance, Mr Koduah stated it was customers who were outside the Premises or who were walking towards or away from the Premises that presented the greatest likelihood of noise nuisance. He stated that having a door supervisor would allow the potential for noise nuisance outside the Premises to be managed. However, the Premises were not able to control possible nuisance by customers walking towards or away from the Premises. It was for this reason that the Environmental Health Service had maintained its representation.

In response to a question by the Chairman, Mr Lavell confirmed that it was proposed that the Premises opening hours for Sunday remain the same i.e. until midnight.

Mr Richard Brown, Citizens Advice Westminster, Licensing Advice Project (On Behalf of Mr Conrad Roeber)

Mr Brown stated that Mr Roeber's representations were set out on Page 10 of the report. In addition, there was as a representation from The Soho Society on Page 25 of the Additional Information Pack supporting Mr Roeber's representations.

Mr Brown stated that the Premises, should the application be granted, would serve as a "honeypot" as identified in the Council's Statement of Licensing Policy i.e. it would serve to attract customers from other Premises at the end of the night. This gave rise to concerns about how the proposed conditions would operate to prevent queueing outside the Premises. In addition, fast-food Premises tended to have a high turnover of customers which had implications for residents regarding noise nuisance.

Regarding the location of the Premises on Brewer Street, near to where it met with Wardour Street and where Old Compton Street met with Wardour Street, could be described as the epicentre of the West End CIA. An inventory by The Soho Society had shown that there were nine licensed Premises in this area open until 3 AM. Consequently, if Wok to Walk was open as these Premises were closing, customers would not disperse as they left these Premises, contrary to the aims and objectives of the CIA policy.

The amendments had significantly changed the application. However, they did not address the issue of the retention of people within the CIA as they left other licensed Premises.

Regarding the effect of coronavirus, Mr Brown stated that there was nothing to prevent the Premises from remaining open to serve food that was below ambient temperature. However, it was not clear whether the Premises had stayed open late at night to serve cold food as its website stated that the Premises closed at 1 AM, Monday to Saturday, and midnight on Sundays. In addition, Mr Roeber could not recall the Premises being open after 1 AM, the Premises having been closed for much of the last year due to the redevelopment of Brewer Street.

Mr Brown suggested that the sale of cold food late at night would be minimal as customers leaving other venues who wanted to buy food would want to buy hot food.

In conclusion, Mr Brown stated that the application, as it stood, was contrary to policy and that the Applicant had not established any grounds that might be

deemed exceptional and which would allow a time-limited Premises licence to be granted.

Mr Conrad Roeber, Resident

Mr Roeber stated he was speaking on behalf of those residents who had objected to the application as they were all of one mind. He said that residents accepted that Soho was, by its nature, a noisy area, but that there were rules and policies in place to maintain the peace when "Soho went to sleep". The fact that many Premises stayed open till 3 AM was not ideal as far as residents were concerned, but the noise of people dispersing from late night Premises very quickly died down.

He stated that the amendments to the application were welcomed. However, the CIA policy was there to protect residents and that residents did not see why that policy should be waived on this occasion as any Premises that remained open till late at night would add to the impact in the CIA and add further to the nuisance to residents.

In response to a question by the Chairman, Mr Roeber confirmed that, although the Premises had been closed for some time due to the redevelopment in Brewer Street, he could not ever recall the Premises having opened later than 1 AM.

In response to a few questions by Cllr Carman, Mr Roeber stated that people would leave other licensed Premises within the vicinity at different times and that these Premises would be particularly busy on Thursday, Friday, and Saturday nights, and very quiet on Sunday and Monday nights. Generally, people started to disperse from the various Premises from midnight followed by a brief burst of dispersal activity at 3 AM when the streets would become quiet at about 3:20 AM. Residents had been concerned about the application as first presented as they believed there would be a demand for hot food after 3 AM resulting in continued noise nuisance from the time Premises emptied at 3 AM until the time Wok to Walk closed.

In response to a question by the Chairman as to why the residents would be opposed to a time-limited licence as suggested by Mr Lavell, Mr Brown stated he was aware the Sub Committee had been sympathetic to the plight of traders under the current circumstances and that some applications had been granted for discrete periods of time. Not knowing how coronavirus might affect the CIA meant there was nothing upon which the Sub Committee could rely when determining whether the application fell within an exception to the CIA policy based on the effect of coronavirus. However, if the Sub Committee was minded to grant the application, it would be the residents' request that the variation to the licence be time-limited and for no more than one year.

Mr Roeber noted that, under the 10 PM curfew for licensed Premises, the streets and Soho were empty by 11 PM. Not knowing how long the current restrictions might last, he stated he was of the view that granting the application on a temporary basis was a moot point.

In response to a question by Mr Hardy (Policy Officer), Mr Lavell confirmed the proposed operating hours, as amended. He stated that that, if the application was granted on a time-limited basis, it would be appropriate to make it a two-year time limit to allow the Premises to react to the effects of coronavirus, which

could last for another year; and to allow the business to stabilise in the aftermath of coronavirus which could take a further year.

SUMMING UP

At this stage of the proceedings, the Chairman invited the various parties who had made representations to sum up their representations, if they so wished.

Environmental Health Service

Mr Koduah stated that, if the Sub Committee was minded to grant a temporary licence, government guidance had indicated that September 2021 would be an appropriate end date.

Mr Koduah went on to say that the current operating schedule exceeded Core Hours by one hour but there was no history of complaints about the Premises which would indicate that the Premises were well managed. If the Premises wished to operate beyond the hours currently permitted, the Applicant would have to apply for a Temporary Event Notice (TEN) and there was no history of the Premises ever having been granted a TEN.

Mr Lavell confirmed that the Premises had trialled selling cold food, which was not a regulated activity, after 1 AM and it had been established that selling cold food late at night was not as popular as selling hot food. He confirmed that the Applicant had never applied for a TEN. He said that the Premises had been there for 13 years but had only operated sporadically over the last five years due to the redevelopment of Brewer Street. Most recently, it had re-opened in the middle of August this year.

Richard Brown On Behalf of Residents

Mr Brown asked the Sub Committee to consider the location of the Premises in relation to the very large number of other licensed Premises in the area and the number of licensed Premises within the vicinity of Wok to Walk.

In conclusion, he referred the Sub Committee to Paragraphs 2.5.18 and 2.5.20 in the Council's Statement of Licensing Policy and asked that those paragraphs be taken into consideration when the Sub Committee was making its decision.

Conrad Roeber, Resident

Mr Roeber noted that the property that was being redeveloped and which housed Wok to Walk was a residential building with three new one-bedroom flats directly above Wok to Walk which had yet to be occupied. Also, opposite Wok to Walk was a residential block with seven flats.

Marcus Lavell On Behalf of the Applicant

Mr Lavell referred to Mr Brown's comments that Wok to Walk was in the centre of the West End CIA. As such, the Premises were not a destination venue and relied on passing trade from persons already within the stress area having disgorged from licensed Premises within the vicinity. Because the Premises were within a CIA, it had been agreed to amend the application such that the Premises would be closed by the time other licensed Premises closed at 3 AM. Consequently, should anyone want to order food to eat in at Wok to Walk, they would have to leave any other Premises open until 3 AM in enough time to get to

Wok to Walk before it closed at 2:45 AM. By offering hot food, it was proposed that passers-by en route to another venue might be diverted to quieter surroundings where they could order food and sit down to have their food.

Regarding the possible grant of a time-limited licence, Mr Lavell stated that circumstances had changed from when the Council's Statement of Licensing Policy had been agreed and that the evidential basis for the stress area policy was not presently supported. Accordingly, a time-limited licence would reflect the current circumstances and allow operators to continue to trade in an environment that was markedly different from when the stress policy was introduced.

If the Sub Committee were to find that the changed circumstances allowed an exception to the policy, a time-limited licence that struck a balance [between the needs of residents and the needs of the business] would offer the Applicant a lifeline by allowing the Applicant to charge more for each sale of hot food.

Regarding the three new flats above the Premises, Mr Lavell noted that there were already several residential flats in the building and nearby. The Premises had been at this location for 13 years and there was no history of noise nuisance from the Premises. In addition, the new flats would be built to current building regulation standards so there would be no issue of sound transmission from within the building and any external noise would be managed in the same professional way it had always been managed.

In response to Member's question, Mr Lavell confirmed that as well as the hot toppings it was proposed to offer, the accompanying noodles could be served either hot or cold.

ADJOURNMENT

At this stage in the proceedings, the Chairman adjourned the meeting so that Members could retire to consider their decision. She stated that the Sub Committee would not announce its decision today but that a summary of the decision would be sent to the various parties within five working days.

The Chairman then closed the Live part of the virtual meeting.

DECISION

It was the Sub Committee's decision to refuse the application as set out in the appendix to this minute.

REASONS FOR THE DECISION

The Sub Committee was satisfied that, having considered the papers before it and having heard representations from the various parties in attendance at the meeting, the Applicant had not, in the Sub Committee's view, made a sufficiently compelling case that the application should be granted as an exception to the Council's Statement of Licensing Policy.

In particular, the Sub Committee was of the view that, because the Premises was one of only very few Premises in the area selling hot food late at night, to grant the application, as amended, would mean that the Premises would become a destination for persons leaving the numerous late-night drinking venues in the area.

While the provision of a SIA door supervisor to prevent people from queueing outside the Premises and to control any noise nuisance concerns outside the Premises, it did not address the concerns of local residents about noise nuisance caused by people dispersing from other late-night Premises and walking towards the Premises as potential customers, or away from the Premises having been served or turned away from the Premises because it was full.

The Sub Committee was persuaded by representations on behalf of local residents that, to grant the application, would add to the noise nuisance already experienced by local residents living above and opposite the Premises as well as other residents living within the vicinity of the Premises given the mixed character of the area which included a large residential element.

Members were also concerned that the proposal that there would be no takeaway service after 1 AM, requiring customers buying Late Night Refreshment after that time having to consume purchases on the Premises, would only apply if the Sub Committee was minded to add a condition to the licence to this effect. Members were of the view that, if the Premises could serve takeaway meals after 1 AM, this would further exacerbate the potential for noise nuisance associated with the Premises as a destination venue.

In support of its decision to refuse the application, the Sub Committee relied on Paragraphs 2.5.18 and 2.5.20 of the Council's Statement of Licensing Policy, as follows –

Premises supplying fast food inside the Cumulative Impact Areas – Policy FFP2

It is the Licensing Authority's policy to refuse applications in the Cumulative Impact Areas other than applications to vary hours within the core hours under Policy HRSA1

2.5.18: Fast food Premises which are open after 23.00 can attract large groups of customers, many of whom have been consuming alcohol in pubs, bars, or night clubs sometimes some distance away. The congregation of people around these Premises leads to additional noise and disturbance and further congestion in the area. Although Premises which serve cold food and drink are not subject to licensing and may stay open all night, they are not so attractive to people who have been drinking as those providing hot food and drink. The council considers that the addition of hot fast food and hot drink adds to the attractiveness of Premises to people who have been drinking and who are more likely to be involved in anti-social behaviour.

2.5.19: ...

2.5.20 These issues [crime and disorder and public nuisance] are of concern in the Cumulative Impact Areas where there are high concentrations of fast-food Premises in addition to other licensed Premises. On this basis and because the attraction and retention of people by the Premises mitigates against their rapid dispersal from the cumulative impact areas, the Licensing Authority considers that the grant of variations or new licences for fast food Premises in the Cumulative Impact Areas should be limited to exceptional circumstances.

b HEAVEN: APPLICATION TO RENEW SEXUAL ENTERTAINMENT VENUE LICENCE

Present: Jeremy Joseph (Applicant); Craig Baylis (BCLP Solicitors for the Applicant); Richard Brown (Citizens Advice Westminster, Licensing Advice Project); and two Local Residents objecting to the application (represented by Richard Brown and referred to as Guest No. 3 and Guest No. 5, respectively, for the purposes of these proceedings).

Representations: Five representations objecting to the application had been received from residents of Villiers Street, all of whom wished to remain anonymous. There were no representations from Responsible Authorities.

Applicant: Mr Jeremy Joseph
Ward: West End
CIA⁴: West End

Summary of Application

The application was for the renewal of a Sex Establishment licence under the Local Government (Miscellaneous Provisions) Act 1982 (“the Act”) for Heaven, The Arches, London WC2N 6NG which was licensed to operate as a Sexual Entertainment Venue (SEV).

INTRODUCTION

The Chairman welcomed everyone to the meeting. In so doing, the Chairman introduced the Members of the Sub Committee and the Council Officers who would be supporting the Sub Committee before explaining the procedure that would be followed at the meeting.

The Chairman then invited the Presenting Officer, Ms Jessica Donovan, to present the report that was before the Sub Committee.

PRESENTATIONS AND SUBMISSIONS

Ms Jessica Donovan, Licensing Officer

Ms Donovan, Licensing Officer, summarised the application that was before the Sub Committee. Ms Donovan noted that additional submissions had been received from Richard Brown and the two residents in attendance at today’s meeting. The submissions had been circulated in the Additional Information Pack sent to Members and the various parties.

Mr Brian Baylis On Behalf of the Applicant

Mr Baylis stated that, as a matter of practicality, it was very difficult when dealing with redacted submissions to know the core of the concerns when some of the redactions may be germane to the points he was about to raise. In addition, it was difficult to engage in a dialogue, as suggested by Richard Brown in his submission, between the objectors and his client, Mr Joseph (who said he would

⁴ Cumulative Impact Area

welcome a dialogue with residents) when the residents had exercised their right to remain anonymous.

Mr Baylis said this was a very surprising and disappointing set of objections and he was surprised and concerned that this process was being abused for what should more properly be a Premises licence review. The allegations had nothing to do with the character of the sexual entertainment licence and everything to do with the operation of the Premises licence itself and it was inappropriate to use this renewal application to complain about the day-to-day operation of the Premises.

The reality of the use of this Sexual Entertainment Venue (SEV) was that the SEV licence had only been used nine times since January of this year. Whenever it had been used, the Premises had operated at lower capacities than the 1,625 allowed by the Premises licence viz. 1,100 and 155 when operating in compliance with the Coronavirus Regulations.

Mr Baylis stated that Richard Brown had tried his best to shoehorn the objectors' allegations into some sort of legal semblance to try and keep them within the very limited legal grounds that the Sub Committee had for refusing the renewal of the licence. He stated that these grounds were primarily to do with the character of the area as set out in the guidance to the legislation i.e. the proximity of the Premises to a school or a church, and had nothing to do with how queues were managed.

When the Premises were not operating as a SEV, they operated as a nightclub and music venue and his client had managed these Premises for many years without difficulty while maintaining a good relationship with many residents with whom he liaised on a regular basis. Therefore, as a matter of law, he invited the Sub Committee to ignore these submissions and say that they were irrelevant to the application itself and could not constitute anything which was relevant to a reason for refusing the application.

Mr Baylis went on to say that there was no evidence of any linkage between the allegations to the actual use of the SEV. No dates had been provided by the Objectors as to when the problems referred to in the objections had occurred and it was more likely, given the paucity of times that the SEV licence had been used, that the problems had occurred when the SEV licence had not been in use.

In response to several questions by Mr Baylis to the Applicant, Mr Joseph provided the following information.

- (a) Before lockdown, G-A-Y Porn Idol ran on a Thursday night and it was rare for there to be a queue outside the Premises on those nights. If there were queues to get into the Premises, they tended to form on Friday or Saturday nights.
- (b) The reasons queues formed included the requirement for extensive security measures to be implemented when letting customers into the Premises⁵ and to comply with coronavirus social distancing requirements.
- (c) Prior to the coronavirus lockdown periods, the SEV licence was only ever used on a Thursday night. Since the introduction of the 10 PM curfew, the

⁵ Mr Joseph noted that, as Heaven was an LGBT venue, it was subject to strict antiterrorist security measures.

Premises had been used as a SEV on about four occasions on a Sunday and the capacity had been restricted to 155 customers.

- (d) There were SIA security staff at the entrance who implemented the coronavirus “track and trace” requirements, and there were security staff on Villiers Street to safeguard customers leaving the Premises as there had been an increase in the incidence of gang-related violence in Villiers Street since the removal of CCTV cameras from the street.
- (e) Regular meetings were held with residents to discuss any concerns they might have, not just about Heaven but any of the local businesses, and these meetings were attended by the Police and Westminster City Council. All residents were notified about meetings and about eight or nine residents had attended the last meeting which took place just before the current lockdown.
- (f) Westminster City Inspectors tended to inspect the Premises more often on G-A-Y Porn Idol nights because of the added security required on those nights. As, generally, there were no queues on the Thursday nights when G-A-Y Porn Idol was taking place, there had been no complaints from City Inspectors about queues outside Premises.

In response to a question by the Chairman, Mr Joseph confirmed that, since March of this year and the introduction of the first coronavirus lockdown, there had only been two G-A-Y Porn Idol events in August. Following the introduction of the 10 PM licensed Premises curfew, four G-A-Y Porn Idol events had been organised on a Sunday. During the curfew, the Premises had opened from 5 PM to 10 PM on Sundays.

In response to questions by Members of the Sub Committee, Mr Joseph and Mr Baylis provided the following information.

- (a) There was a maximum capacity for the Premises which could not be exceeded at any time. However, the capacity of each area within the Premises, when added together, exceeded the maximum capacity of the Premises. The Premises could operate to the maximum capacity of each of these rooms but only if the number of rooms in use at any one time did not exceed the overall permitted capacity.

Mr Baylis noted that the capacity was limited by the Premises licence and not the SEV licence and that when the Premises operated as a SEV, it limited its capacity to significantly less than that permitted by the Premises licence.

- (b) The Applicant had not received any complaints this year about the operation of the Premises.
- (c) The SEV licence was used primarily for G-A-Y Porn Idol events but the Premises also staged performances of burlesque which were covered by the SEV licence.

[Mr Joseph then described the format of the G-A-Y Porn Idol events and the history of the event which had been running for a total of 20 years, 11 of which had been at the present venue].

Mr Richard Brown (Citizens Advice Westminster, Licensing Advice Project), Representing Guests 3 & 5⁶

On a point of clarification, Mr Brown stated that those residents objecting to the application had not done so in previous years because they had been unaware of the application having been made.

Mr Brown stated that, contrary to Mr Baylis's assertion that the objections were not relevant and that the grounds on which the Sub Committee could refuse the renewal of the application were very limited was not true. He stated that the statutory grounds for objecting to an SEV application were not circumscribed. However, case law suggested that moral objections to an application would not be relevant and that none of the residents were objecting to the application on moral grounds.

Mr Brown stated that the proposal that the Sub Committee ignore the objections had not previously been raised and, therefore, he had not dealt with this matter in his written submission. He stated that the objections clearly related to the nights that G-A-Y Porn Idol events took place and, therefore, were relevant.

[Mr Brown then summarised the Resident's objections which were set out in Appendix D of the report that was before the Sub Committee, and in the supplementary statements in the Additional Information Pack].

In support of his argument that the objections were relevant, Mr Brown referred the Sub Committee to the provisions of Paragraph 12(3)(d) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ("the Act"), as set out in his written submission in the Additional Information Pack. He stated that the objectors were not asking that the application be refused, but that mitigating measures be put in place which would address the concerns of residents.

Mr Brown then referred to the Council's Statement of SEV Licensing Policy (the "SEV Policy"), the relevant parts of which were set out in his written submission in the Additional Information Pack,⁷ noting that the objections by residents were included in Paragraph 4.5, Clause (iv) of the SEV policy.

Guest 5

Guest 5 wished to make clear at the outset of her presentation that she did not object to the application on moral grounds and it was her hope that some compromise could be reached with the management of the Premises regarding the issues that were of concern to the residents.

In her presentation, Guest 5 referred to the following issues.

- (a) The nuisance caused by noisy queues outside the Premises every night the Premises operated

[Guest 5 stated that she had resided in the area for 15 years and it had been her experience that the Premises always attracted queues of people waiting to enter).

⁶ Residents who had objected to the application, who attended the meeting, and who had exercised their right to anonymity.

⁷ See 4.5 Policy LO3 – Layout – Policies relating to the layout, character or condition of the venue (iv) Whether the layout of the Premises promotes the prevention of public nuisance in respect of the proximity of noise sensitive Premises in the vicinity, provision for access and egress, or behaviour of customers outside the Premises.

- (b) Patrons using the smoking area under The Arches tended to congregate and remain there, and on Villiers Street, while smoking and, because some were intoxicated, contributed to noise nuisance in the area.
- (c) The staff managing queues outside the Premises did not engage with people who were queueing requiring them to keep noise to a minimum so as not to disturb residents.
- (d) There had been occasions when security staff from the Premises had failed to intervene in noisy fights outside the Premises and residents had had to telephone the Police to deal with the fights.
- (e) The Premises had implemented security measures on Craven Street but had neglected to implement similar security measures on Villiers Street. As staff failed to manage patrons leaving the Premises, the noise nuisance meant that residents could not leave their windows open.
- (f) Suitable conditions should be attached to the licence to allow better management of the queues. Also, that consideration be given to different ticketing systems and the location of security staff to assist in managing queues, as well as considering an alternative location for the smoking area and limiting the number of smokers using the smoking area at any one time.

In response to a question by the Chairman, Guest 5 stated that she had attended one meeting organised by the Applicant but, because she worked during the day, she could not attend the daytime meetings arranged by the Applicant.

Guest 3

Guest 3 stated that he had no objection to Heaven operating from these Premises. He acknowledged that, because of coronavirus, the situation had changed in that the Premises had recently been closed for much of the time. However, his objections related to previous concerns which might once again be matters of concern when circumstances changed and after renewal of the SEV licence.

In his presentation, Guest 3 referred to the following matters.

- (a) He was aware of a recent meeting organised by Heaven to address the issue of gang-related violence which had targeted the Premises patrons. However, he was not aware of any other meetings having taken place for several years and that those meetings had taken place during the day.
- (b) Although there had been no complaints about the Premises by residents, that did not mean that residents had no concerns about the Premises as evidenced by resident's objections to the present application.
- (c) During the 25 years in which he had lived in the area there had been an increase in the number of "big ticket" events held at the Premises, and there had been a significant increase in the number of people queueing to get into the Premises on these nights, including G-A-Y Porn Idol.
- (d) It had been his experience that whenever Heaven was open, there was always a queue to get into the Premises, whether the capacity was restricted to 1,100 persons or if the Premises was operating to its maximum capacity of 1,600 persons.
- (e) There were regular issues of noise nuisance associated with the queues outside Heaven, as well as with customers leaving the Premises in the early hours, and

there appeared to be no effort by security staff on Villiers Street to control noise nuisance.

[Guest 3 then described the security arrangements, or lack thereof, in Craven Street and Villiers Street].

- (f) The patrons using the smoking area tended to remain there for long periods of time, were very loud, and it didn't appear that the Premises' management were taking measures to mitigate this noise nuisance.
- (g) The noise from outside the Premises late on Thursday night made it difficult for residents to relax and prepare for work the next day. In addition, if residents went out into Villiers Street at that time of night, they encountered antisocial behaviour and it was a very unpleasant environment. He said that the situation was particularly difficult for residents who had children whose bedroom windows looked onto Villiers Street.

In conclusion, Guest 3 stated that, if the Sub Committee were to renew the licence, he would like to see the conditions set out in his written submission attached to the licence.

In response to a question by the Chairman, Mr Joseph explained how patrons could acquire wristbands that would allow them either free or discounted entry to the Premises. He stated that wristbands had been introduced as an alternative to advertising by way of flyers which could be a cause of litter.

In response to some of the comments made by residents, Mr Joseph stated that, because of the increased incidence of gang-related violence targeting their patrons, the management had arranged for security staff to be present on Villiers Street, and that the last meeting with residents to discuss this issue had taken place, at residents' request, at about 5 PM.

In response to further questions by the Chairman and Members of the Sub Committee, Mr Joseph stated that –

- (a) Security staff on Villiers Street were responsible for managing the queues outside the Premises and anyone who did not comply with requests to keep the noise down were removed from the queue, photographed, and banned from entering the Premises.
- (b) Security staff were also responsible for dispersal and directed customers generally in the direction of Charing Cross Road as they left the Premises, noting that there were a lot of other late-night venues in the area.
- (c) There were security staff on Buckingham Street to prevent customers entering the streets around that area where there was no CCTV and to protect customers from becoming victims of gang-related violence.
- (d) As soon as the present lockdown ended, arrangements would be made to have a meeting with residents at a time of their choosing. The meeting would involve other local businesses, as well as Heaven and residents.
- (e) It was not practicable to restrict the numbers in the smoking area or the length of time that people spent in the smoking area. The smoking area had been located on Villiers Street but, after consultation with the licensing authority and the Police, it had been moved to its present location under The Arches to protect customers and away from residents.

In response to Member's questions, Guest 5 stated that –

- (a) The noise nuisance created by the queues outside the Premises was worse on the nights that G-A-Y Porn Idol was taking place as the queues tended to be a lot more animated on those evenings.
- (b) She had not been aware of any noise nuisance when the G-A-Y Porn Idol event had taken place on Sundays. However, this may have been attributable to the current coronavirus circumstances.

She stated she disputed Mr Joseph's assertion that there were security staff all along Villiers Street and noted that the smoking area was located where The Arches met Villiers Street. Referring to a photograph of The Arches, Guest 5 identified the location of security staff and barriers that were erected to control queues on the nights that G-A-Y Porn Idol took place.

The Chairman thanked the various parties for their presentations and for answering Member's questions. She then invited officers to ask any questions they may have of any of the parties.

Questions by Officers

In response to a question by the Legal Officer, Vivienne Walker, Mr Brown stated that he could propose some appropriate wording for conditions that the objectors would like to see attached to the licence.

The Chairman noted that Mr Baylis, on behalf of the Applicant, had indicated during the preceding part of the proceedings that, on behalf of his client, he would not be prepared to accept added conditions to the licence.

The Chairman then invited the various parties, if they so wished, to sum up their presentations.

SUMMING UP

Richard Brown On Behalf of Residents

Mr Brown stated that, if the Applicant were to arrange any further meetings with residents to discuss matters of concern, he would ask that the meetings be arranged at a suitable time for residents.

He stated that the issue of CCTV was one where the Applicant and the residents found common ground and that it would be desirable if arrangements could be made for CCTV to be installed in Villiers Street.

Westminster City Council's Basket of Model Conditions included provisions for queueing: MC 26 stated –

“The licence holder shall ensure that any queue to enter the Premises which forms outside the Premises is orderly and supervised by door staff so as to ensure that there is no public nuisance or obstruction to the public highway”.

[The Legal Officer stated she would confirm whether this condition had been attached to the Premises licence].

In response to a question by the Chairman, Mr Joseph stated that it would not be practicable to introduce a system of timed entry to the Premises using wristbands, which were available to customers from 8:30 PM. He noted that the description by

residents of the security arrangements for the Premises referred to nights other than the Thursday night when the G-A-Y Porn Idol events took place [and when the Premises relied on its SEV licence].

Guest 3

Guest 3 stated that, given the security measures the Applicant had put in place, he could not see why these measures could not be added as conditions to the licence. In addition, given the Applicant's evidence today that security staff had assisted the Police by detaining knife carrying members of a gang until such time as they could be arrested by the Police, it should be possible for security staff to deal with matters of antisocial behaviour outside the Premises.

Regarding meetings arranged by the Applicant to discuss the concerns of residents, he stated that these would have to be evening meetings for him to be able to attend.

In conclusion, Guest 3 stated that he was anxious to ensure that the concerns of residents prior to the current coronavirus pandemic were addressed now when considering renewing the licence to ensure that they did not reoccur in a post coronavirus pandemic period.

In response, Mr Joseph stated that the security staff were only insured to operate immediately outside and inside the Premises and were not insured to work on Villiers Street and, therefore, he was already taking a risk by asking them to patrol Villiers Street. If it was made a condition that security staff patrol Villiers Street and other streets within the vicinity of the Premises, it was possible that the insurance company would refuse to insure staff not working inside or immediately outside the Premises and the company supplying security staff would then refuse to supply staff.

In response to an observation by the Chairman regarding MC 26, Mr Joseph stated that security staff did manage the queues outside the Premises.

[Mr Joseph then described how the queues were managed and operated according to how many customers were queueing to enter the Premises on any night. He also informed the Sub Committee that the G-A-Y Porn Idol event took place between 1 AM and 2 AM (followed by a "Meet and Greet" & photo session) after which the club reverted to be a nightclub. Therefore, given the reduced capacity of the Premises on G-A-Y Porn Idol nights, he could not see how queues to enter the Premises on those nights would be any noisier than on any other night].

Mr Joseph stated that, if queues ever became so long that they stretched out into Villiers Street, he could easily plan for the queue to be split so as not to encroach into Villiers Street. The Chairman stated that such a proposal would probably be welcomed by residents on Villiers Street.

Mr Baylis On Behalf of the Applicant

Mr Baylis stated that this was not an appropriate forum to air the types of grievances made by the Objectors as they were a Premises licence concern and not a SEV licence concern. He stated that the reason he was saying this was because the Sub Committee was only dealing with the renewal of the SEV licence and the activities associated with that licence.

He stated that the Sub Committee had heard from Mr Joseph that the SEV activity was sporadic and, if operated for only nine months of the year, as had been the case pre- the coronavirus pandemic, the SEV licence was only ever used once a week or

once a fortnight. Therefore, he resisted any conditions being added to the SEV because, to do so, would be disproportionate to the operation of the Premises. He stated that the effect of adding conditions to the SEV licence would mean that, for nine months of the year, the Applicant would have to do something different on the nights that the Premises operated as a SEV from every other night the Premises was open, involving potential additional expense and/or supervision.

It was his submission that it was not appropriate to have different conditions on the Premises licence and the SEV licence and the conditions should be proportionate and relevant to the Premises. He stated that, putting the objectors' evidence at its highest, the Premises were not only having problems on G-A-Y Porn Idol nights, but on every other night as well. On this application, the Sub Committee could only condition what happens on a night that Mr Joseph operated the Premises as a SEV. As Mr Joseph may only run the Premises as a SEV every so often, adding conditions to the SEV licence was a pointless exercise.

Mr Baylis stated he was anxious that the Objectors heard this point as it may be that they were under the misapprehension that if conditions were added to the licence, they would operate every night the Premises was open, which was not the case.

The Chairman thanked the parties for their summing up. In conclusion, she stated that both the Applicant and the Objectors had heard each other's submissions and it was clear that residents had several concerns. She recommended that, when circumstances were more propitious, the Applicant should consult with residents and that the residents should be aware that they could call for a review of the Premises licence if they felt that the conditions on the Premises licence were not being met.

Mr Joseph stated that, if Mr Brown wished to provide Mr Baylis with his contact details, a meeting with objectors, residents and businesses would be arranged for a time when circumstances were better. He proposed that Mr Brown attend that meeting which he hoped would prove that businesses and residents could work together on matters of common concern. Mr Brown confirmed he would be willing to attend such a meeting.

ADJOURNMENT

At this stage in the proceedings, the Chairman adjourned the meeting so that Members could retire to consider their decision. She stated that the Sub Committee would not announce its decision today but that a summary of the decision would be sent to the various parties within five working days.

The Chairman then closed the Live part of the virtual meeting.

DECISION

It was the Sub Committee's decision to approve the application and to attach further Conditions to the SEV licence, as set out in the Appendix to this minute.

REASONS FOR THE DECISION

The Sub Committee, having considered the papers before it, and having heard representations from the various parties in attendance at the meeting, was satisfied that it was appropriate to renew the SEV licence.

The Sub Committee concurred with the Applicant's contention that many of the concerns raised by Objectors related to matters that fell for consideration under the

Premises licence and not the current application to renew the SEV licence. In so doing, the Sub Committee noted that residents had the remedy of applying for a review of the Premises licence as a means of addressing their concerns.

That said, the Sub Committee was satisfied that the concerns raised by Objectors in relation to public nuisance, crime and disorder and public safety applied equally to when the Premises operated as a SEV, notably on the nights that G-A-Y Porn Idol events took place, as well as other nights when the Premises operated as a nightclub. Therefore, the Sub Committee was of the view that it was reasonable, appropriate, and proportionate to add a few conditions to the SEV licence, the purpose of which was to promote the licensing objectives on those occasions when the Premises operated as a SEV.

INFORMATIVE

The Sub Committee welcomed Mr Joseph's offer to meet, as soon as circumstances permitted, with the Objectors and their representative, Richard Brown of Citizens Advice Westminster, Licensing Advice Project, in a public forum at a time when objectors and residents would be available to attend such a meeting i.e. an evening meeting.

The Sub Committee also welcomed Mr Joseph's offer to manage any queues that might form outside the Premises, either on G-A-Y Porn Idol nights, or any other night, in such a way as to prevent queues of customers waiting to enter the Premises from extending into Villiers Street [Mr Joseph stated this would be possible by splitting the queue into two sections and that he would make arrangements for this to be done].

The Meeting ended at 3.30 pm

CHAIRMAN: _____

DATE _____

This page is intentionally left blank

APPENDIX LSC 19.11.20: WALK TO WOK

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO.1 ("The Committee")

Thursday 19 November 2020

Membership: Councillor Heather Acton (Chairman), Councillor Susie Burbridge and Councillor Maggie Carman

APPLICATION FOR A VARIATION OF PREMISES LICENCE – WOK TO WALK GROUND FLOOR 4 BREWER STREET LONDON W1F 0SB

FULL DECISION

Premises

Wok to Walk
Ground Floor
4 Brewer Street
London
W1F 0SB

Applicant

Mr Dror Appel

Cumulative Impact Area?

The Premises are located within the West End Cumulative Impact Area.

Ward

West End

Summary of Application

The Committee has determined an application for a variation of Premises Licence for the above Premises under the Licensing Act 2003 ("The Act") to extend the terminal hour for Late Night Refreshment (Indoors) Monday to Sunday and the modification of a condition as detailed below: -

- To extend the hours for Late Night Refreshment to the proposed hours of -
 1. Monday to Wednesday 23:00 to 04:00 the following morning;
 2. Thursday to Saturday 23:00 to 05:00 the following morning; and
 3. Sunday 23:00 to 01:00 the following morning.
- To amend condition 3 of the Premises Licence to read "no amplified music shall be played within the premises after 05:00 hours".

The Premises operate as a fast-food restaurant offering traditional Asian Thai cuisine that is affordable and of good quality. Meals are built up from a noodle or rice base and are then topped with a number of optional items. During the day and up to 01:00 hours (as permitted by the current Premises Licence), this choice of topping includes both hot and cold options. The Applicant has seven other restaurants around London

and now wishes to sell hot food beyond 23:00 hours for these Premises which has triggered this application. The Applicant stated in his submissions that the “*effect of this application is not to enable the operation to trade but rather to improve the choice and overall customer experience and hopefully driving revenue for the business*”.

The restaurant can seat 15 Customers, and this is conditioned on the Premises Licence. This application only seeks to extend the hours for which customers can sit inside the premises and have the option of a warm topping on their noodle salad or the option of hot noodles.

The Sub Committee noted that during the hearing the Applicant amended his application. The Applicant sought to extend the hours for Late Night Refreshment Monday to Saturday 23:00 to 02:45 hours the following morning and Sunday 23:00 to 00:00 hours. The Applicant also confirmed that the Premises would not operate a takeaway service and that customers were to remain seated on the Premises when eating food. The Sub Committee was advised that there would be no extension sought for Sunday. It was noted that the time amendment to Condition 3 of the Premises Licence would be 02:45 hours should the Sub-Committee be minded granting the application. The Applicant confirmed also that there will be no amplified music played at 23:00 hours and that Recorded Music was now withdrawn from the application.

The Sub Committee noted that representations were received from the Environmental Health Service and the Licensing Authority and these were considered. Five local residents’ objections were received who cited public nuisance as an issue and the disturbance for residents in relation to the later hours. Local residents were represented by Mr Richard Brown of the Citizens Advice Bureau Licensing Project.

The Sub Committee noted that four local objectors did not attend the hearing. However, one objector attended and confirmed that whilst he was not speaking directly on behalf of his neighbours, they all nevertheless shared the same concerns with the application.

The Sub Committee has a duty to consider the application on its individual merits and took into account both Agenda Papers including the Street Management and Smoking Policies provided, the submissions made by the Applicant and the oral evidence given by all parties during the hearing in its determination of the matter.

The Premises are situated within the West End Cumulative Impact Area and so the policy presumption is to refuse the application unless exceptional circumstances can be proven under the relevant paragraphs of the City Council’s SLP.

Representations Received

Representations had been received from the Environmental Health Service, the Licensing Authority and several residents.

Summary of Objections

- The Environmental Health Service state that the hours requested to provide late night refreshment have the likely effect of causing an increase in public safety and may affect public nuisance within the West End Cumulative Impact Area.
- The Licensing Authority state that they have concerns in relation to this application and how the premises will promote the licensing objectives.

- The resident objectors state if the application were to be granted it would undermine the licensing objective to prevent public nuisance. The area is already under pressure due to the level of activity. This part of Soho has an especially high level of licensed activity, high footfall and high levels of noise.
- The proposed hours would inevitably attract people who have been drinking in the venues nearby. It is those people that Wok to Walk is mostly targeting with this application.
- I do not want or need more drunks congregating in the area even later than they do already. Adding further noise and general madness to the already crowded stretch of bars and clubs. Everything else closes at 3.00am and this is when Soho goes to bed. We need peace at some point. /

Policy Considerations

Policies CIP1, HRS1 and FFP2 apply under the City Council's Statement of Licensing Policy ("SLP"). The policy presumption is to refuse such applications in the CIA provided the Applicant can demonstrate an exception to policy.

SUBMISSIONS AND REASONS

Ms Donovan, Licensing Officer, summarised the application as set out in the report before the Sub Committee, noting that several representations had been received, including representations from responsible authorities and residents.

Mr Marcus Lavell, Counsel appearing on behalf of the Applicant advised that the application was made by the operator, an independent restaurant chain that has now grown to include seven restaurants around London for 13 years, six of those restaurants trade until 05:00 hours. They currently employ 10 staff. Mr Lavell stated that the premises did not sell alcohol and food was made to order for dining in, and there would be no take-aways. The number of persons permitted in the Premises at any one time was fifteen and with social distancing, this had been reduced to nine customers. Mr Lavell explained that the ability to sell hot food to the small number of customers would make a significant difference to the economic success of the business. He stated that the premises required a lifeline.

Mr Lavell in addressing the concerns of residents, stated that there will be no music played inside the premises, it was proposed that there would be a door supervisor to ensure that the door to the premises remained closed when not in use and no queuing would be permitted outside the premises after 01:00am. He stated that with the limited number of persons and the provision of a door supervisor would reduce the risk of noise escaping from the premises. He also stated that it was not the Applicant's intention to trade beyond 02:45 hours on weekdays and Sundays. At this point, Mr Lavell sought to amend the application by the reduction in hours and this was noted accordingly by the Sub-Committee.

Mr Lavell referred to Policy FFP2 of the SLP paragraph 2.5.18 and stated that it was the premises business model to sell to passers-by as it was not a destination venue. He then went onto state that there had been no representations from the Police which would give rise to issues of crime and disorder.

It was noted that given the unprecedented challenges of the current Covid-19 pandemic the Applicant had taken steps to be compliant with the Government's regulations to manage the Premises.

Mr Lavell stated the closure has had a significant impact on the business with the reduction of the number of tourists and office workers in the West End.

When asked by the Sub-Committee, how the Applicant would advise potential customers that there is no take-away service (whereas the premises appeared on the face of it to be a take-away type establishment) Mr Lavell responded by saying that the door supervisor on duty at the time would be responsible for informing patrons that there was no takeaway service. Staff were suitably trained to deal with any disruption both within and outside the premises. In addition, there were regular staff meetings, including SIA training to discuss dispersal of customers and related issues.

Mr Jackson Senior Licensing Officer addressed the Sub-Committee on behalf of the Licensing Authority. Mr Jackaman stated that the proposed Conditions put forward by the Environmental Health Service, as set out in the Additional Information Pack, were welcomed, as were the amendments to the application. However, it remained the Council's policy to refuse applications for premises which were within a CIA, and that the policy would only be overridden if there were exceptional circumstances. Therefore, the Licensing Authority maintained its representations, noting that it was for the Sub Committee to determine whether the Applicant had established, to the Sub Committee's satisfaction, that there were exceptional circumstances that would allow the Sub Committee to grant the application. He confirmed that the proposed conditions agreed with the applicant were welcomed, also the amendments to the application.

Mr Koduah on behalf of the Environmental Health Service stated that following discussions with the Applicant the proposed conditions were agreed. Regarding the potential source of noise nuisance, Mr Koduah stated it was customers who were outside the Premises or who were walking towards or away from the Premises that presented the greatest likelihood of noise nuisance. He stated that having a door supervisor would allow the potential for noise nuisance outside the Premises to be managed. However, the premises were not able to control possible nuisance by customers walking towards or away from the Premises. It was for this reason that the Environmental Health Service had maintained its representation.

The Sub-Committee noted that the Premises were able to control possible nuisance customers walking towards or away from the Premises but only if they had robust management procedures in place to tackle this very issue.

Mr Brown addressed the Sub-Committee on behalf of the one resident and the Soho Society, he stated that should the application be granted, the Premises would attract customers from other premises at the end of the night. This gave rise to concerns as to how the proposed conditions would operate to prevent queueing outside the premises.

Mr Brown stated that the amendments proposed by the Applicant had changed the application, but they did not address the specific issue of the retention of people within the Cumulative Impact Area as they left other licensed premises. He also indicated that the application was contrary to policy and that the Applicant had not established any grounds that might be deemed exceptional.

Mr Roeber, a local resident who spoke on behalf of other residents who had objected to the application addressed the Sub Committee. He stated that the amendments to the application were welcomed. However, the Cumulative Impact Area policy was there for a number of reasons and one of those reasons was to protect residents and that they did not see why that policy should be waived on this occasion. Any premises

that remained open until late at night would add to the impact in Cumulative Impact Area and add further to the nuisance to residents.

In response to a question raised by the chairman of the Sub-Committee Mr Roeber confirmed, that although, the Premises had been closed for some time due to the redevelopment, he could not recall the Premises having opened later than 01:00 hours. He stated that residents had been concerned about the application as they believed that there would be a demand for hot food after 03:00 hours resulting in continued noise nuisance from the time the Premises are emptied at that time until closed.

When asked by Members whether residents would oppose a time-limited licence as suggested by the Applicant's representative, Mr. Brown stated that he was aware the Sub-Committee had been sympathetic to the plight of operators under the circumstances and that some of the applications had been granted for discreet periods of time. However, he considered two years would be too long and suggested a period of one year.

In reaching their decision, the Sub Committee had noted that the Premises were one of very few premises in the area selling hot food late at night. To grant the application as amended, would mean that the Premises would most likely become a destination for persons leaving the numerous late-night drinking venues in the area.

The Sub-Committee had also acknowledged that there would be a SIA door supervisor to prevent people from queueing outside the premises and to control any noise nuisance outside the premises. The Sub Committee were of the view that this did not address the concerns of local residents about noise nuisance caused by people dispersing from other late-night premises and walking towards the premises as potential customers, or away from the premises as potential customers, or away from the premises having been served or turned away from the premises because it was full.

Conclusion

The Sub Committee heard evidence from all the respective parties and 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 extension of hours for licensable activities and modification of the condition.

The Sub Committee noted that the Premises have had the benefit of a Premises Licence since 2005 and that the Applicant had run the business for 13 years.

The Sub Committee has to consider the evidence before it and whether the four licensing objectives will be promoted. The Sub Committee properly considered the Street Management and Smoking Policies but did not view these documents to be exceptional in nature - in fact any competent operator promoting the licensing objectives would produce these documents as a matter of routine to show that they employ good management practices.

Although the extension of hours had been reduced by the Applicant the Sub Committee formed the view that any increase in hours would lead to public nuisance. The Sub Committee took the view that queues forming outside of the Premises and queue management could potentially be an issue for the Premises with customers leaving other licensed premises within the Cumulative Impact Area and trying to gain

entry into the Premises when inebriated. It was felt that trying to manage effectively those type of alcohol fuelled behavioural situations with customers is likely to result in potential disturbance to local residents due to the mixed character of the area which includes a residential element, particularly for those residents who live in such close proximity to the Premises. The Sub Committee noted that the residential count for the area is 255.

It was noted that the Applicant offered a condition regarding SIA door supervisor staff but the Sub Committee was not fully persuaded that during very busy periods the Premises would be able to cope effectively due to the sheer numbers of people within the West End Cumulative Impact Area at later hours, particularly, when nearby licensed premises are closing at similar times which would only exacerbate matters and give rise to problems in the Cumulative Impact Area associated with crime and disorder and public nuisance.

The Sub Committee decided that exceptional reasons had not been provided. Exceptionality must be proven in accordance with the policy aims and objectives. Regrettably, on this occasion the Applicant failed to demonstrate why it should depart from the policy requirements.

In terms of the Policy considerations, the Sub Committee had particular regard to paragraphs 2.5.18 and 2.5.20 of the SLP. Paragraph 2.5.18 states that -

“Fast food premises which are open after 23:00 hours can attract large groups of customers, many of whom have been consuming alcohol in pubs, bars or night clubs sometimes some distance away. The congregation of people around these premises leads to additional noise and disturbance and further congregation in the area. Although premises which serve cold food and drink are not subject to licensing and may stay open all night, they are not so attractive to people who have been drinking as those providing hot food and drink. The Council considers that the addition of hot fast food and hot drinks adds to the attractiveness of premises to people who have been drinking and who are more likely to be involved in anti-social behaviour”.

Paragraph 2.5.20 states -

“These issues are of particular concern in the Cumulative Impact Areas where there are high concentrations of fast-food premises in addition to other licensed premises. On this basis and because the attraction and retention of people by the premises mitigates against their rapid dispersal from the cumulative impact areas, the Licensing Authority considers that the grant of variations or new licences for fast food premises in the Cumulative Impact Areas should be limited to exceptional circumstances.”

The Sub Committee came to the overall conclusion that the additional hours would have a negative impact on the cumulative impact area leading to the licensing objectives being undermined. The Sub Committee considered the stance it has taken to refuse the application to be reasonable, appropriate and proportionate in all the circumstances of the case.

The application is therefore **REFUSED**.

This is the full decision reached by the Licensing Sub-Committee. This Decision takes immediate effect.

The Licensing Sub Committee
19 November 2020

This page is intentionally left blank

APPENDIX LSC 19.11.20: HEAVEN

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO.1 ("The Committee")

Thursday, 19 November 2020

Membership: Councillor Heather Acton (Chairman), Councillor Susie Burbridge and Councillor Maggie Carman

Present: Jeremy Joseph (Applicant); Craig Baylis (BCLP Solicitors for the Applicant); Richard Brown (Citizens Advice Westminster, Licensing Advice Project); and two Local Residents objecting to the application (represented by Richard Brown and referred to as Guest No. 3 and Guest No. 5, respectively, for the purposes of these proceedings).

APPLICATION FOR THE RENEWAL OF A SEX ESTABLISHMENT LICENCE - HEAVEN THE ARCHES LONDON WC2N 6NG (20/06600/LISEVR)

FULL DECISION

Applicant

Mr Jeremy Joseph

Ward

St James's

Summary of Application

The Committee has considered an application for the renewal of a Sex Establishment Licence under the Local Government (Miscellaneous Provisions) Act 1982 (as amended) ("the Act") for the Premises known as Heaven situated at the Arches, London WC2N 6NG. which was licensed to operate as a Sexual Entertainment Venue (SEV). The Premises have had the benefit of a Licence which expired on 30 September 2020.

Representations Received

Five representations objecting to the application had been received from residents of Villiers Street, all of whom wished to remain anonymous. There were no representations from Responsible Authorities.

Summary of Objections

- Patrons queue on our street and are mainly drunk when they arrive.
- Heaven's security staff do nothing to manage the queues of people.
- Tighter control measures are required by way of any additional conditions to include but not limited to matters such as security, posting of notices so patrons when dispersing do not cause a nuisance and respect the area as well as smoking.

Policy Considerations

Policies; SU1, SU2, NO1, LO1, LO2 and LO3 apply under the City Council's Sexual Entertainment Venues Statement of Licensing Policy 2012

SUBMISSIONS AND REASONS

Ms Donovan, Licensing Officer, summarised the application that was before the Sub Committee. Ms Donovan advised that additional submissions had been received from Richard Brown and the two residents who attended the hearing. The submissions had been circulated in the Additional Information Pack sent to the Sub-Committee and the various parties.

Mr Craig Baylis Solicitor on behalf of Mr Joseph, the Applicant addressed the Sub-Committee by stating that in his opinion the Sub-Committee was not the appropriate forum for the objectors to air their grievances about the application.

Mr Baylis stated that the objectors' concerns were in relation to a premises licence under the Licensing Act 2003 and not a Sex Establishment Licence. He stated that what was before the Sub Committee for consideration was a renewal of the Sex Establishment Licence and the activities associated with that Licence.

Mr Baylis stated that the licence had only been used 9 times since January 2020. Whenever the Premises had been used it had operated at lower capacities than the 1,625 authorised by the premises licence, namely 1,100 and 155 when operating in compliance with the Coronavirus Regulations.

He stated that when the Premises were not operating as a Sex Establishment Venue ("SEV"), they operated as a nightclub and music venue, and his client had managed these Premises for many years without difficulty, while maintaining a good relationship with many residents with whom he has liaised on a regular basis.

Mr Baylis stated also that there was no evidence of any linkage between the allegations to the actual use of the SEV. No dates had been provided by the objectors as to when the problems had occurred.

In response to questions raised by Mr Baylis of the Applicant, Mr Joseph provided the following information:

- a) Before Lockdown, G-A-Y: Porn Idol ran on a Thursday night and it was rare for there to be a queue outside the premises on those nights. Queues tended to form on Friday and Saturday nights.
- b) The reason for the queues is due to the extensive security measures implemented when letting customers into the premises and to comply with coronavirus social distancing requirements.
- c) Since the introduction of the 22:00 hour curfew, the Premises had been used as an SEV only on four occasions on a Sunday and the capacity had been restricted to 155 customers.
- d) There were SIA security staff at the entrance who implemented the coronavirus "track and trace" requirements and there were security staff on Villiers Street to safeguard customers leaving the premises, as there had been an increase in the incidence of gang-related violence in Villiers street.

e) Regular meetings were held with residents to discuss their concerns and these meetings were attended by the Police and Council Officers.

Mr Joseph described to the Sub Committee how the queues were managed and operated according to how many customers were queueing to enter the Premises on any given night, and due to the reduced capacity of the Premises on G-A-Y: Porn Idol nights, he believed that those nights are less noisy than other nights. Mr Joseph stated that they have worked very hard with the Police and Council Officers.

The Sub Committee noted that the Premises were regularly inspected by Council Officers, and there have been no complaints by Officers about queues forming outside of the Premises.

Mr Brown on behalf of the local residents who had objected (Guests 3 and 5 who chose to remain anonymous) stated that on a point of clarification those residents objecting to the application had not done so in previous years because they had been unaware of the application having been made. Mr Brown stated that, contrary to Mr Baylis's assertion that the objections were not relevant and that the grounds on which the Sub Committee could refuse the renewal of the application were very limited was not true. He stated that the statutory grounds for objecting to an SEV application were not circumscribed. However, case law suggested that moral objections to an application would not be relevant and that none of the residents were objecting to the application on moral grounds.

Mr Brown stated that the proposal that the Sub Committee ignore the objections had not previously been raised and, therefore, he had not dealt with this matter in his written submission. He stated that the objections clearly related to the nights that G-A-Y Porn Idol events took place and, therefore, were relevant. Mr Brown then summarised the Resident's objections which were set out in Appendix D of the report that was before the Sub Committee, and in the supplementary statements in the Additional Information Pack]. In support of his argument that the objections were relevant,

Mr Brown referred the Sub Committee to Paragraph 12(3)(d) of Schedule 3 of the Act, as set out in his written submission in the Additional Information Pack. He stated that the objectors were not asking that the application be refused, but that mitigating measures be put in place which would address the concerns of residents.

Mr Brown then referred to the Council's Statement of SEV Licensing Policy (the "SEV Policy"), the relevant parts of which were set out in his written submission in the Additional Information Pack. The Sub Committee heard oral evidence from Guests 3 and 5 in attendance at the hearing who both amplified their written representations by giving an account of their daily living when living in such close proximity to the Premises and how the management of the Premises impacts their lives when it came to issues caused by nuisance. These heartfelt and passionate submissions were noted and considered by the Sub Committee in its determination of the matter.

However, the role of the Sub Committee is to consider each application on its individual merits. It therefore concurred with the Applicant's contention that many of the concerns raised by Objectors related to matters that fell for consideration under the premises licence and not the current application to renew the SEV licence. In so doing, the Sub Committee noted that residents had the remedy of applying for a review of the premises licence under the provisions of the Licensing Act 2003 as a means of addressing their concerns.

That said, the Sub Committee was satisfied that the concerns raised by local residents in relation to public nuisance, crime and disorder and public safety applied equally to when the premises operated as a SEV, notably on the nights that G-A-Y Porn Idol events took place, as well as other nights when the premises operated as a nightclub.

The Sub-Committee welcomed the Applicant's offer to liaise directly with local residents and their representatives, so as to encourage and maintain a fruitful dialogue, in respect of those matters relating specifically to nuisance. The Sub-Committee considered that the Additional Conditions numbered 33-36 below and imposed on the SEV Licence are appropriate and proportionate and will mitigate the concerns raised by residents when it came to those issues of nuisance.

The Sub-Committee having carefully considered the application and the representations made on behalf of the objectors decided to **grant** the renewal of the Licence for a twelve-month period subject to the mandatory and additional conditions specified below.

Conditions imposed by the Sub Committee after a hearing

1. Whilst Relevant Entertainment is taking place no person under the age of 18 shall be on the licensed premises and a clear notice to that effect shall be displayed at the entrance in a prominent position so that it can be easily read by persons entering the premises.
2. Whenever persons under the age of 18 are admitted to the premises there will be no promotional or other material on display within the premises which depicts nudity or partial nudity.
3. The licence or a clear copy shall be prominently displayed at all times so as to be readily and easily seen by all persons using the premises.
4. No provision of relevant entertainment, or material depicting nudity or relevant entertainment, shall be visible from outside the premises.
5. Menus and drinks price lists shall be clearly displayed at the front entrance of the club, reception area, tables and bar at such a position and size as to be easily read by customers. This price list shall show all consumable items and any minimum tariff including charges and fees applicable to Performers.
6. Except with the consent of the Licensing Authority, no advertisements of any kind (including placard, poster, sticker, flyer, picture, letter, sign or other mark) shall be inscribed or affixed at the premises, on the surface of the highway or on any building, structure, works, street furniture, tree or any other property or be distributed in the street to the public that advertises or promotes the relevant entertainment at the premises.
7. The licence holder or other person concerned in the conduct or management of the premises shall not seek to obtain custom by means of personal solicitation or touting, nor enter into any agreement with a third party to do so.
8. Adequate toilets, washing and changing facilities for use by the Performers shall be provided.

9. Either the licence holder or a named responsible person shall be present throughout the time the Relevant Entertainment takes place.
10. The premises will install and maintain a comprehensive CCTV system as per the minimum requirements of a Metropolitan Police Crime Prevention Officer that ensures all areas of the licensed premises are monitored including all entry and exit points will be covered enabling frontal identification of every person entering any light condition. All cameras shall continually record whilst the premises are 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 together with facilities for viewing.
11. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public and this staff member should be able to show the Police recent data and footage with the absolute minimum of delay of the request.
12. An incident log shall be kept at the premises, and made available on request to the Licensing Authority 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) 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;
 - (i) any breach of licence conditions reported by a Performer.
13. The licence holder shall produce a Code of Conduct setting out rules and obligations between the licence holder and performers whilst performing. All Performers shall sign the Code of Conduct in their proper name acknowledging that they have read, understood and are prepared to abide by the said Code of Conduct, and a copy so signed shall be retained by the licence holder and shall be readily available for inspection by the Police and/or authorised persons upon reasonable request Individual records shall be kept at the premises of the real names, stage names and addresses of all Performers working at the premises. The record will include either a copy of their birth certificate, current passport, EU driving licence or national

identity card and shall be made immediately available for inspection by the Police and/or the Licensing Authority upon

14. Details of all work permits and/or immigration status relating to persons working at the premises shall be retained by the licence holder and be readily available for inspection by the Licensing Authority, a Police Officer or Immigration Officer.
15. Relevant Entertainment shall be given only by Performers and the audience shall not be permitted to participate in the relevant entertainment.
16. There shall be no physical contact between Performers whilst performing.
17. Performers will not request or give out any telephone number, address or any other contact information from or to any customer. Any such information given by a customer shall be surrendered to the premises manager as soon as is practicable.
18. Relevant Entertainment shall take place only in the designated areas approved by the Licensing Authority as shown on the licence plan. Arrangements for access to the dressing room shall be maintained at all times whilst Relevant Entertainment is taking place and immediately thereafter.
19. Customers must remain fully clothed at all times. The Performer must not remove any of the customer's clothing at any time.
20. Where Relevant Entertainment is provided in booths, or other areas of the premises where private performances are provided, the booth or area shall not have a door or other similar closure, the area shall be constantly monitored by CCTV, and access to the booth or other area shall be adequately supervised.
21. Whenever Relevant Entertainment is being provided there shall be no physical contact between Performers and customers or between customers and Performers except for the exchanging of money or tokens at the beginning or conclusion of the performance and only for the purpose of that performance. Clearly legible notices to this effect shall clearly be displayed in each private booth and in any performance area.
22. Performers must redress fully immediately after each performance.
23. The provision of the Porn Idol talent competition or similar entertainment when unpaid members of the public participate as performers, shall be permitted to be held for a two-hour period one day a week, during which time standard conditions 14, 15, 16 and 20 (above) shall not apply.
24. The maximum number of persons accommodated within the premises at any one time (excluding staff) shall not exceed 1625 persons with maximum local capacities at any one time for the following areas (as marked on drawing no's 08.001 Rev Land 8.002

Rev K) being: the ground floor main dance floor - 1300, 'VIP' bar - 50, the 'Artist Bar and Cinema' - 550 and first floor total - 390 provided that there shall be a maximum capacity in the Dakota Smoke Bar of 280.

25. All emergency doors shall be maintained effectively self closing and not held open other than by an approved device.
26. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
27. Curtains and hangings shall be arranged so as not to obstruct emergency signs.
28. The approved arrangements at the premises, including means of escape provisions, emergency warning equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.
29. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.
30. All exit doors shall be available at all material times without the use of a key, code, card or similar means.
31. Any special effects or mechanical installations shall be arranged and stored so as to minimise any risk to the safety of those using the premises. The following special effects will only be used on 10 days prior notice being given to the Licensing Authority where consent has not previously been given:
 - i. pyrotechnics including fire works
 - ii. firearms
 - iii. lasers
 - iv. explosives and highly flammable substances.
 - v. real flame.
 - vi. strobe lighting.
32. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
33. 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.
34. A direct telephone number for the manager at the premises shall be publicly available at all times the premises are open.
35. This telephone number is to be made available to residents and businesses in the vicinity.
36. The licence holder shall ensure that any queue to enter the premises

which forms outside the premises is orderly and supervised by door staff so as to ensure that there is no public nuisance or obstruction on the public highway.

INFORMATIVE

The Sub Committee welcomed the Applicants offer to meet, as soon as circumstances permitted, with the Objectors and their representative, Richard Brown of Citizens Advice Westminster, Licensing Advice Project, in a public forum at a time when objectors and residents would be available to attend such a meeting i.e., an evening meeting.

The Sub Committee also welcomed the Applicants offer to manage any queues that might form outside the premises, either on G-A-Y Porn Idol nights, or any other night, in such a way as to prevent queues of customers waiting to enter the premises from extending into Villiers Street - this would be possible by splitting the queue into two sections and that he would make arrangements for this to be done as indicated by the Applicant.

**This is the full decision reached by the Licensing Sub-Committee.
The Decision takes immediate effect.**

**The Licensing Sub-Committee
19 November 2020**