



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (4)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (4)** held on **Thursday 3rd September, 2020**, This is a virtual meeting.

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

1 MEMBERSHIP

2 DECLARATIONS OF INTEREST

1 CUCKOO CLUB, GROUND FLOOR, VICTORY HOUSE, 99 - 101 REGENT STREET, LONDON

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 3 **("The Committee")**

Thursday 3 September 2020

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

Declaration of Interest: Councillor Glen advised that he had sat on the previous hearing but was able to determine this application with an open mind.

Officer Support: Horatio Chance: Legal Advisor
Kerry Simpkin: Policy Officer
Committee Officer: Andrew Palmer
Presenting Officer: Kevin Jackaman

Application for a Variation of Premises Licence - Cuckoo Club Ground Floor
Victory House 99 - 101 Regent Street W1B 4EZ 20/04738/LIPV

Full Decision

Premises

Cuckoo Club
Ground Floor
Victory House
99 - 101 Regent Street
W1B 4EZ

Applicant

Unicorn Capital Limited

Cumulative Impact Area

West End

Ward

West End

Summary of Application

The Committee has determined an application for a variation of a premises licence under the Licensing Act 2003 ("The Act"). The Premises operates as a Members only restaurant and nightclub and situated within the West End Ward. The Premises have had the benefit of a licence since 2009 (19/15018/LIPV) The Applicant seeks to vary the licence as follows: -

- *To extend the provision for regulated entertainment indoors (to include plays, films, live music, recorded music, performance of dance and anything similar) to the proposed hours of Monday to Sunday 09:00 to 06:00 the following morning.*
- *To extend the sale of alcohol on and off the premises to the proposed hours of Monday to Sunday 09:00 to 06:00 the following morning.*
- *To extend the provision for late night refreshment indoors to the proposed hours of Monday to Sunday 09:00 to 06:00 the following morning.*
- *The opening hours of the premises will be Monday to Sunday 09:00 to 06:30 the following morning.*
- *To remove conditions, 17, 20, 37,44 and 45 which are taken from premises licence 19/08094/LIPV relating to occupancy of the premises, provision of substantial food and private pre-booked events and prohibition of off sales*

The Committee noted that the Applicant had met with the Responsible Authorities prior to the hearing and in light of those discussions amended the application as follows:-

- The variation as to hours remains unchanged.

- Condition 17 is to be amended to read “*the number of persons accommodated (excluding staff) at any one time shall not exceed:*

Basement - 198

Ground Floor – 213

- Condition 20 is no longer to be removed so there is still the requirement to make substantial food available at the premises.
- Condition 37 is to be read “*there shall be no entry or re-entry to the premises (except for smokers and staff) after 04:30, except the management may permit after 04:30 a maximum of 15 persons who have pre-booked entry and provided their details in advance (but still ensuring the premises capacity is not exceed). Details of those persons to be retained for 7 days and to be kept for police inspection.*”

Conditions 44 and 45 are no longer on the licence following an earlier variation.

Activities and Hours

- As per the premises licence save for the variations applied for.

Representations Received

- Environmental Health (Sally Fabbricatore)
- Metropolitan Police (PC Adam Deweltz)
- Licensing Authority (Karyn Abbott)
- D. Hughes (53 Blackheath Road, London, SE10 8PD)
- J. Mazur (45 Pastoral Way, Brentwood, CM14 5WG)
- H. Sunderland (Flat 1, 20 Swallow Street London)

Brief summary of issues raised by objectors

- Extending licensable activity until 06:00 hours and removing quite pertinent conditions from the premises licence will invariably cause many issues in the area and have an impact on Policing resources.
- The granting of the variation Premises Licence as presented would have the likely effect of causing an increase in Public Nuisance in the cumulative impact area and impact Public Safety.
- The Licensing Authority encourages the applicant to provide further submissions as to how the premises will not add to cumulative impact in the cumulative impact area, as per policy CIP1. Therefore, it is a decision for the Licensing Sub-Committee to determine whether the applicant has demonstrated any exceptional circumstances that would allow to depart from policy.

- We work in a retail store next door to the premises and often come into work early. I do not feel comfortable or safe with alcohol being served until 6am and having intoxicated people when I am coming into work. I feel this would be very disruptive for local residents and businesses alike.
- I work from home (also before lockdown) and this is my main home, not a weekday flat. There are 6 more residences in my building and several flats on Sackville St overlooking this end of Swallow St. The neighbouring properties are offices, 2 restaurants closing at around 11pm, a Jo Malone and a Hollister store, and a coffee shop closing at around 7pm. The Club has no outside seating or outdoor premises, just a door. Therefore, people going in/out congregate outside, and Swallow St becomes rather a loud rubbish bin and loo late at night. I do of course sympathise with the coronavirus situation but am very concerned about increased noise pollution, disorder, public safety and public nuisance if the license is extended and its conditions are removed.
- Being able to open all night long 7 days a week, removing the limit on the number of patrons, removing the controls on bookings and entry/re-entry, introducing off-premises alcohol sales at an indoor venue, and removing the need to sell food and non-intoxicating beverages and water alongside drinks, are all counter-intuitive to the concept of social distancing, and contrary to the interests of public safety, preventing public nuisance and disorder, and of public health. There is little space by the Club door and the Crown Estate is putting up scaffolding to clean all the Regent St and Swallow St buildings, which will further reduce that area. The previous noise pollution - music and patrons - and public drinking will be exacerbated, and the larger numbers of patrons raises serious health concerns. I strongly urge the Club to use other ways of increasing revenue, and ask that the license amendment and removal of license conditions be decline

Policy Position

Policies HRS1, CIP1, PB2 and MD2 apply under the City Council's Statement of Licensing Policy ("SLP"). There is a policy presumption to refuse applications that are in the Cumulative Impact Area unless exceptional reasons can be proven.

DECISION AND REASONS

Kevin Jackaman Presenting Officer outlined the application to the Sub-Committee. This is an application for a variation of premises licence in respect of the Cuckoo Club Ground Floor Victory House 99 - 101 Regent Street W1B 4EZ. The Applicant is seeking to extend the terminal hour until 06:00 for licensable activities and opening hours until 06:30. Representations were received from the Environmental Health Service, the Metropolitan Police Service, the Licensing Authority and three interested parties. Neither of those resident objectors are in attendance today. The applicant has amended the application through the re-wording of certain conditions, but the proposed hours of operation remain unchanged from 09:00 to 06:30 resulting in an extension of 3 hours. Licensable activities would end at 06:00 hours including the sale of alcohol. The Premises is situated within the West End Ward and in the West End Cumulative Impact Area.

Mr Paddy Whur Solicitor acting on behalf of the Applicant addressed the Sub-Committee. Mr Whur referred the Sub-Committee to his written submission previously submitted which can be seen at Pages 5-9 of the Additional Papers. Mr Whur gave some background as to the operator and the rationale for seeking the variation. He advised that the Premises remain closed due to the current Covid-19 pandemic but when re-open would be at a reduced capacity. It was confirmed that the applicant had met with the responsible authorities which has led to the application being amended.

Mr Whur stated that the customer base at the Premises is over 90% known to the management/owners. It is by way of guest list and there has always been a safe environment at the premises with gradual dispersal from the premises meaning that there will not be issues created which should pose concern to the licensing objectives of crime and disorder and public nuisance. The average age of the customer base is 24-28. Other clubs in Westminster and London have a much younger client base. This is down to the music policy. The Cuckoo Club's music policy is designed for an older client base. This has the dual benefit in that it does not attract an aggressive crowd. This is reflected in the lack of crime and disorder issues at the Premises.

Mr Whur advised that the Premises have traded in this location for some 15 years and the same head doorman has overseen the dispersal policy from the Premises. He ensures that people safely go to the cars that they are being picked up in or are directed to Regent Street for taxi's and Uber pickups. There has never been an issue in relation to dispersal from the Premises and the same level of control will be exhibited should the hours be extended. There are no residential properties near the Premises which could have negative public nuisance issues.

Mr Whur stated that the Premises lend themselves to having a full COVID-19 risk assessment for when they are permitted to reopen. There are 2 different entrances which means that one can be used for entrance and the other used for egress. There are 3 lots of toilet facilities, which again can be COVID risk assessed. Strict measures will be put in place for social distancing and sanitisation practices will be undertaken throughout the Premises. Mr Whur said that the Police conditions regarding the use of an ID Scanner and last entry time had now all been agreed with some modifications to the original wording.

The Sub-Committee raised concerns as to the additional hours whether that would add to cumulative impact in the cumulative impact area and asked the Applicant to explain when life resumes after Covid-19 the numbers entering the cumulative impact area will therefore increase.

In answer to this specific question Mr Whur said that longer hours are required otherwise the business would not survive in these hard times. The Premises has a range of measures to ensure the promotion of the licensing objectives when it came to dispersal. The Clientele would be respectful and would be mindful of causing a public nuisance. A bespoke dispersal policy would be submitted to the Responsible Authorities and a condition could be imposed on the licence to this effect.

Mr Whur stated that the Applicant appreciates that the grant of hours is at the discretion of the Sub-Committee but wants to emphasise that they have a very good

track record of operating other late night venues (with long hours than currently at the Cuckoo) without affecting the Crime and Disorder or Public Nuisance Licensing Objectives.

Ms Sally Fabricatore on behalf of the Environmental Health Services addressed the Sub-Committee. Ms Fabricatore said that EHS representation had been maintained on the basis that it wanted the Sub-Committee to decide whether the application would be granted. Ms Fabricatore said that the Premises were not the subject of any complaints and that there was no concern for the later hour of 06:00 hours. In terms of dispersal it would be wise to have a gradual dispersal and any dispersal policy should reflect that. Ms Fabricatore said that for the capacity these were 213 on the ground floor and 198 in the basement but this is subject to Covid-19 restrictions. Model restaurant Condition 41 was to remain so there will be food available when alcohol is sold.

Ms Kayrn Abbott appearing on behalf of the Licensing Authority addressed the Sub-Committee. Ms Abbot stated that the Premises is located within the West End Cumulative Impact Area and as such various policy points must be considered, namely CIP1, HRS1, PB2 and MD2. Ms Abbott said it was for the applicant to demonstrate how the premises will not add to cumulative impact in the cumulative impact area, as per policy CIP1 and it was up to the Sub-Committee to decide if the Applicant has proven exceptional circumstances.

PC Adam Deweltz appearing on behalf of the Metropolitan Police addressed the Sub-Committee. PC Deweltz said that extending licensable activities until 06:00 hours and removing quite pertinent conditions from the premises licence will cause many issues in the area and have an impact on Policing resources. The increased terminal hour will mean there is more drinking in the Premises and as such is likely to become a destination venue. PC Deweltz said at that time of the morning patrons can become easy targets for street robbery. The Premises is low for crime and disorder and the operators are known to be responsible. However, an ID Scanner and last entry time are crucial factors that require consideration and conditions have been proposed in this respect. PC Deweltz said that it was down to the applicant to demonstrate exceptional circumstances to the Sub-Committee given the CIA implications.

The Sub-Committee noted that representations were received from Environmental Health, the Metropolitan Police and the Licensing Authority and all of these were considered. Three local objections were received from two business workers in nearby units and one local resident who cited public nuisance as an issue and the disturbance for residents and business' alike in relation to the later hours.

The Sub-Committee has a duty to consider the application on its individual merits and took into account all of the committee papers, supplementary submissions made by the Applicant and the oral evidence given by all parties during the hearing in its determination of the matter. However, the Committee noted that the three local objectors did not attend the hearing.

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 City Councils Statement of Licensing Policy (“SLP”)

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 extension of hours for licensable activities and the removal and modification of the conditions.

The Sub-Committee is not bound by previous Decisions of licensing premises that may or may not have been granted within the area. The Committee noted that the Premises has had the benefit of a premises licence since 2009 and that the operator purchased the Premises in 2019, however, the length of time the Operator took over the Premises does not prevent such an application being made to the Licensing Authority. 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 noted that the operator took over the business in 2019 and was experienced in this field and had no complaints. The Sub-Committee was advised that the rationale for seeking the additional hours was to allow further time for customers to have the full “Cuckoo Experience” particularly due to Covid-19 restrictions, as their capacity would be reduced and that longer hours were required to save the business from failure. Although it was admitted that the Premises may not take full advantage of it closing at the terminal on all seven days of the week. The Applicant stated that when the Premises were to eventually re-open this would be in full compliance with the Covid-19 Government Guidance in terms of social distancing, hygiene requirements and separate exit and entrance points for customers.

The Sub-Committee noted that the Applicant had not applied for a time limited licence and questioned why they had not done so. The Applicant stated that it could not be certain of the future and did not want to pigeon-hole itself by seeking a licence for say a period of 12 or so months when the current situation with the Covid-19 pandemic could be longer.

The Sub-Committee welcomed the additional conditions that had been agreed with the Police with regard to an ID Scanner and the last entry condition appearing as Condition 37 on the licence so that customers would not be permitted in the Premises after 04:30 hours.

The Sub-Committee did express concern with regard to customers exiting the Premises at the later hour and questioned whether the dispersal arrangements the Applicant had in place were adequate to promote the licensing objectives in particular the public nuisance licence objective. The Applicant stated that dispersal had not been a problem because its established management practices had been proven over time with an experienced doorman and it was envisaged that a gradual dispersal of customers would take place during the later hours in the hope that this would minimise any nuisance caused to nearby residents. The Committee noted that the Applicant offered to have a bespoke dispersal plan which would be made

available to the Responsible Authorities as well as offering a condition on the Licence in that respect.

The Sub-Committee noted the capacity for the Premises and a discussion took place as to a possible reduction on each of the floors after 03:00 hours so as to reduce public nuisance and help to reduce the number of persons dispersing in the early hours of the morning

The Sub-Committee noted that Environmental Health and the Licensing Authority did not have specific issues with regard to the application if this was amended and if the Sub-Committee were minded, to approve the application that the proposed conditions be imposed on the Licence particularly with regard to dispersal and capacity numbers. Likewise, the Police shared the same views and reported that the Premises was not a problem Premises where crime and disorder was concerned but appreciated that the Premises was nevertheless in the cumulative impact area where exceptional reasons had to be proven.

It was the Sub-Committee's considered view, however, that the increase in licensable activities would lead to public nuisance, particularly when customers are leaving the Premises.

In terms of the policy considerations, the Sub-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 Statement of Licensing Policy (SLP)***".

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 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 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.

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. It 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 and exceptionality.

The Sub-Committee was of the view that the Premises could become a destination venue due to the later hours as this would attract customers in the cumulative impact area drinking alcohol and adding to negative impact. It also considered carefully the evidence given by the Police in terms of the potential for crime and disorder particularly with regard to violent offences and street robberies that take place in the area as described by the Police in oral evidence and this could have the potential for exacerbating existing problems and a drain on resources. The Sub-Committee were

concerned that should the Premises change hands in the future the licence would run with the Premises.

The Sub-Committee noted the reasons from the Applicant why an application for a time limited licence had not been made, this was because the Covid-19 pandemic situation was uncertain and that in turn created uncertainty for the business which was currently losing financially. The Sub-Committee takes the view that it would have perhaps been prudent for the Applicant to have sought advice from the Licensing Authority on the question of a time limited licence as that may have helped the Applicant decide whether this was a viable option they could have explored as a short term measure going forward.

The Sub-Committee was of the view that exceptional reasons had not been provided. It sympathised wholly with the Applicant that businesses are struggling in the current climate for obvious reasons and the financial implications for the business would not be good, but exceptionality must first and foremost be proven in accordance with the policy aims and objectives. Regrettably on this occasion this had not been demonstrated as to why the policy requirements should be departed from setting the Premises out to be unique.

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 which is not what the 2003 Act is designed to do.

In all the circumstances of the case the application is ***Refused***.

This is the Full Decision of the Licensing Sub-Committee which takes effect forthwith

**Licensing Sub-Committee
3 September 2020**

2 ZELMAN MEATS, 2 ST ANNE'S COURT, LONDON, W1F 0AZ

2.1 The applicant asked that the application be withdrawn, to allow further discussions with residents and the responsible authorities.

CHAIRMAN: _____

DATE _____