



**CITY OF WESTMINSTER**

# MINUTES

## **Licensing Sub-Committee (3)**

### **MINUTES OF PROCEEDINGS**

Minutes of a meeting of the **Licensing Sub-Committee (3)** held on **Wednesday, 30<sup>th</sup> September 2020**, This was a virtual meeting.

**Membership:** Councillor Jacqui Wilkinson (Chairman), Councillor Margot Bright and Councillor Aicha Less

**Officer Support:** Legal Advisor: Horatio Chance  
Policy Officer: Aaron Hardy  
Committee Officer: Kisi Smith-Charlemagne  
Presenting Officer: Jessica Donovan

#### **1 MEMBERSHIP**

There were no changes to the Membership.

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

There were no Declarations of Interest.

#### **1 WHYTE AND BROWN FORMER GROUND FLOOR UNIT G2 KINGLY COURT LONDON W1B 5PW**

**Application for Variation of a Premises Licence [20/06404/LIPV]**

### **FULL DECISION**

#### **Premises**

Whyte And Brown  
Former Ground Floor  
Unit G2  
Kingly Court  
London  
W1B 5PW

#### **Applicant**

Whyte and Brown Limited: Sarah Clarke Managing Director  
Represented by Craig Baylis: Bryan Cave Leighton Paisner

#### **Cumulative Impact Area**

West End

## **Ward**

West End

### **Summary of Application**

The Sub Committee has determined an application for a Variation of Premises Licence under the Licensing Act 2003 ("The Act"). The Premises currently operate as a restaurant situated in the West End and are within the West End area of Cumulative Impact. The Premises have had the benefit of a licence (17/03113/LIPVM) from 2013.

The Applicant sought to suspend restaurant conditions during the Covid period as defined in the Business and Planning Act 2020. All other conditions are to remain so there will be no vertical drinking and all patrons are required to be seated and served at tables.

### **Current and Proposed Licensable Activities and Hours**

#### **(Ground and first floors)**

#### **Conditions being Varied**

##### Condition 19: Proposed Variation

Condition 19 to be suspended until 31 September 2021 save that substantial food shall be available throughout the premises at all times.

##### Compared with existing condition

The premises (including the external seating area) shall only operate as a restaurant

- (i) in which customers are shown to their table,
- (ii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery,
- (iii) which do not provide any takeaway service of food or drink for immediate consumption, and
- (iv) where intoxicating liquor shall not be sold, supplied, or consumed on the premises otherwise than to persons who are seated in the premises and bona fide taking substantial table meals and provided always that the consumption of intoxicating liquor by such persons is ancillary to taking such meals.

### **Representations Received**

- Richard Brown (Citizens Advice Westminster – representing The Soho Society objectors)
- Karyn Abbott (representing the Licensing Authority)
- A representation made on behalf of the Metropolitan Police Service dated 18 August 2020 had subsequently been withdrawn, following further conditions being agreed and the Application amended.

### **Brief summary of issues raised by objectors**

- The main concern expressed related to the proposed suspension of condition 19 as the suspension of this condition means there is no ancillary nature to the Sale of Alcohol which in turn the application would fall into Westminster's PB2 policy which states paragraph 2.5.23 the Licensing Authority considers that the grant of variations for pubs and bars in the Cumulative Impact Areas should be limited to exceptional circumstances.
- The potential to allow patrons to purchase alcoholic drinks without food thereby creating a new indoor and outdoor bar in the West End Cumulative Impact Area which is contrary to policy as set out in the Statement of Licensing Policy 2016. The capacity of 180, if successful, would permit the restaurant to transform into a drinking venue.
- The lack of details of how the Applicant would promote the licensing objectives in the light of the premises selling more alcohol without the consumption of food.
- The application would add to existing disorder and disturbance and fail to promote the licensing objectives.
- The application is the latest in a series of applications to increase the alcohol on offer in Soho and the trend will continue as a result of the effect of COVID on the hospitality industry.

### **Policy Position**

Policies CP1, HRS1, RNT2 and PB2 apply under the City Council's Statement of Licensing Policy ("SLP"). The Premises is within the West End Cumulative Impact Area (CIA) and so exceptional reasons must be proven by the applicant. There is no policy presumption to refuse for a restaurant premises provided it will not add to negative cumulative impact.

### **DECISION**

Mr Craig Baylis Solicitor presented the application on behalf of Whyte and Brown Limited and explained that the Applicant was seeking to suspend restaurant conditions during the Covid period as defined in the Business and Planning Act 2020 while continuing to promote the licensing objectives. He advised that the Applicant wished to add a new condition to the premises licence as follows "Condition 19 to be suspended until 31 September 2021 save that substantial food shall be available throughout the premises at all times." Mr Baylis explained that all other conditions would remain in place, so there will be no vertical drinking and all patrons would be seated and served at tables as at present.

Mr Baylis advised that since the start of COVID the Applicant had experienced a 65% decrease in overall sales and 5% decrease in sales after 22:00 across the business. He stated that the Applicant had made 20 staff redundancies at its Southbank restaurant. Mr Baylis confirmed that due to COVID restrictions the Applicant has a reduced capacity of 70 people which is a 50% decrease in its usual capacity which had a negative impact on the business. There is no pavement area and so the Applicant is not able to take advantage of the off-sales pavement licence regime. He explained that some patrons just want to come in for a drink and are being turned away.

My Baylis said that in his view the Premises Variation would not impact the CIA, he advised the Premises were extremely well run and that the Applicant's landlord was renowned for its high standards. He also confirmed that the Police had withdrawn its objections after agreeing conditions which prohibited vertical drinking. Mr Baylis stated that these were different times and the main reason for the variation is so that the restaurant can socially operate during these extraordinary times. Ms Sarah Clarke, Managing Director of the Applicant company, addressed the Sub-Committee advising that Kingly Court re-opened to the public at the end of July and had seen a 30-35% decrease in sales. She added that the tourist and after work trade had been severely reduced and the restaurant needed flexibly in order to continue to operate.

The Sub-Committee queried the conditions agreed with the Police, the premises plan and the Applicant's food offer. Ms Clarke confirmed the offerings of the free-range chicken menu, she also highlighted for the Sub-Committee attention the indoor and courtyard seating areas on the premises plan. To mitigate the objector's concerns, Mr Baylis offered a condition to restore the restaurant condition after 22:00 hours, if the application was granted.

Ms Karyn Abbott appearing on behalf of the Licensing Authority addressed the Sub-Committee advising that the Premises were located within the West End Cumulative Impact Area and as such various policy points must be considered, namely HSR1, CIP1, RNT2 and PB2. Ms Abbott went on to state that the Licensing Authority had concerns over the proposed suspension of condition 19 as the suspension of this condition would mean there was no ancillary nature to the Sale of Alcohol which in turn would make the application fall under Policy PB2 policy, therefore the Licensing Authority considers that the grant of variations for pubs and bars in the Cumulative Impact Areas should be limited to exceptional circumstances as more particularly detailed in paragraph 2.5.23 on pages 50 and 51 of the SLP.

Mr Brown addressed the Sub-Committee advising that he intended to assist the Sub-Committee and the parties by summarising why the Soho Society believed that the application will, if granted, add to cumulative impact in the cumulative impact area and harm the licensing objectives. He confirmed that the licensed capacity of the Premises was 30 in the outside courtyard and 70 inside. Mr Brown felt that it was important that the Sub-Committee should be somewhat cautious as this was a shifting situation. Regarding the outside courtyard, Mr Brown felt that there was the potential to consider further options for a more flexible approach to using the courtyard for off sales in accordance with the pavement licence regime.

Mr Lord also addressed the Sub-Committee advising that he was in support of helping local businesses, he commented that while it was acknowledged that the Premises was operating as a very respectable restaurant, the Soho Society also supported reducing the spread of COVID, safety and noise nuisance. Mr Lord advised that the Soho Society had been concerned about the potential public health implications of licence relaxations for some time, whether they be for extended hours or for removal of 'restaurant' conditions. Mr Lord felt that this had been thrown into even sharper focus by the recent rise in the Covid-19 alert level back to level 4 and recent announcements by the Government mandating a return to stricter measures to control the pandemic. Mr Lord stated that the regulations remain unclear as to how the licensing authority can think it

appropriate to permit methods of operation in circumstances where social distancing is more difficult to achieve and maintain i.e., that the more people drink, without food, the more intoxicated they are likely to become and the less likely they are to adhere to social distancing.

The Sub-Committee noted that it was important to consider the public health implications within the Cumulative Impact Area. The Sub-Committee considered whether the suspension of the restaurant conditions would have an adverse impact upon the CIA and concluded that at present it would not. The suspension was to be temporary and the full restaurant condition would be reinstated after that time and so would not be detrimental because the numbers currently within the CIA in practical terms had been substantially reduced in any event.

The Sub-Committee realises that each application should be considered on its merits and based upon the evidence before it concluded that an exception to policy had been proven. The Sub-Committee was satisfied that the conditions it had imposed would mitigate the concerns of those parties that had objected to the application.

The Sub-Committee was further reassured by the undertakings given by the Applicant that the Premises would be managed well resulting in the relaxation of the condition being fully complied with and the licensing objectives being upheld.

The Sub-Committee decided that the Applicant had provided valid reasons as to why the granting of the application would not add to negative cumulative impact in the Cumulative Impact Area and thus promote the licensing objectives.

Having carefully considered the committee papers and the submissions made by all of the parties, both orally and in writing, the Sub-Committee decided, after taking into account all of the individual circumstances of this case and the promotion of the four licensing objectives.

1. To grant permission to suspend restaurant conditions during the Covid-19 period as defined in the Business and Planning Act 2020 while continuing to promote the licensing objectives.
2. To grant permission to *Add* a new condition to the premises licence to the effect that “Condition 19 is to be suspended for a limited period until 30 September 2021 *save that substantial food shall be available throughout the premises at all times*” after which time the condition shall be reinstated and remain to have full force and effect.
3. To add conditions in the terms specified below.
4. That the varied licence is subject to any relevant mandatory conditions.
5. That the existing conditions on the licence shall apply in all respects except in so far as they are varied by this Decision.
6. That the varied licence is subject to the following additional conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

#### **CONDITIONS IMPOSED BY THE COMMITTEE AFTER A HEARING**

7. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team.

All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises and will include the external area immediately outside the premises entrance. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.

8. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open to the public. This staff member must be able to show a Police or authorised council officer recent data or footage with the absolute minimum of delay when requested.
9. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
10. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
11. The supply of alcohol shall be by waiter or waitress service, save in the respect of the area hatched black on the approved plan.
12. No striptease, no nudity, and all persons to be decently attired at all times except when the premises are operating under the provision of a Sexual Entertainment Venue Licence.
13. There shall be no sale of alcohol for consumption off the Premises after 23:00 hours.
14. The external seating shall not be used after Core Hours, being 22:30 hours Sunday, 23:30 hours Monday to Thursday and Midnight Friday and Saturday.
15. The premises (including the external seating area) shall only operate as a restaurant
  - (i) in which customers are shown to their table;
  - (ii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery; and
  - (iii) which do not provide any takeaway service of food or drink for immediate consumption, and (iv) where intoxicating liquor shall not be sold, supplied, or consumed on the premises otherwise than to persons who are seated in the premises and bona fide taking substantial table meals and provided always that the consumption of intoxicating liquor by such persons is ancillary to taking such meals.
16. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police, which will record the following:
  - (a) all crimes reported to the venue
  - (b) all ejections of patrons

- (c) any complaints received regards crime and disorder
  - (d) any incidents of disorder (e) all seizures of drugs or offensive weapons
  - (e) any faults in the CCTV system
  - (f) any refusal of the sale of alcohol
  - (g) any visit by a relevant authority or emergency service.
17. Condition 19 on the Premises Licence shall be suspended for a limited period until 30 September 2021 save that substantial food shall be available throughout the premises at all times after which time the condition shall be reinstated and remain to have full force and effect.
18. There shall be no vertical drinking allowed on the premises.
19. Only up until the 30 September 2021, the supply of alcohol at the premises (including the external seating area) shall be by waiter or waitress service only.

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

**2 CUTTER AND SQUIDGE, 20 BREWER STREET LONDON W1F 0SJ**  
**Application for Variation of a Premises Licence [20/06574/LIPV]**

**FULL DECISION**

**Premises**

20 Brewer Street  
LONDON  
W1F 0SJ

**Applicant**

Cutter and Squidge Limited Annabel Lui  
Represented by Craig Baylis Bryan Cave Leighton Paisner

**Cumulative Impact Area**

West End

**Ward**

West End

**SUMMARY OF APPLICATION**

This was an application for a variation of a premises licence under the Licensing Act 2003 ("The Act"). The Premises currently operate as a Cake Shop situated in the West End and are within the West End area of Cumulative Impact. The Premises have had the benefit of a Premises Licence (18/02179/LIPVM) from 2016. The Applicant wished to vary the licence to permit the service of cocktails on the ground floor in addition to the currently permitted basement by amending condition 10 to read ' No beer, lager, cider or spirits shall be sold from the premises except spirits in the form of cocktails to no more than 20 persons attending a pre booked event in the basement area or any customer seated on the ground floor of the premises and all drinks to be served to table by staff'.

**Current and Proposed Licensable Activities and Hours**

**(Basement and Ground Floor)**

**Conditions being Varied**

Condition 10: Proposed Variation

No beer, lager, cider, or spirits shall be sold from the premises except spirits in the form of cocktails to no more than 20 persons attending a pre booked event in the basement area or any customer seated on the ground floor of the premises, and all drinks to be served to table by staff.

Compared with Existing Condition

No beer, lager, cider, or spirits shall be sold from the premises except spirits in the form of cocktails to no more than 20 persons attending a pre booked event in the basement area.

**Representations Received**

- Karyn Abbott (representing the Licensing Authority)



- One local resident
- A representation made on behalf of the Environmental Health Service dated 31 August 2020 had subsequently been withdrawn, following further conditions being agreed and the Application amended.

### **Brief summary of issues raised by objectors**

- The main concern expressed related to the proposed amending of condition 10 to allow cocktails to be served on the ground floor and is not ancillary to food which in turn would make the application fall into Westminster's PB2 policy which states paragraph 2.5.23 the Licensing Authority considers that the grant of variations for pubs and bars in the Cumulative Impact Areas should be limited to exceptional circumstances.
- The lack of details on how the serving of cocktails on the ground floor would be operated and controlled
- How the variation of the licence will add to cumulative impact in the West End cumulative impact area, in accordance with policy CIP1.
- Would not promote the licensing objectives in the light of the premises selling more alcohol without the consumption of cakes.
- The application would add to public nuisance.

### **Policy Position**

Policies CP1, HRS1, RNT2 and PB2 apply under the City Council's Statement of Licensing Policy ("SLP"). The Premises is within the West End Cumulative Impact Area (CIA) and so exceptional reasons must be proven by the applicant. There is no policy presumption to refuse for a restaurant premises provided it will not add to negative cumulative impact.

### **DECISION**

Ms Donovan, presenting officer summarised the application as set out in the report before the Sub Committee, noting that representations had been received from the Licensing Authority Service, one local resident and the Environmental Health Service who had subsequently withdrawn their representation following agreement of conditions.

Mr Craig Baylis Solicitor presented the application on behalf of Cutter and Squidge Limited and explained that the Applicant was seeking to permit the service of cocktails on the ground floor in addition to the currently permitted basement by amending condition 10 on the licence which reads "No beer, lager, cider or spirits shall be sold from the premises except spirits in the form of cocktails to no more than 20 persons attending a pre booked event in the basement area or any customer seated on the ground floor of the premises, and all drinks to be served to table by staff". Mr Baylis explained that the Premises had been established for 5 years and offered tea, a selection of cakes, which included afternoon teas to pre booked groups.

Mr Baylis explained that in his view the Premises variation would not impact the CIA, since the Premises was currently only open 3 days a week, although this was to increase to a 5-day opening from November 2020. He stated that the

Premises were small with a maximum capacity of only 60 people and that customers are always seated and remain seated. He confirmed that there was no bar counter and drinks, and food are served to tables by members of staff. The Sub Committee noted that the sale of alcohol would cease at 20:00 hours.

Ms Karyn Abbott from the Licensing authority addressed the Sub-Committee advising that the Premises is located within the West End Cumulative Impact Area and as such various policy points must be considered, namely HSR1, CIP1, RNT2 and PB2 under the SLP. Ms Abbott advised that the Licensing Authority had concerns over the proposed amendment of condition 10 which would effectively allow cocktails to be served on the ground floor. Therefore, this would not be ancillary to food which in turn would make the application fall under PB2 policy. Paragraph 2.5.23 of the SLP states that the Licensing Authority considers that the grant of variations for pubs and bars in the Cumulative Impact Areas should be limited to exceptional circumstances. Ms Abbott went on to advise that the Applicant should provide further information as to how the serving of cocktails on the ground floor would be operated and controlled and sought clarification as to whether the supply of cocktails on the ground floor would in fact fall within the meaning of personal condition 9 on the licence in that "The premises shall operate as a cake shop and tea rooms".

The Sub-Committee queried the conditions agreed with the Environmental Health Service, types of customers served and Applicant's cocktail offer. Ms Lui for the applicant confirmed the themed cocktails which were on offer and that the Premises catered to mostly bridal showers, baby showers and birthday parties.

The Sub-Committee considered the relaxation of Condition 10 and took the view that this would not undermine the promotion of the licensing objectives. The Sub-Committee realises that each application should be considered on its merits and based upon the evidence before it concluded that an exception to policy had been proven. The Sub-Committee was satisfied that the conditions it had imposed would mitigate the concerns of those parties that had objected to the application. The Sub-Committee was further reassured by the undertakings given by the Applicant that the Premises would be managed well, and staff trained in relation to the type of events held at the Premises.

The Sub-Committee decided that the Applicant had provided valid reasons as to why the granting of the application would not add to negative cumulative impact in the Cumulative Impact Area and thus promote the licensing objectives.

Having carefully considered the committee papers and the submissions made by all of the parties, both orally and in writing, the Sub-Committee decided, after taking into account all of the individual circumstances of this case and the promotion of the four licensing objectives.

1. To grant permission to permit the sale of Cocktails on the Ground Floor area of the Premises.
2. That Condition 10 on the Premises Licence is now varied so that it reads "*No beer, lager, cider or spirits shall be sold from the premises except spirits in the form of cocktails to no more than 20 persons attending a pre booked event in the basement area or any customer seated on the ground floor of the premises and all drinks to be served to table by staff*"
3. To add conditions in the terms specified below.

4. That the varied licence is subject to any relevant mandatory conditions.
5. That the existing conditions on the licence shall apply in all respects except in so far as they are varied by this Decision.
6. That the varied licence is subject to the following additional conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

#### **CONDITIONS IMPOSED BY THE COMMITTEE AFTER A HEARING**

7. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.
8. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
9. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police. It must be completed within 24 hours of the incident and will record the following:
  - (a) all crimes reported to the venue
  - (b) all ejections of patrons
  - (c) any complaints received concerning crime and disorder
  - (d) any incidents of disorder
  - (e) all seizures of drugs or offensive weapons
  - (f) any faults in the CCTV system, searching equipment or scanning equipment
  - (g) any refusal of the sale of alcohol (h) any visit by a relevant authority or emergency service.
10. A Challenge 21 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport, or proof of age card with the PASS Hologram.
11. Patrons permitted to temporarily leave and then re-enter the premises, e.g., to smoke shall not be permitted to take drinks or glass containers with them.

12. Substantial food and suitable beverages other than intoxicating liquor shall be available during the whole permitted hours in all parts of the premises where intoxicating liquor is sold or supplied.
13. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.
14. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 08.00 on the following day.
15. No deliveries to the premises shall take place between 23.00 and 08.00 on the following day.
16. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
17. The maximum number of persons seated within the premises at any one time shall not exceed 60 persons excluding staff.
18. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
19. The premises shall operate as a cake shop and tea rooms:
  - (i) in which customers are shown to their table
  - (ii) where the supply of alcohol is by waiter or waitress service only
  - (iii) where alcohol shall not be sold or supplied for consumption on the premises otherwise than by persons who are seated in the premises and where the consumption of alcohol by such persons is ancillary to food (including cake, desserts, and ice cream)
20. The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a cake shop and tea rooms.
21. No beer, lager, cider, or spirits shall be sold from the premises except spirits in the form of cocktails to no more than 20 persons attending a pre booked event in the basement area or any customer seated on the ground floor of the premises and all drinks to be served to table by staff.

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

The Meeting ended at 2.45 PM

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

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