



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (1) MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (1)** held on **Thursday 4th February, 2021**. This was a Microsoft Teams virtual meeting.

Members Present: Councillors Matthew Green (Chairman), Jim Glen and Rita Begum

1. MEMBERSHIP

- 1.1. There were no changes to the Membership of the Sub Committee.
- 1.2. For the purposes of this meeting, the Chairman proposed that Councillor Jim Glen be appointed Substitute Chairman. Councillor Glen accepted the appointment.

2. DECLARATIONS OF INTEREST

- 2.1. There were no Declarations of Interest.

3. THE SCOTCH OF ST JAMES, BASEMENT & GROUND FLOOR, 13 MASON'S YARD, LONDON SW1Y 6BU

Members Present: Councillors Matthew Green (Chairman), Jim Glen, and Rita Begum.

Officer Support:

Legal Officer:	Horatio Chance
Policy Officer:	Aaron Hardy
Committee Officer:	Cameron MacLean
Presenting Officer:	Michelle Steward

Present: Mr Vahram Papazyan, Applicant; Mr James Rankin, Counsel, Francis Taylor Building (for the Applicant); Mr Craig Baylis, Solicitor, BCLP LLP (representing the applicant); Mr Aaron Stevens, Solicitor, King & Spalding LLP (representing the applicant); Mr Tihomir [Tim] Lalic, Objector; Mr Philip Kolvin, QC, Cornerstone Barristers (representing Mr Lalic & Alula Three Ltd); Mr Richard Brown, Citizens Advice Westminster (representing objectors); Mr Bernard Benn, Objector; and Marcus Lavell, Counsel, Keystone Law (in attendance).

Representations: Mr Tihomir [Tim] Lalic; and local businesses and residents.
Applicant: Ground Support Equipment DMCC
Ward: St James's

CIA¹: Not applicable

Summary of Application

The application was for a new (“shadow”) premises licence.

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. The Chairman explained the procedure that would be followed at the meeting. He then invited the Presenting Officer, Ms Michelle Steward, to present the report.

PRESENTATIONS AND SUBMISSIONS

Ms Michelle Steward, Senior Licensing Officer

Ms Steward summarised the application as set out in the report of the Director of Public Protection and Licensing that was before the Sub Committee. She noted that there had been an amendment to the report and that an updated version of the Plan of the premises on Page 24 of the Agenda Pack had been circulated to Members and the parties.²

The Licensing Authority had received 21 objections to the application from Members of the Public and local businesses and Mr Richard Brown of Citizens Advice Westminster, Licensing Project, would be representing several of the objectors. Mr Tim Lalic, represented by Philip Kolvin, QC, and Mr Bernard Benn, Resident Landlord, were present and would make submissions opposing the application.

The Metropolitan Police Service (MPS) had also made representations on the application but, after discussions with the applicant, had subsequently withdrawn their representations. Late submissions had been received from the applicant and Mr Lalic and these were included in the Additional Information Pack which had been circulated.

The premises were located within the St James Ward and were not within a cumulative impact area.

The Chairman then invited Mr Rankin to make his presentation behalf of the applicant.

James Rankin, Counsel for the Applicant

Mr Rankin noted that the Members would have read his skeleton argument at Pages 7-14 of the Additional Information Pack, and the statement of his client, Mr Vahram Papazyan, at Pages 21 & 22 of the Additional Information Pack, both of which described the background to the application. In summary, there was a commercial dispute between Mr Papazyan and Mr Tihomir [Tim] Lalic, represented today by Mr Philip Kolvin, QC.

Mr Rankin stated that the history of the premises was, as follows: Mr Papazyan had bought the lease of the premises in 2012 for £280,000 without any

¹ Cumulative Impact Area

² See Appendix 1 to these minutes.

contribution from Mr Lalic. He then refurbished the premises at a cost of £675,000. Mr Lalic was a salaried employee and Mr Papazyan received an income from the property. Mr Papazyan and Mr Lalic, with the assistance of consultants, operated the premises together until they fell out.

In 2014, Mr Papazyan had to compensate staff who had been unfairly dismissed by Mr Lalic. However, the more pressing matter related to events on 3 September 2020 when Mr Lalic, it is alleged, illegally and without notice, informed Companies House that Mr Papazyan had ceased to be a Director of Alula Three Ltd.³ It was Mr Papazyan's contention that, because of the nature of the actions by Mr Lalic, he remained a Director of Alula Three Ltd. Mr Papazyan also alleged that Mr Lalic subsequently acquired shares in Alula Three Ltd. and that he did so illegally. It was noted that these allegations were now the subject of litigation.

Mr Rankin stated that he was not asking the Sub Committee to find that Mr Lalic had conducted himself unlawfully, or that, as a finding of fact, he had misappropriated shares in Alula Three Ltd. He also stated that he did not want the Sub Committee to be distracted by press statements made by Mr Lalic to the Times newspaper which were wholly refuted by Mr Papazyan.

It was Mr Rankin's contention that Mr Lalic had conducted himself unlawfully in the way in which he had operated the premises. Specifically, Westminster City Council Licensing Officers had visited the premises on 3 October 2020 and had found the premises to be operating in breach of the Coronavirus Regulations. A Prohibition Notice was subsequently served on the premises, thereby putting the premises licence at risk.

It was Mr Rankin's proposal that the solution to these problems was for Mr Papazyan to apply for a shadow licence for the following reasons.

1. It preserved the status quo until such time as the ownership of the premises could be resolved. The shadow licence would be in the name of "Ground Support Equipment DMCC⁴", a company based in Dubai of which the applicant was a Director.
2. It protected the licence i.e., the way in which Mr Lalic had been operating the premises had attracted a Prohibition Notice. Therefore, Mr Papazyan wished to protect the licence.
3. It would prevent Mr Lalic from using the licence as a bargaining chip or some form of leverage in the pending litigation.

Mr Rankin then referred to the case of R (OTA) Extreme Oyster v Guildford Borough Council [2013]⁵ and the history of shadow licences, noting that landlords and others frequently applied for shadow licences. He proceeded to explain the operation of shadow licences and Mr Papazyan's equitable interest in the property, as noted in the Land Registry "Register of Title" at Page 25 of the Agenda Pack. It was Mr Papazyan's equitable interest that brought him within

³ Alula Three Ltd. was the investment umbrella which held the premises licence. Mr Papazyan and Mr Lalic were joint directors of the company and Mr Papazyan was a guarantor for the lease of the premises.

⁴ Dubai Multi Commodities Company with Limited Liability

⁵ EWHC 2174 (Admin), [2014] PTSR 235

the provisions of section 16 of the Licensing Act 2003, allowing him to apply for a shadow licence.

Mr Rankin stated that, if the Sub Committee had concerns about a shadow licence being in the name of a company based in Dubai, a condition could be imposed on the licence prohibiting it from becoming operative until such time as the licence had been transferred into the name of a UK company or UK resident (Mr Papazyan being a UK resident).⁶

Referring to his skeleton argument, Mr Rankin explained the operation of section 16 which provided a “gateway” for applications for a premises licence, noting how the applicant met the gateway criteria. He stated that, if the shadow licence was granted, there be no prejudice to Mr Lalic, the residents, or any other party, and that this would simply be a holding position.

Regarding the lack of an Operation Plan, Mr Rankin stated there was nothing remarkable in this in that the application would be granted on exactly the same terms and conditions as the existing licence and the shadow licence would not become operative until such time as the existing licence was surrendered or transferred.

In response to residents’ concerns that they had not been consulted, it was true that they had not been consulted, but only because their position would not change if the licence was granted. Furthermore, concerns about the operation of the premises was not relevant to this application as the appropriate remedy, should there be concerns about the operation of the premises, would be to seek a review of the premises licence.

In response to allegations that Mr Papazyan had no experience in managing licenced premises, Mr Rankin stated that Mr Papazyan had been involved in the running of these premises since 2012 as well as being involved in the running of other licensed premises.

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

1. The applicant was as concerned as the Sub Committee about the breach of the Coronavirus Regulations which had resulted in a Prohibition Notice being issued. The activities that took place in breach of the Coronavirus Regulations were entirely the fault of Mr Lalic and not a failing on the part of the conditions attached to the licence. Should the Sub Committee wish to add conditions to the shadow licence, the applicant would have no objection to additional conditions.
2. The applicant would be willing to accept a condition requiring the existing licence to be surrendered before any shadow licence would become operative, such a condition being in accordance with Paragraph D20 of the Spatial Policy in the Council’s Statement of Licensing Policy.

⁶ Under s.16 of the Licensing Act 2003, there is no prohibition on a non UK-based company applying for a new premises licence.

Mr Philip Kolvin, QC

In making his submission, Mr Kolvin stated he would concentrate on the licensing merits of the application as it was the task of the Sub Committee to consider what was appropriate for the promotion of the licensing objectives, having regard, amongst other things, to the Council's Statement of Licensing Policy.

He suggested that, for the following reasons, there was no need for the Sub Committee to be distracted by the technical workings of section 16 of the Licensing Act 2003, shadow licences, or the details of the commercial dispute between the parties.

1. The case of R (OTA) Extreme Oyster v Guildford Borough Council [2013] concerned the application of section 16 of the Licensing Act 2003. It was not in dispute that the requirements of section 16 had been satisfied.

2. The Council's Statement of Licensing Policy, under the heading "Licence Conditions and Enforcement", stated, at paragraph H20, that –

"The Act permits more than one licence to be in effect at any one time at the same premises and it has to be established in law that the landlord may apply for a second or subsequent licence."

Because of problems created by multiple licenses, Paragraph H24 stated –

"To support the Council's approach to multiple licenses for the same premises it is the licensing authority's policy that all licences take effect when granted and continue to have effect in accordance with Section 26 of the 2003 Act and that the imposition of a condition which purports to suspend the effect of a licence would not promote the licensing objectives."

Therefore, as the Council would be granting a live licence, if the application was approved, it was necessary to apply the Council's Statement of Licensing Policy to the application.

3. The civil dispute between Mr Papazyan and Mr Lalic did not alter the focus on the licensing objectives as required by the Licensing Act 2003.

Mr Kolvin then considered the licensing merits of the application, as follows.

1. The Locality

The locality was sensitive with Mason's Yard being a small enclosed yard with reverberant surfaces and residential dwellings all around. Any noise within the square would have a high propensity to cause nuisance to adjoining residents, particularly at night. Therefore, this was a case where the Council's Public Nuisance Policy (specifically, PN1: B1 & 2⁷) would be engaged.

⁷ Council's Statement of Licensing Policy, Page 32

2. The Proposal

The proposal was for music and dance extending 5 to 6 hours beyond the Council's core hours. Therefore, Core Hours Policy HRS18 was relevant, particularly given the residential nature of the Yard.

3. The Applicant

The applicant was an unincorporated Association registered in Dubai and, as its name suggested, it was a ground support equipment company. The Sub Committee knew nothing about the applicant company, either here or in the Middle East, and there was no evidence that it had ever operated licensed premises.

Contrary to the advice on Page 6 of the Council's Statement of Licensing Policy, the applicant had not consulted with residents. The applicant was of the view that the licence would not impact upon residents as the premises were already licensed. However, the real question was whether the applicant should be licensed as it was the applicant who wished to operate the premises. Consequently, several residents had spoken up to say that they had not received the courtesy of being consulted.

In this sensitive location, and the current operating hours, it was a serious job to avoid harming the licensing objectives and the support of residents was hard won, requiring operational experience, consistent management and stakeholder engagement. Mr Lalic had never had a day-to-day operational role in these premises and had provided no evidence that he could operate the premises without harming the licensing objectives.

4. The Operating Plan

In the circumstances, the Operational Management Plan was key, but the Sub Committee had not been presented with any plans, policies or supporting documents, contrary to the advice on page 6 of the Council's Statement of Licensing Policy. There were no risk assessments in accordance with CD1 (Prevention of Crime and Disorder Policy): Paragraph B1; or PS1 (Public Safety Policy): Paragraph B1; or PN1 (Prevention of Public Nuisance Policy): Paragraph C12; or Appendix 7A (Metropolitan Police Crime Prevention and Effective Management Checklist): Paragraphs A2 & H2; or Appendix 11 (Guidance on Noise): Paragraph 3.

In addition, the Sub Committee had no information about staffing structures, security engagement, compliance monitoring, and so on. The application before the Sub Committee simply stated, "Attach all conditions attached to the current licence". It would be remarkable if that was all that was required to get a 5 AM premises licence in Westminster.

It was Mr Kolvin's submission that the application failed the Council's Statement of Licensing Policy MD1 (Music & Dance Premises and Similar Entertainment Policy): Paragraphs A1&2; and PB1 (Public Houses and Bars Policy): Paragraphs A1&2. There was no provision in the Council's Statement of

⁸ Ibid. page 44

Licensing Policy which allowed the Statement of Licensing Policy to be ignored because the premises were already licensed. The applicant was not a landlord wanting a fallback licence, but a company wishing to operate the premises pursuant to the licence it was seeking. Therefore, the applicant was subject to the same policies as everyone else. Furthermore, the Licence Plan submitted by the applicant had been superseded. Finally, the applicant had no legal interest in the property, such as a lease or sublease, or an option, or an agreement for a lease, and the landlord had no interest in granting the applicant a legal interest. Consequently, there was no evidence as to how the applicant was going to exert the control required by the licence conditions or any conditions of its own that might be deemed necessary to promote the licensing objectives.

The high watermark of the applicant's case was that there was a licence which was a relevant consideration under Policy HSR1: The Core Hours Policy. But this alone was not determinative. The Prohibition Notice was a serious matter and Mr Lalic had apologised for the breach and had complied with the terms of the Notice. However, this could not affect the principle of whether a new licence should be granted to the applicant.

In conclusion, Mr Kolvin stated that this was an unusual application in that applications for shadow licences were usually made by landlords as a backup. However, this was a predatory application from a disgruntled actual or former Director, who was not recognised by the Council's Statement of Licensing Policy as being subject to special consideration. Therefore, the application had to comply with the Council's policies. The present application failed to comply with the Council's policies. Therefore, the application should be refused.

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

1. In response to a suggestion that, given the sensitive nature of the area, it might be appropriate to review the premises, a review had been carried out prior to Mr Lalic taking over the premises. In the time that Mr Lalic had been in charge, relations with residents had improved considerably and Mr Lalic had a good relationship with the Licensing Authority and the Police, and there was nothing to suggest that these premises were being run in a way that was harmful to the licensing objectives.

More generally, there had been issues across the country about when a late bar might be classified as a nightclub, and the operation of such premises within the parameters of the Coronavirus Regulations. It was this uncertainty that had led to Prohibition Notices being issued to ensure that operators stayed on the right side of the line between bars and nightclubs.

2. Regarding promoting new business, there was an existing licence, business, and staff. This was not an empty premises and, as soon as the coronavirus lockdown restrictions were lifted, the premises would start to operate. The issue in the present case was whether to grant a licence to somebody who did not have a lease or an interest in the property, and who had not presented an operating plan or any other information other than a proposal that the current licence simply be replicated.
3. The issue in the present case was whether the applicant had satisfied all the criteria in the Council's Statement of Licensing Policy for the grant of a

licence. The essence of Mr Lalic's submission was that the applicant had not complied with the requirements of the Council's Statement of Licensing Policy and that it was the job of the Licensing Authority to prevent harm to the licensing objectives. Therefore, the policy indicated that the application should be refused

4. Should the shadow licence be granted and there was a condition that it could not operate until the existing licence was surrendered, that would afford some protection to the licence holder. The premises licence was an asset and Mr Lalic was concerned that, should another licence be granted, that would dilute the value of his asset.

Richard Brown, Citizens Advice Westminster (on behalf of several residents)

Mr Brown stated that the resident's primary concern was that the late-night premises in Mason's Yard was operated properly. He stated that the application had to be considered on its merits and that the Licensing Authority was under a duty, in accordance with the provisions of the Licensing Act 2003, to exercise its functions with a view to promoting the licensing objectives.

In response to the submission by Mr Rankin that, should the shadow licence be granted, this would not impact upon residents, it was noted that the residents had a good relationship with the current licence holder who was alive to the sensitive nature of the area. From the information presented today, it was not clear what experience the applicant had of running licensed premises as opposed to investing in such premises.

As the applicant had not submitted an Operating Plan, and had not engaged with the residents, the applicant remained an unknown entity as far as residents were concerned. Should the shadow licence be granted, residents were concerned that this may jeopardise the positive steps that had been taken by the current licence holder.

Rather than go through the policy considerations already covered by Mr Kolvin, Mr Brown posed the rhetorical question: should an application for a 5.00 AM licence in this location by an applicant with little or no track record or experience of operating licensed premises; who had failed to provide a detailed operating schedule with the application; and who had not given any indication that the application complied with the [Home Office] Section 182 Guidance, be granted?

Mr Brown stated that, to grant such an application on the evidence before the Sub Committee would be a leap of faith.

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

1. Regarding Mr Papazyan's track record as a director of the company holding the lease of the premises, it may be that the applicant could operate the premises in a responsible manner. However, based on the information available, it was not possible to decide on the matter. Again, on the information available, it did not appear that there had been any contact between the residents and the applicant.
2. Regarding possible conditions that could be added to the licence to ensure that the premises were operated in a way that promoted the licensing

objectives, if there was a condition to the effect that the shadow licence would not be operative while the current licence was in operation, that would afford a degree of protection to the residents. If there was then an application to vary the licence and remove the condition preventing its use, the expectation would be that there would be a lot more information available at that time, and residents could decide whether they wished to make representations on the application.

3. It was his view that there was a difference between a shadow licence and a new premises licence. That there was an existing licence was a relevant factor but not the only one. As the operating hours of the current licence were until five in the morning, this necessitated greater scrutiny of the application than might be the case for premises operating within core hours.
4. Applications for a shadow licence by a landlord who was not going to operate the premises but transfer the licence to an unknown entity were more likely to raise concerns than would an application by a landlord for a shadow licence for the purpose of preserving the landlord's position, rather than with the intention of operating the premises. The present case was slightly unusual and, for this reason gave rise to concerns on the part of residents regarding the applicant's ability to operate the premises in a responsible manner. This concern was based on their being insufficient information to allow residents to come to an informed decision on the matter.

Mr Bernard Benn

Mr Benn stated that he was the residential landlord of the property and that he resided on the top floor of the property in the mansard roof, and that he had lived there for the last five years. During that time, he had built up a relationship with Mr Lalic whom he saw two or three times each week. In the last five years, he had never met the applicant and only became aware of his existence in the last few weeks. He noted that, as Mr Lalic's landlord, Milestone Investments Ltd. managed various property holdings in central London and the company tried to harness strong relationships with all its tenants. As such, Milestone Investments would not be keen to enter a lease with a party that was not known to them.

Mr Benn stated that he was not clear as to why the applicant was seeking a shadow licence while the applicant company was still based in Dubai. He proposed that the application should not have been made until such time as there was a UK company to make the application.

He stated that he had no concerns about the way in which Mr Lalic operated the premises, noting that, whatever the premises were operating, noise barriers were erected and there were 2 to 3 security guards present preventing people from congregating outside the premises. He stated that there was no noise pollution or criminal damage as a result of the operation of the premises, and he commended the way in which Mr Lalic managed the premises.

Regarding investment in the premises, as far as he was aware, it was Mr Lalic who had invested in the premises, including noise abatement measures and the installation of air-conditioning.

In conclusion, Mr Benn stated he had not had any contact with the applicant and that, if the applicant was serious about obtaining a shadow licence, he would

have thought that the applicant might have extended the courtesy of contacting him.

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

1. He had never had any contact with the applicant, although he could see that he was named on the Land Registry's "Register of Title", which was before the Sub Committee.
2. Regarding a proposed condition that a shadow licence would only become operative when it was transferred to a UK based company, it would make more sense to him if it were a UK company that made the application. It would then be possible to undertake a search of the company personnel and determine their suitability to operate premises in a commercial and residential area. The approach adopted by the applicant had not put him on a strong footing.
3. He met regularly with Mr Lalic and the tenants on the first and second floors of the property to ensure that the building was being well managed. He also took this opportunity to ensure that his tenants were able to survive in the present economic climate by making suitable arrangements for the payment of rent.
4. He had no knowledge of the time that the applicant had managed the premises with Mr Lalic and that any dealings that the applicant may have had as a tenant with the landlord of the premises would have been before he took over responsibility for managing the premises from his father.

Questions by the Council's Legal and Policy Officers

At this stage in the proceedings, the Chairman asked if the Council's Legal and Policy officers had any questions, they wished to put to any of the parties.

Horatio Chance, Legal Officer, asked if Mr Rankin could clarify a few points, which he then enumerated.

In response, Mr Rankin stated that –

1. The applicant would be willing to have the Council's Model Condition (MC) 62⁹ added to the licence conditions.
2. The applicant would also be content with a condition requiring a shadow licence to be transferred to a UK based company or UK resident before it became operative.
3. Regarding promoting the licensing objectives, Mr Rankin stated that the applicant relied on Paragraph D20 of the Council's Spatial Policies, as set out in the Council's Statement of Licensing Policy.

Mr Rankin then referred to the specific provisions of Paragraph D20. He stated that when the shadow licence holder applied for a variation of the licence to remove any conditions preventing the use of the licence, it was at that point that the Licensing Authority would consider whether the operation of the premises was likely to be an exception to policy. And it was at that point that the applicant would submit an operating schedule and supporting

⁹ No licensable activities shall take place at the premises until premises licence xxxx/xxxxx/xxxx (or such other number subsequently issued for the premises) has been surrendered [and is incapable of resurrection].

documentation to demonstrate how the applicant would promote the licensing objectives. Accordingly, these requirements, in conjunction with MC62, and a condition requiring the licence to be transferred to a UK based company, provided all the safeguards that were necessary.

4. Although there was a settled intention to carry on the business at these premises, the applicant did not have a management plan at this stage as it would only be when the applicant applied to lift the MC62 condition to make the licence operative, that the applicant would look in detail at a management plan.
5. It would make sense if the Sub Committee wished to amend the wording of MC62 to include a requirement that, at the point of surrendering the first licence, a detailed operational and management plan which was satisfactory to the Westminster Licensing Authority and Environmental Health Service (EHS) was submitted before the licence could become operative.

Mr Chance confirmed that it would be possible to amend the wording of MC62, as suggested. Alternatively, there could be a stand-alone condition to that effect.

Mr Kolvin confirmed that such a condition would not be acceptable to his client for reasons that he would set out in his summing up. However, if the Sub Committee was against him on that point, then MC62 would be a starting point. However, to require that an operational plan be submitted to the Licensing Authority and the EHS for approval would preclude consultation with any other parties. He noted that it was one of the principles of the Licensing Act that there should be consultation and, for there to be any consultation, it would be necessary for a formal application to be made which could then be advertised in the normal way, thereby allowing parties the opportunity to make representations on the application.

Mr Brown concurred with the points made by Mr Kolvin, noting that, if an application was made to remove a condition from the shadow licence restricting its operation, then his clients would expect to see detailed operating plans and supporting documentation at that stage.

SUMMING UP

Mr Brown, Citizens Advice Westminster (on behalf of resident)

Mr Brown stated that, having had ample opportunity to address the Sub Committee during his presentation, he had nothing further to add.

Mr Benjamin Benn, Resident Landlord of the Premises

Mr Brown confirmed he had nothing further to add to his presentation by way of summing up.

Mr Philip Kolvin, QC on behalf of Mr Tim Lalic and Alula Three Ltd

Mr Kolvin stated that the case turned on the proper interpretation and application of the Council's Statement of Licensing Policy. The essential case made by the applicant was based on the supposition that a grant to one was a grant to all. That could not be right: if his client surrendered his license, and an applicant came before the Sub Committee requesting that they be granted a licence in exactly the same terms, the Sub Committee would refuse the application as the

Sub Committee knew nothing about the applicant or the applicant's operating plan. All that the applicant would be promising to do would be to operate the premises in accordance with the conditions of the original licence as replicated in a new licence.

The answer to the question: could the premises be operated in accordance with the existing licence in such a way as to promote the licensing objectives, was yes, as demonstrated by Mr Lalic over many years. Before granting the privilege of a licence to any applicant, the Sub Committee had to know a great deal about the applicant and the application, as required by the Council's Statement of Licensing Policy. The problem here was that, by failing to provide enough information, the applicant had not complied with the Council's Statement of Licensing Policy.

Looking at the property register; it could be seen that Mr Papazyan did not have an interest in the property as the leaseholder of the premises was a company called Hartanak Leisure Ltd. Mr Papazyan was a guarantor for the lease of the premises.

Referring to criticisms about the way in which Mr Lalic had run the premises, based on the fact that a Prohibition Notice had been served on the premises, it was reported that two senior managers had been dismissed for failing to comply with the Coronavirus Regulations, and that Mr Lalic now used the services of a different security company. In addition, Mr Lalic had apologised to the Metropolitan Police for the breach of the Coronavirus Regulations. Apart from that incident, Mr Lalic had enjoyed good relations with the landlord, residents, and the responsible authorities for many years.

Mr Papazyan had been involved in the premises as a director, but he did not have any day-to-day experience of operating the premises, as made clear in Mr Lalic's witness statement. It was for that reason that Mr Papazyan was not known to residents or the landlord.

Because the applicant was a company registered in Dubai, the Sub Committee had considered rewording MC62 such that any shadow licence would not become operative until it was transferred to a UK based company or UK resident. However, the problem remained that the applicant had failed to provide enough information to enable the Sub Committee to grant the licence. Furthermore, the effect of a reworded MC62 would be to defer the moment that the Sub Committee had to consider whether the shadow licence should have been granted in the first instance.

The appropriate time for an applicant for a shadow licence to present an operating plan and to explain how the premises would be managed, should be at the time the application for the shadow licence was made, and not when the applicant, having been granted a shadow licence, sought to make the licence operable by having the MC62 or any other condition discharged.

If the Sub Committee was minded to grant the licence and to include MC62, it should be made clear that the licence was not to operate while the current licence was extant and, if there was a subsequent application to vary the shadow licence, the applicant would be required to produce sufficient information to allow the Sub Committee to vary the licence. These requirements could be included in the Decision Notice or by way of an Informative.

If there was a rider to such a condition that it was for the licensing authority to approve the operational plan, that would provide a measure of protection but would exclude the residents from any consultation on the operating plan, unless the Licensing Authority was of the view that the plan was a matter that should be referred back to the Sub Committee.

In the present case, the applicant did not have an interest in the property or any means of operating the premises as a licensed premises. Therefore, the Sub Committee did not have to extend the Council's licensing policy to breaking point. All that was required was to inform the applicant that, if he wanted a licence from this authority, which jealously guarded the interests of its residents, he would have to come forward with the kind of information that the authority would typically expect to see when considering a premises licence application.

In conclusion, Mr Kolvin proposed that, if the applicant wished to have a licence, then he had to come before the Sub Committee with the kind of information that the licensing authority would typically expect to see when considering such an application. As the applicant had not provided the required information, the Sub Committee's response to the application should be "No".

Question by Councillor Glen

In response to a question by Councillor Glen as to whether the points made by Mr Kolvin in his summing up could not equally apply to any landlord seeking a shadow licence who, at the time they were applying for the shadow licence, did not have an operator in mind, Mr Kolvin made the following comments.

There was some tension between what was said in Paragraphs D20 and H20 to H24 in the Council's Statement of Licensing Policy.¹⁰

Landlords usually applied for a shadow licence to protect the investment in their property, particularly in cumulative impact areas, as the value of a property could turn, to a large extent, on the existence of a premises licence. If a licence ceased to exist, the property owner then had to find a suitable operator if a premises licence was to be granted. It was for these reasons, as noted in the Council's Statement of Licensing Policy that, typically, it would be a landlord that would apply for a shadow licence.

In the present case, the applicant, who did not have a direct interest in the premises, was asking the Sub Committee, as noted in his skeleton argument, to grant him a shadow licence so that he may operate the premises. This then gave rise to the consideration as to whether the Sub Committee handed out licences to any operator who was going to operate the premises on the same terms as the existing licence. If this was a planning matter, the answer would be "Yes" because "planning [permission] runs with the land". That was not the case with Licensing. Therefore, when a third-party, about which the Sub Committee knew very little, came before the Sub Committee seeking a licence, then any tension within the Council's policies should be resolved in favour of the general considerations in the Statement of Licensing Policy, and not according to the commentary in the policy on applications by landlords, notably, those with premises in cumulative impact areas, for a shadow licence.

¹⁰ See Appendix 2 to these minutes.

In response to question by the Chairman, Mr Kolvin illustrated the points he had made by reference to a hypothetical situation of an applicant with no interest in the premises seeking a licence to operate the Hippodrome in Westminster on the same terms as the present operator, but without providing any supporting information, stating that such information would be provided at a later date. Understandably, the Sub Committee's likely response would be to refuse to consider the application. This, he suggested, was a very different situation from a landlord seeking to protect his/her investment.

In the present case, there were objections from the landlord, residents and the current licence holder on the grounds that nothing was known about the applicant or how the applicant proposed to manage the premises.

Responses to Questions Posted in the Meeting Chat Section

In response to questions posted in the meeting chat section, Mr Kolvin provided information regarding the dismissals that had taken place following the issuing of the Prohibition Notice. He also noted that, following the incident, the premises had been closed for two weeks by Mr Lalic to allow staff training to take place.

In response to a question by the Chairman, Mr Rankin confirmed that his client, Mr Papazyan, had nothing further to contribute to the proceedings.

Mr Rankin, Counsel for the Applicant

Mr Rankin stated that there was an obvious difference between a shadow licence and a brand-new licence for premises that had never previously been licensed. Referring to the question posed by Councillor Glen, Mr Rankin stated that there was no difference and gave the example of the Crown Estate routinely applying for shadow licences to protect their investment. He stated that was precisely what he was doing on behalf of Mr Papazyan i.e., he was protecting his investment.

Mr Papazyan had an interest in these premises; had invested large sums of his own money in the premises; was a guarantor for the lease; and he had been deprived of his directorship. Mr Papazyan was protecting his interests and his interests lay in maintaining the licence in its current form, and not having that licence placed in jeopardy by the actions of Mr Lalic.

Mr Rankin stated that it was a mystery why, when licensing officers visited premises, the owner was never there and that everyone else was on a frolic of their own. He put the question as to why Members of Staff, of their own volition, would decide to open premises, post the 10 PM [Coronavirus Regulations] curfew, and operate the premises as a normal nightclub. He asked why it would be in the interests to do so unless they were acting on instructions from someone higher up.

Mr Rankin stated that his instructions were that Mr Lalic was on the premises on the evening the premises was visited by Westminster City Council's Licensing Officers. Mr Kolvin had stated that Mr Lalic was not on the premises.

Mr Rankin stated that he was simply asking the Sub Committee to apply Paragraph D20 the Council's Statement of Licensing Policy. Mr Kolvin had stated that, to do so, would be a free-for-all and anyone could turn up and apply for a licence.

Paragraph D20 was not restricted to landowners; it included landowners and any other persons with an interest in the property i.e., his client, Mr Papazyan, who had an interest in the property and who wished to protect that interest, in the same way that Mr Lalic stated that he wished to prevent any dilution of the value of his licence.

In addition, Mr Papazyan wished to provide himself with some reassurance that Mr Lalic would not operate the premises in a manner which led to a Prohibition Notice being issued because of the events that took place at the premises on 24 October 2020.

Regarding the statements by Mr Kolvin that Mr Papazyan –

- (a) Had no legal interest in the premises: that was not a requirement, and Mr Papazyan did have an interest in these premises; and
- (b) Never had a day-to-day operational role in running the premises: Mr Papazyan had been involved in the day-to-day operation of the premises for many years and had known the landlord's father, Mr Benn, with whom he had a good working relationship.

Concerning residents, Mr Rankin apologised that, with hindsight, it might have been wise to have consulted with persons such as Mr Benn and other residents to explain that the application would not change their lives and that any interests they had would be protected by the conditions, as discussed.

Regarding the Plan that had been submitted with the application, Mr Rankin stated that, when Mr Baylis, his instructing solicitor, had inspected the licensing register, he had, in reliance on the register, deposited a copy of the Plan that was on the register. Therefore, the applicant could not be blamed for having submitted a plan that had subsequently been updated.

In conclusion, Mr Rankin stated that, for the avoidance of doubt, the applicant's agreement to additional conditions on the licence was an agreement to conditions to protect the interests of residents, the Police, and Environmental Health being as added to a shadow licence that was in terms that were identical to the existing licence. In accordance with Paragraph D20 of the Council's Statement of Licensing Policy, it was **at that point** [emphasis added] when the applicant wished to make the licence operative that detailed operating schedules, risk assessments and evidence by way of statements would be examined and the Council's Licensing policies would be engaged. And, it was **at that point** [emphasis added] that the Licensing Sub Committee would go about examining the promotion of the licensing objectives.

Question by Councillor Glen

Cllr Glen asked if Mr Rankin might address the point made by Mr Kolvin *viz.*

- (a) That different standard should apply depending on whether it was the landlord, or a party with an interest in the premises, who was applying for a shadow license; and
- (b) If so, was that on the basis that it was the party with an interest in the premises, and not the landlord, who would be responsible for putting forward a proposed operator for the premises; and

- (c) Would it would be for the proposed operator to submit an operating schedule and other information that might be required to enable the Sub Committee to grant a licence.

In response, Mr Rankin stated that would be the case if the applicant was inviting the Sub Committee to grant a licence without the addition of MC62 and the other condition offered today by the applicant i.e., that any transfer of the licence would be to a UK based company or UK resident.

MC62 had the effect of preventing an applicant, about whom the Sub Committee knew nothing, from simply turning up and asking for a shadow licence which the applicant could then operate the next day. The requirements of MC62 were such that, if the shadow licence was granted, the operational capabilities of the applicant would, further down the line, be subject to detailed assessment and matched with the Council's licensing policy requirements.

ADJOURNMENT

At this stage in the proceedings, the Chairman adjourned the meeting to allow Members to retire to consider their decision. He 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 Summary Decision attached as an appendix to these minutes.¹¹

REASONS FOR THE DECISION

Having read the report by the Director of Public Protection and Licensing, and the information in the Additional Information Pack that was before it; and having heard the submissions by Mr Rankin on behalf of the applicant, and Mr Kolvin, QC, on behalf of Mr Tim Lalic, opposing the application; and having heard the oral representations by Mr Richard Brown, Citizens Advice Westminster, on behalf of businesses and residents opposed to the application; and having heard the oral representation of Mr Bernard Benn, resident landlord of the premises, opposing the application; and having asked the various parties several questions during the course of the proceedings, the Sub Committee was satisfied that it was reasonable, proportionate and appropriate to **Refuse** the application for the following reasons.

1. The Sub Committee had not been persuaded by the applicant's submission that, because the premises had been issued with a Prohibition Notice for a breach of the Coronavirus Regulations, that this was indicative of the premises being badly managed and that, therefore, the applicant had to protect his interest in the premises licence.

To support this view, the Sub Committee relied on the following -

¹¹ See appendix 3 to these minutes.

- (a) No evidence of crime and disorder or public nuisance associated with the premises, other than the Prohibition Notice, had been presented to the Sub Committee;
 - (b) The Police, who had made representations on the application on the basis that there was insufficient information in the application to determine if the applicant could satisfy the licensing objectives, in particular the licensing objective of the Prevention of Crime and Disorder, had subsequently withdrawn their representation when it was realised that this was an application for a “shadow licence”, and not an application by a new operator.
 - (c) The evidence presented by Mr Benn, in his capacity as resident landlord, that the premises were well-managed and that he had a good working relationship with Mr Lalic, who operated and managed the premises.
2. The Sub Committee was not satisfied that, if it were to grant the licence, without having seen an operating plan or any other documentation in support of the application, that it would be fulfilling its statutory or policy obligations to ensure the promotion of the licensing objectives. In support of this view, the Sub Committee relied on the following:
 - (a) Paragraph H24¹² of the Council’s Statement of Licensing Policy: Licence Conditions and Enforcement, which stated that, regarding multiple licences for the same premises, it was –
 - The Licensing Authority’s policy that all licences take effect when granted; and
 - That the imposition of a condition which purports to suspend the effect of a licence would not promote the licensing objectives.
 - (b) There was a legitimate expectation on the part of interested parties that the Council, when considering applications for premises licences, would, through the application of its policies as set out in the Council’s Statement of Licensing Policy, seek to promote the licensing objectives.
3. The Sub Committee was of the view that Mr Rankin’s interpretation of Paragraph D20 of the Council’s Statement of Licensing Policy and the operation of MC62 was cogent and compelling. However, the Sub Committee agreed with Mr Kolvin that the Sub Committee should not rely on Paragraph D20, which set out the reasons for Cumulative Impact Policy CIP1 (Spatial Policies) and was a commentary on applications for shadow licences. The Sub Committee should, instead, rely on the specific policy requirements set out in the Council’s Statement of Licensing Policy.

The Meeting ended at 3.30 pm

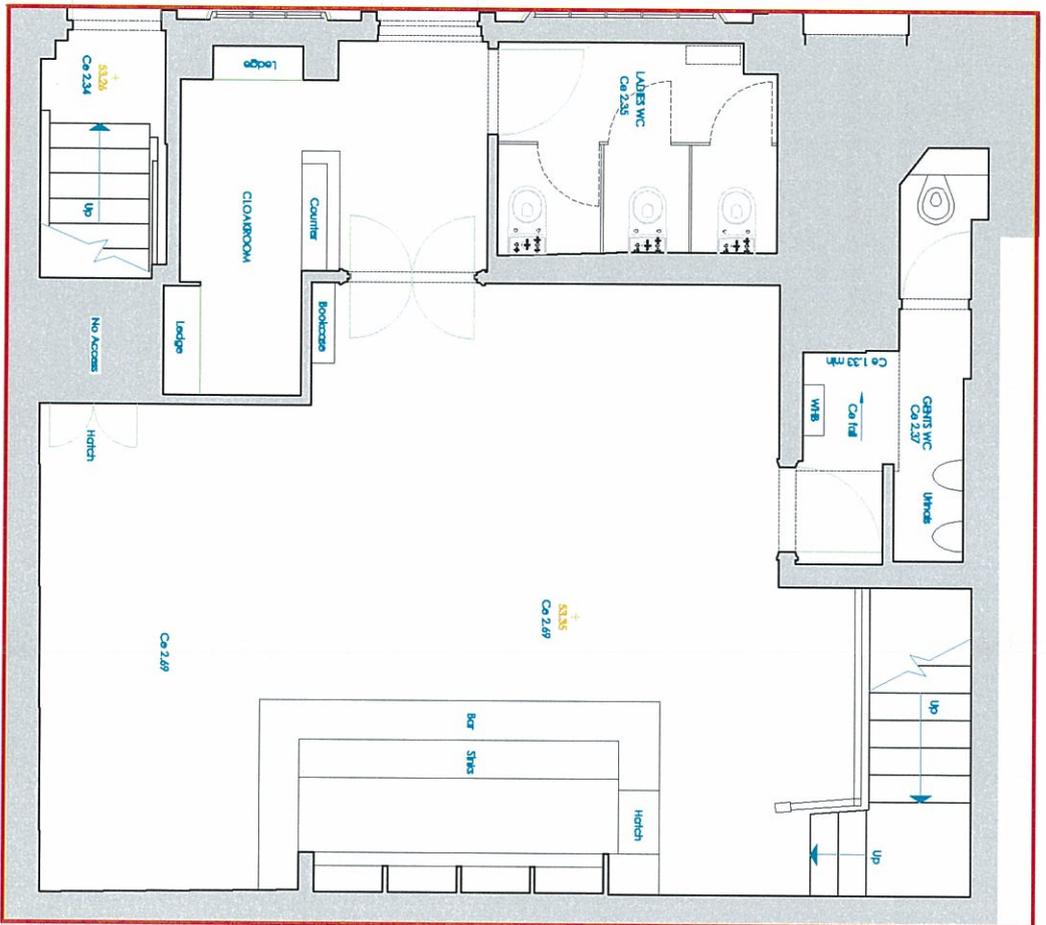
¹² “To support the Council’s approach to multiple licenses for the same premises it is the licensing authority’s policy that all licences take effect when granted and continue to have effect in accordance with Section 26 of the 2003 Act and that the imposition of a condition which purports to suspend the effect of a licence would not promote the licensing objectives.”

CHAIRMAN: _____

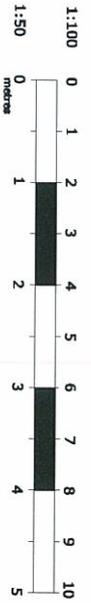
DATE _____

Licensable activities may take place anywhere within the red line. The position of any loose furniture is shown for diagrammatic purposes only. The location of fire equipment is shown as is on the date hereof but may be moved in consultation with the fire officer - 19/08/2015

APPENDIX 1



Proposed Ground Floor Plan



Chalkline
Chalkline Architectural Services

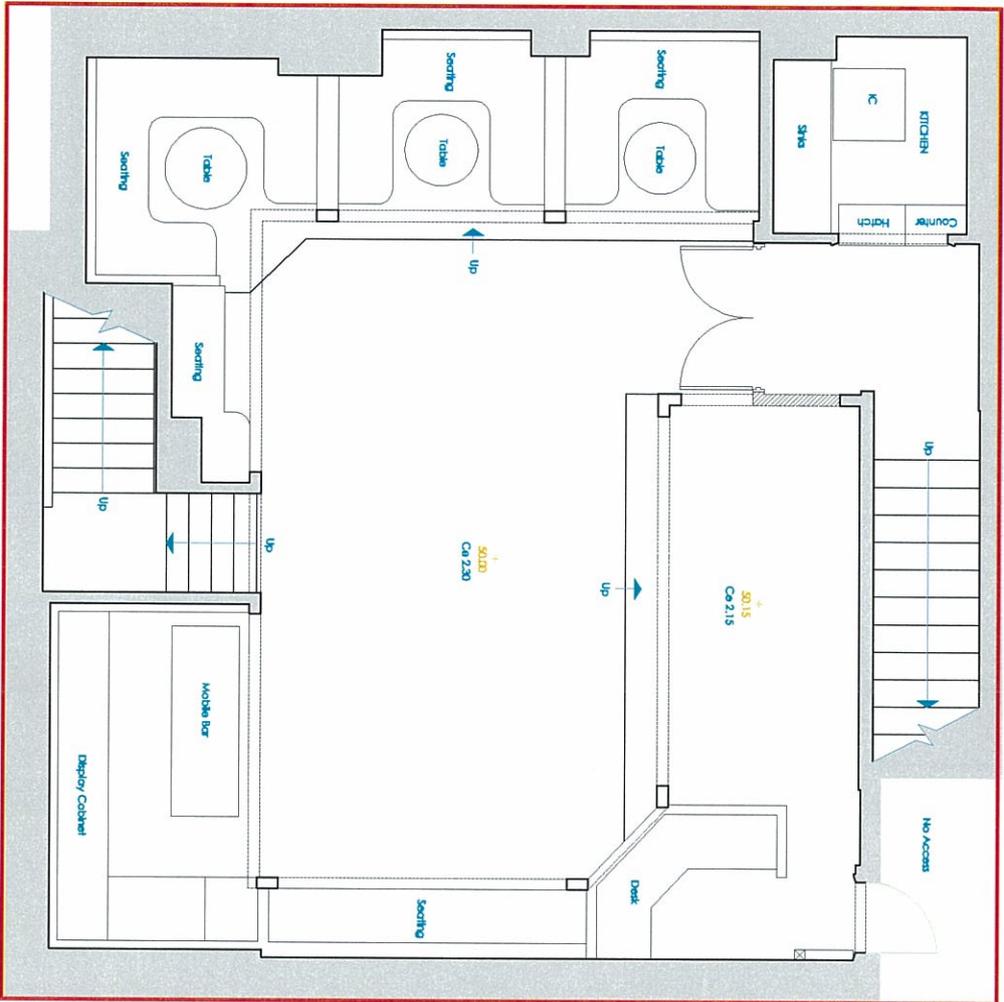


REV	DESCRIPTION	DATE

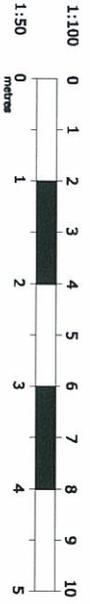
PROJECT	13 Mason's Yard Mayfair SW1Y 6BU
DETAIL	Proposed Refurbishment Design Stage Details

SCALE	1:50 @ A3
DRAWN	WF
DATE	July 2015
CONTRACT DRAWING	SO-652-03
REV.	

Licensable activities may take place anywhere within the red line. The position of any loose furniture is shown for diagrammatic purposes only. The location of fire equipment is shown as is on the date hereof but may be moved in consultation with the fire officer - 19/08/2015



Proposed Lower Ground Floor Plan



Chalkline
Chalkline Architectural Services



REV	DESCRIPTION	DATE

PROJECT	13 Mason's Yard mayfair SW1Y 6BU
DETAIL	Proposed Refurbishment Design Stage Details

SCALE	1:50 @ A3
DRAWN	WF
DATE	July 2015
CONTRACT DRAWING	50-652-04
REV.	

EXTRACTS FROM WESTMINSTER CITY COUNCIL STATEMENT OF LICENSING POLICY

D: SPATIAL POLICIES

D20. The Licensing Authority may consider granting applications for licences that duplicate the terms and conditions of the current operational licence for that same premises but are issued to the landowner, or other person with an interest in the property and that the licence has not affect by condition. These 'Shadow Licences' are normally sought by the landowner to protect the interest of their property due to the Policy to refuse certain new applications. A Shadow Licence will, in the event that a licence lapses, is surrendered or is revoked the property own can look to market the property with the licence. The holder of the Shadow Licence would in those circumstances need to apply to the Licensing Authority to vary the licence to remove any conditions preventing the use of that licence. At that point the Licensing Authority will consider whether the operation of the premises is likely to be an exception to policy. It will be for the Shadow Licence licensee to demonstrate that they are an exception within the applications operating schedule.

H: LICENCE CONDITIONS AND ENFORCEMENT

H20. The Act permits more than one licence to be in effect at any onetime at the same premises and it has been established in law that the landlord may apply for a second or subsequent licence.

H21. The council remains concerned however that the holding of additional licences has the potential to undermine the sanctions available to it in response to a review application under the Act. This would be the case if action was taken in respect ozone of the licences in effect at the premises, but the premises continued to operate under the authority of a second licence which had not been affected by the review proceedings.

H22. The council recognises that landlords have powers over their tenants outside of the licensing regime and would expect responsible landlords to exert that control to promote the licensing objectives. Where the landlord is also a licence holder of premises licence in effect at the premises the council considers that the landlord has further responsibilities in respect of the operation of the premises to promote the licensing objectives.

H23. In order to promote the licensing objectives the council will take a holistic view of the licensing circumstances at the premises. When the licensing authority makes an application to review a premises licence to promote the licensing objectives at a premises, it will also consider whether it is appropriate to review all the licences in effect at the premises in order to promote the licensing objectives. Where the applicant for the review is not the licensing authority it will encourage the applicant to also consider whether it is appropriate to review all the licences in effect at the premises,

and will consider bringing a review of any other licence in effect at those premises if it considers it appropriate to promote the licensing objectives.

H24. To support the council's approach to multiple licences for the same premises it is the licensing authority's policy that all licences take effect when granted and continue to have effect in accordance with Section 26 of the 2003 Act, and that the imposition of a condition which purports to suspend the effect of a licence would not promote the licensing objectives.

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

Thursday 4 February 2021

Membership: Councillor Matthew Green (Chairman), Councillor Jim Glen, and Councillor Rita Begum

APPLICATION FOR A NEW PREMISES LICENCE IN RESPECT OF BASEMENT AND GROUND FLOOR 13 MASON'S YARD, LONDON SW1Y 6BU – 20/08824 LIPN

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Aaron Hardy
Committee Officer: Cameron MacLean
Presenting Officer: Michelle Steward

Parties Present: Mr Vahram Papazyan, Applicant; Mr James Rankin, Counsel, Francis Taylor Building (for the Applicant); Mr Craig Baylis, Solicitor, BCLP LLP (representing the applicant); Mr Aaron Stevens, Solicitor, King & Spalding LLP (representing the applicant); Mr Tihomir [Tim] Lalic, Objector; Mr Philip Kolvin, QC, Cornerstone Barristers (representing Mr Lalic & Alula Three Ltd); Mr Richard Brown, Citizens Advice Westminster (representing objectors); Mr Bernard Benn, Objector; and Marcus Lavell, Counsel, Keystone Law

FULL DECISION

Premises

Basement and Ground Floor
13 Masons Yard
London
SW1Y 6BU

Applicant

Ground Support Equipment DMCC

Cumulative Impact Area?

The Premises is not located within the West End Cumulative Impact Zone

Ward

St James

Summary of Application

This New Premises Licence application is made as a shadow licence on behalf of the investors and operators of the premises under the Licensing Act 2003 ("The Act"). The premises are licensed under 18/15638/LIPVM

Proposed Activities and Hours

Late Night Refreshment (Indoors)

Monday to Saturday: 23:00 to 05:00 hours
Sunday: 23:00 to 03:00 hours
Seasonal Variations: From the start time on New Year's Eve to the finish time on NYD

Live Music and Performance of Dance (Indoors)

Monday to Saturday: 09:00 to 05:00 hours
Sunday: 09:00 to 03:00 hours
Seasonal Variations: From the start time on New Year's Eve to the finish time on NYD

Recorded Music (Unrestricted) (Indoors)

Monday to Sunday: 00:00 to 23:59 hours

Sale by Retail of Alcohol (On/Off Sales)

Monday to Saturday: 11:00 to 04:45 hours
Sunday: 12:00 to 22:30 hours
Seasonal Variations: From the start time on New Year's Eve to the finish time on NYD

Hours Premises are open to the Public

Monday to Saturday: 09:00 to 05:30 hours
Sunday: 09:00 to 03:30 hours
Seasonal Variations: From the start time on New Year's Eve to the finish time on NYD

Representations Received

- Metropolitan Police Service (Withdrawn)
- 21 Local Resident Representations comprising both of business owners and residents.

Summary of issues raised by objectors

- We are extremely concerned about the application that has gone in for a shadow licence at the Scotch. I really object to someone applying and providing local business with no plans as to how they will operate. Mason's Yard is a community and they simply ignore this.
- I am worried about noise coming from people leaving and coming to the venue, the current management puts a lot of effort to ensure that I am not disturbed. The new operator has submitted no plans as to how they are going to make sure that we are not woken at night. 5am is very late.
- The current Premises Licence Holder has been an asset to St. James's for several years, always showing consideration for the neighbouring residents and businesses. He has had an open dialogue with residents and has worked hard to

identify any concerns that residents might have. The new Licence Holder has shown contempt (and a lack of understanding of the sensitivities of the area in general).

- The current operators go to great lengths to ensure that the licensing objectives are upheld, namely, the prevention of public nuisance. The new operator has not shown us their plans nor has engaged with us.
- I would ask that Licensing Service reject this application until the applicant contacts residents and businesses and inform them how they are going to operate. The Scotch sits in a very sensitive area, with lots of high-end Art and Fashion business like mine in very close proximity. I am extremely concerned that should this licence be granted, these new operators will at some point take over and run the venue.

Policy Position

- HRS1
- MD1
- PB1

DECISION

The Presenting Officer, Ms Steward summarised the application to the Committee. She confirmed that this was an application for a Shadow Licence made on behalf of the Applicant Ground Support Equipment DMCC ("The Applicant"). It was confirmed that a slight amendment had been made to the report in that an updated version of the Premises Plan had been provided on Page 24 of the Agenda Pack which had been circulated to the Committee and all relevant parties. It was confirmed that the Licensing Authority had received 21 local objections comprising of residents and businesses. Mr Richard Brown of Citizens Advice Westminster, Licensing Project, would be representing several of the objectors. Mr Tim Lalic represented by Philip Kolvin, QC, and Mr Bernard Benn, Resident Landlord, were present and would make submissions opposing the application. The Metropolitan Police Service (MPS) had also made representations but, after discussions with the Applicant, subsequently withdrawn their representations. Late submissions had been received from the Applicant and Mr Lalic and these were included in the Additional Information Pack which had been circulated. The premises were located within the St James's Ward and were not within a cumulative impact area.

Mr Rankin appearing on behalf of the Applicant referred the Committee to his skeleton argument at Pages 7-14 of the Additional Information Pack, and the statement of the Applicant Mr Vahram Papazyan, at Pages 21 & 22 of the Additional Information Pack, both of which described the background history to the application. It was stated that there was a commercial dispute between the Applicant and Mr Tihomir [Tim] Lalic. Mr Rankin confirmed that the Applicant had purchased the Premises in 2012 for £280,000 without any contribution from Mr Lalic. He then refurbished the Premises at a cost of £675,000. Mr Lalic was a salaried employee and that the Applicant received an income from the property. The Applicant and Mr Lalic, with the assistance of consultants, operated the premises together until relations had broken down.

Mr Rankin advised the Committee that in 2014, the Applicant ended up compensating staff who had been unfairly dismissed by Mr Lalic. He then stated that on the 3 September 2020 Mr Lalic illegally, informed Companies House that the Applicant had

ceased to be a Director of Alula Three Ltd. The Committee noted that the Applicant was contending he was still a Director of Alula Three Ltd.

Mr Rankin's stated that Mr Lalic had conducted himself unlawfully in the way in which he had operated and managed the Premises. The Committee was advised that the City Councils Licensing Inspectors had visited the Premises on 3 October 2020 and had found the Premises to be operating in breach of the Coronavirus Regulations resulting in a Prohibition Notice being served, thereby putting the premises licence at risk.

Mr Rankin was of the opinion that the solution to these problems was for the Applicant to apply for a shadow licence for the following reasons.

1. It preserved the status quo until such time as the ownership of the premises could be resolved. The shadow licence would be in the name of "Ground Support Equipment DMCC", a company based in Dubai of which the Applicant was a Director.
2. It protected the licence i.e., the way in which Mr Lalic had been operating the premises had attracted a Prohibition Notice. Therefore, Mr Papazyan wished to protect the licence.
3. It would prevent Mr Lalic from using the licence as a bargaining chip or some form of leverage in the pending litigation.

Mr Rankin then referred to the leading case of R (OTA) Extreme Oyster v Guildford Borough Council [2013] which established the principle of shadow licences. He stated that landlords and others frequently applied for shadow licences. He proceeded to explain the operation of shadow licences and the interest the Applicant derived in the Premises. Reference was made to the Land Registry Documents Page 25 of the Agenda Pack. Mr Rankin stated that it was the Applicants equitable interest that brought him within the provisions of section 16 of the Licensing Act 2003, allowing him to apply for a shadow licence.

Mr Rankin stated that, if the Committee had concerns about a shadow licence being in the name of a company based in Dubai, a condition could be imposed on the licence prohibiting it from becoming operative until such time as the licence had been transferred into the name of a UK company or UK resident.

Referring to his skeleton argument, Mr Rankin explained the operation of section 16 of the Act which provided a "gateway" for applications for a premises licence, noting how the Applicant met the gateway no prejudice to Mr Lalic, the residents, or any other party, and that this would simply be a holding position.

Regarding the lack of an Operation Plan, Mr Rankin stated there was nothing remarkable in this in that the application would be granted on exactly the same terms and conditions as the existing licence and the shadow licence would not become operative until such time as the existing licence was surrendered or transferred.

Mr Rankin accepted that residents had not been consulted but only because in reality their position would not change if the licence was granted by the Committee. Furthermore, he asserted that concerns about the operation of the premises was not relevant to this application as the appropriate remedy, should there be concerns about the operation of the premises, would be to seek a review of the premises licence.

Mr Rankin addressed the specific issue as to whether the Applicant had experience in managing licenced premises, Mr Rankin stated that the Applicant had been involved in the running of these Premises since 2012 as well as being involved in the running of other licensed premises.

Mr Philip Kolvin, QC appearing on behalf of Mr Lalic addressed the Committee. Mr Kolvin stated he would concentrate on the licensing merits of the application as it was the role of the Committee to consider what was appropriate for the promotion of the licensing objectives, having regard, amongst other things, to the City Council's Statement of Licensing Policy ("SLP").

Mr Kolvin explained that, for the following reasons, there was no need for the Committee to be distracted by the technical workings of section 16 of the Act or the details of the commercial dispute between the parties.

- The case of *R (OTA) Extreme Oyster v Guildford Borough Council [2013]* concerned the application of section 16 of the Act and it was not in dispute that the requirements of section 16 had been satisfied.
- The SLP, under the heading "Licence Conditions and Enforcement", states, at paragraph H20, that –

"The Act permits more than one licence to be in effect at any one time at the same premises and it has to be established in law that the landlord may apply for a second or subsequent licence."

Because of problems created by multiple licences, Paragraph H24 states –

"To support the Council's approach to multiple licences for the same premises it is the licensing authority's policy that all licences take effect when granted and continue to have effect in accordance with Section 26 of the 2003 Act and that the imposition of a condition which purports to suspend the effect of a licence would not promote the licensing objectives."

Therefore, as the Council would be granting a live licence, if the application was approved, it was necessary to apply the policy requirements of the SLP to the application.

- The civil dispute between the Applicant and Mr Lalic did not alter the focus on the licensing objectives as required by the Act.

Mr Kolvin then considered the licensing merits of the application under the following headings: -

- The Locality

The locality was sensitive with Mason's Yard being a small enclosed yard with reverberant surfaces and residential dwellings all around. Any noise within the square would have a high propensity to cause nuisance to adjoining residents, particularly at night. Therefore, this was a case where the Council's Public Nuisance Policy (specifically, PN1: B1 & 2) would be engaged.

- The Proposal

The proposal was for music and dance extending 5 to 6 hours beyond the Council's core hours. Therefore, Core Hours Policy HRS1 was relevant, particularly given the residential nature of the Yard.

- The Applicant

The Applicant was an unincorporated Association registered in Dubai and, as its name suggested, it was a ground support equipment company. The Committee has no information about the applicant company, either here or in the Middle East, and there was no evidence that it had ever operated licensed premises.

Contrary to the advice on Page 6 of the SLP, the applicant had not consulted with residents. The applicant was of the view that the licence would not impact upon residents as the premises were already licensed. However, the real question was whether the applicant should be licensed as it was the applicant who wished to operate the premises. Consequently, several residents had spoken up to say that they had not received the courtesy of being consulted.

In this sensitive location, and the current operating hours, it was a serious job to avoid harming the licensing objectives and the support of residents was hard won, requiring operational experience, consistent management and stakeholder engagement. Mr Lalic had never had a day-to-day operational role in these premises and had provided no evidence that he could operate the premises without harming the licensing objectives.

- The Operating Plan

In the circumstances, the Operational Management Plan was key, but the Committee had not been presented with any plans, policies or supporting documents, contrary to the advice on page 6 of the SLP. There were no risk assessments in accordance with CD1 (Prevention of Crime and Disorder Policy): Paragraph B1; or PS1 (Public Safety Policy): Paragraph B1; or PN1 (Prevention of Public Nuisance Policy): Paragraph C12; or Appendix 7A (Metropolitan Police Crime Prevention and Effective Management Checklist): Paragraphs A2 & H2; or Appendix 11 (Guidance on Noise): Paragraph 3.

In addition, the Committee had no information about staffing structures, security engagement, compliance monitoring, and so on. The application before the Committee simply stated, "Attach all conditions attached to the current licence". Mr Kolvin submitted that it would be remarkable if that was all that was required to get a premises licence in Westminster until 05:00 hours.

Mr Kolvin contended that the application failed Policies MD1 (Music & Dance Premises and Similar Entertainment Policy): Paragraphs A1&2; and PB1 (Public Houses and Bars Policy): Paragraphs A1&2. There was no provision in the SLP to be ignored because the premises were already licensed. Mr Kolvin stated that the Applicant was not a landlord wanting a fallback licence, but a company wishing to operate the premises pursuant to the licence it was seeking. Therefore, the Applicant was subject to the same policies as everyone else. Furthermore, the Licence Plan submitted by the applicant had been superseded. Finally, the applicant had no legal interest in the property, such as a lease or sublease, or an option, or an agreement for a lease, and the landlord had no interest in granting the applicant a legal interest. Consequently, there was no evidence as to how the applicant was going to exert the control required by the licence conditions or any conditions of its own that might be deemed necessary to promote the licensing objectives.

Mr Kolvin stated that the high watermark of the applicant's case was that there was a licence which was a relevant consideration under Policy HSR1: The Core Hours Policy. But this alone was not determinative. Mr Kolvin accepted that the Prohibition Notice was a serious matter and Mr Lalic had apologised for the breach and had complied with the terms of the Notice. However, this could not affect the principle of whether a new licence should be granted to the Applicant.

In conclusion, Mr Kolvin stated that this was an unusual application in that applications for shadow licences were usually made by landlords as a backup. However, this was a predatory application from a disgruntled actual or former Director, who was not recognised by the SLP as being subject to special consideration. Mr Kolvin maintained that the application should be refused.

Mr Brown on behalf of the local residents stated to the Committee that the resident's primary concern was that the late-night premises in Mason's Yard was operated properly. He stated that the application had to be considered on its merits and that the Licensing Authority was under a duty, in accordance with the provisions of the Act, to exercise its functions with a view to promoting the licensing objectives.

Mr Brown said that in response to the submission by Mr Rankin that, should the shadow licence be granted, this would not impact upon residents, it was noted that the residents had a good relationship with the current licence holder who was alive to the sensitive nature of the area. Mr Brown stated that from the information presented to the Committee, it was not clear what experience the Applicant had of running licensed premises as opposed to investing in such premises.

Mr Brown expressed concern that an Operating Plan had not been submitted and the lack of engagement with residents. Mr Brown said that the Applicant remained an unknown entity as far as residents were concerned. Should the shadow licence be granted, residents were concerned that this may jeopardise the positive steps that had been taken thus far by the current licence holder.

Mr Brown said that Mr Kolvin had appraised the Committee fully regarding the policy requirements under the SLP and did not feel the need to repeat them. Mr Brown posed the rhetorical question: should an application for a licence to 05:00 hours in this location by an Applicant with little or no track record or experience of operating licensed premises; who had failed to provide a detailed operating schedule with the application; and who had not given any indication that the application complied with the Home Office Section 182 Guidance, be granted?

Mr Brown stated that, in his view to grant such an application on the evidence before the Committee would be a leap of faith.

Mr Brown said that regarding possible conditions that could be added to the licence to ensure that the premises were operated in a way that promoted the licensing objectives, if there was a condition to the effect that the shadow licence would not be operative while the current licence was in operation, that would afford a degree of protection to the residents. If there was then an application to vary the licence and remove the condition preventing its use, the expectation would be that there would be a lot more information available at that time, and residents could decide whether they wished to make representations on the application.

Mr Brown went further on to state that in his view there was a difference between a shadow licence and a new premises licence. The fact there was an existing licence was a relevant factor but not the only one. As the operating hours of the current licence

were until five in the morning, this necessitated greater scrutiny of the application than might be the case for premises operating within core hours.

Mr Brown stated in conclusion that applications for a shadow licence by a landlord who was not going to operate the premises but transfer the licence to an unknown entity were more likely to raise concerns than would an application by a landlord for a shadow licence for the purpose of preserving the landlord's position, rather than with the intention of operating the premises. He said that the application before the Committee was slightly unusual and, for this reason gave rise to concerns on the part of residents regarding the applicant's ability to operate the premises in a responsible manner. This concern was based on their being insufficient information to allow residents to come to an informed decision on the matter.

Mr Benn stated to the Committee that he was the residential landlord of the property and that he resided on the top floor of the property in the mansard roof, and that he had lived there for the last five years. During that time, he had built up a relationship with Mr Lalic whom he saw two or three times each week. He said that in the last five years, he had never met the Applicant and only became aware of his existence in the last few weeks. He noted that, as Mr Lalic's landlord, Milestone Investments Ltd. managed various property holdings in central London and the company tried to harness strong relationships with all its tenants. As such, Milestone Investments would not be keen to enter into a lease with a party that was unknown to them.

Mr Benn stated that he was unclear as to why the Applicant was seeking a shadow licence while the applicant company was still based in Dubai. He proposed that the application should not have been made until such time as there was a UK company to make the application. He advised that he had no concerns about the way in which Mr Lalic operated the Premises, noting that, whatever the premises were operating, noise barriers were erected and there were 2 to 3 security guards present preventing people from congregating outside the premises. He stated that there was no noise pollution or criminal damage as a result of the operation of the premises, and he commended the way in which Mr Lalic managed the Premises.

Regarding investment in the premises, as far as he was aware, it was Mr Lalic who had invested in the premises, including noise abatement measures and the installation of air-conditioning.

In conclusion, Mr Benn stated he had not had any contact with the Applicant and that, if the Applicant was serious about obtaining a shadow licence, he would have thought that the Applicant might have extended the courtesy of contacting him.

The Committee noted the following from Mr Benn in response to questions by the Chairman and Members of the Committee: -

- He had never had any contact with the Applicant, although he could see that he was named on the Land Registry's "Register of Title", which was before the Sub Committee.
- Regarding a proposed condition that a shadow licence would only become operative when it was transferred to a UK based company, it would make more sense to him if it were a UK company that made the application. It would then be possible to undertake a search of the company personnel and determine their suitability to operate premises in a commercial and residential area. The approach adopted by the applicant had not put him on a strong footing.

- He met regularly with Mr Lalic and the tenants on the first and second floors of the property to ensure that the building was being well managed. He also took this opportunity to ensure that his tenants were able to survive in the present economic climate by making suitable arrangements for the payment of rent.
- He had no knowledge of the time that the Applicant had managed the premises with Mr Lalic and that any dealings that the applicant may have had as a tenant with the landlord of the premises would have been before he took over responsibility for managing the premises from his father.

The Legal Advisor to the Committee sought clarification from the parties in relation to proposed conditions on offer. Mr Rankin confirmed that the Applicant would be willing to have the Council's Model Condition (MC) 62 or any modification added to the licence conditions. The Applicant would also be content with a condition requiring a shadow licence to be transferred to a UK based company or UK resident before it became operative.

Mr Kolvin confirmed that such a condition would not be acceptable to his client for reasons that he would set out in his summing up. However, if the Sub Committee was against him on that point, then MC62 would be a starting point. However, to require that an operational plan be submitted to the Licensing Authority and the Environmental Health Service for approval would preclude consultation with any other parties. He noted that it was one of the principles of the Act that there should be consultation and, for there to be any consultation, it would be necessary for a formal application to be made which could then be advertised in the normal way, thereby allowing parties the opportunity to make representations on the application.

Mr Brown concurred with the points made by Mr Kolvin, noting that, if an application was made to remove a condition from the shadow licence restricting its operation, then his clients would expect to see detailed operating plans and supporting documentation at that stage.

The Committee having carefully considered the Agenda Papers and the information in the Additional Information Pack that was before it; and having heard the submissions by Mr Rankin on behalf of the applicant, and Mr Kolvin, QC, on behalf of Mr Tim Lalic, opposing the application; and having heard the oral representations by Mr Richard Brown, Citizens Advice Westminster, on behalf of businesses and residents opposed to the application; and having heard the oral representation of Mr Bernard Benn, resident landlord of the premises, opposing the application; and having asked the various parties several questions during the course of the proceedings, the Committee was satisfied that it was reasonable, proportionate and appropriate to **Refuse** the application in all of the circumstances of the case.

The Committee had not been persuaded by the Applicant's submission that, because the Premises had been issued with a Prohibition Notice for a breach of the Coronavirus Regulations, that this was indicative of the Premises being badly managed and that, therefore, the Applicant had to protect his interest in the Premises Licence. The Committee's duty is to determine each case on its individual merits and did not conclude based on the evidence before it that Mr Lalic was a poor operator who would not promote the licensing objectives. The Committee felt that Mr Lalic acted responsibly after being served with the Prohibition Notice and was satisfied that he took all reasonable steps to ensure compliance with the Notice and this was confirmed by Mr Kolvin during his submissions to the Committee.

The Committee considered the evidence presented by Mr Benn in his capacity as resident Landlord and accepted that he had developed a good working relationship over time with Mr Lalic, who operated and managed the Premises. The Committee noted that the Responsible Authorities had not objected to the application save for the MPS who later withdrew their application.

The Committee noted that the Applicant and Mr Lalic were currently embroiled in a commercial dispute which led to the Applicant applying for a shadow licence in the first place to protect his interest given the large sums of investment in the business. However, it is not the role of the Committee to get involved in what is essentially a commercial dispute or comment upon any pending litigation between the parties but to deal with the merits of the shadow licence application and ultimately decide whether the licensing objectives are to be promoted and whether the policy implications as amplified by all parties under the terms of the SLP are met.

The Committee felt that the Applicant had met the requirements of section 16 of the Act as this could be interpreted widely to take account this type of scenario and circumstances of the application before the Committee and not necessarily where a landlord was applying for a shadow licence as a fall-back position in order to protect their interest. The Committee noted that the Applicant company was based in Dubai.

The Committee did not doubt the intention of the Applicant's proposal to carry on a business from the Premises which is a requirement of section 16 of the Act in any event. The Committee noted that the Applicant was a guarantor under the terms of the existing lease arrangements for the Premises and previously held a Directorship, however, the Committee was not entirely convinced that the Applicant was an experienced Operator because no documentary evidence had been provided to establish or indeed demonstrate how the Premises would be run and managed on a day to day basis and to the mind of the Committee this was one fundamental obstacle that had to be overcome to ensure the promotion of the licensing objectives.

The Committee was surprised that if the Applicant claimed to have been an experienced Operator as expressed by Mr Rankin, then why the Applicant did not take the time to engage with local residents given the strength of feeling opposing the application. The Committee considered that a responsible operator would have done so as to preserve good relations with all parties and start matters on the correct footing.

The Committee considered it appropriate that the Applicant should have submitted an Operating Management Plan as part of its operating schedule but failed to do so. The Committee could not ignore the weight of objection by residents who had objected and whom should have been afforded the opportunity to comment specifically upon such a plan and maybe if that had happened this would have gone some way to alleviate the many concerns. The Committee considered that the Applicant should have engaged with residents right from the outset and this was a costly mistake made by the Applicant.

The Committee considered the Operational Management Plan to be a key document and therefore an essential component in its determination of the matter. It was simply not enough for the Applicant to state that the conditions that already existed on the Premises Licence would merely be replicated for the purposes of the shadow licence because the Committee has to be persuaded when considering matters that the licensing objectives are to be upheld in particular the public nuisance licensing objective.

The Committee was fully persuaded by residents that the public nuisance licensing objective was to be severely undermined particularly as the Committee could potentially be granting a licence until 05:00 hours with an Operator that it knew nothing about and failed to provide any detail regarding this aspect of the application. This was an important material factor and would not be in the spirit of policies PN, PB 1& 2 under the SLP when considering a new application for a licence.

The Committee was of the view that Mr Rankin's interpretation of Paragraph D20 of the SLP and the operation of MC62 was cogent and compelling. However, the Committee agreed with Mr Kolvin that the Committee should not rely on Paragraph D20, which sets out the reasons for Cumulative Impact Policy CIP1 (Spatial Policies) and was a commentary on applications for shadow licences, but that the Committee should, instead, rely on the specific policy requirements as set out in the SLP.

The Committee noted the arguments Mr Rankin advanced to the Committee regarding the specifics of Paragraph D20 of the SLP in that when the shadow licence holder applied for a variation of the licence to remove any conditions preventing the use of the licence, it was at that point that the Licensing Authority would consider whether the operation of the Premises was likely to be an exception to policy, and it was at that point that the Applicant would submit an operating schedule and supporting documentation to demonstrate how the Applicant would promote the licensing objectives. The Committee also noted and carefully considered the condition offered by Mr Rankin requiring the licence to be transferred to a UK-based company or to a UK resident.

The locality of the area was a crucial factor in the decision making of the Committee because whilst it is accepted the area has a mix of commercial and residential there are also residential properties in close proximity to the Premises. With that specific issue in mind, it could not ignore the fact that granting the application would cause problems for residents for all of the above reasons. The Committee felt that the major problem with the application was that there was insufficient detail that would comply with the requirements of the SLP and the absence of an Operational Management Plan which should have been supplied with the application so residents could have expressed their views.

The 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 the Home Office Guidance and the promotion of the licensing objectives in particular the public nuisance licensing objectives. It did properly consider whether the proposed conditions offered as aforesaid would mitigate the concerns raised.

The Committee came to the overall conclusion that granting the application without the detailed information required to assess the application properly on its merits and how the Applicant is to manage the Premises by way of an Operational Management Plan would have a negative impact leading to the licensing objectives being undermined which is not what the 2003 Act is designed to do thus leading to poor decision making by the Committee.

In all of the circumstances of the case the matter was ***Refused***.

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