



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (3)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (3)** held on **Thursday 14th October, 2021**, Rooms 18.01 & 18.02 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Jim Glen (Chairman), Aicha Less and Heather Acton

1. MEMBERSHIP

1.1 There were no changes to the membership.

2. DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1 Order of Proceedings 14th October

2. 1. 10 AM - 38 BERWICK STREET LONDON W1F 8RT

WCC LICENSING SUB-COMMITTEE NO. 3

Thursday 14th October 2021

Membership: Councillor Jim Glen (Chair), Councillor Heather Acton and Councillor Aicha Less

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Aaron Hardy
Committee Officer: Tristan Fieldsend
Presenting Officer: Emanuela Meloyan

Application for a New Premises Licence 21/05452/LIPN

Full Decision

Premises

38 Berwick Street
London
W1F 8RT

Applicant

Toi Moi Limited
Represented by Jack Spiegler (Solicitor – Thomas and Thomas)

Cumulative Impact Area?

West End Cumulative Impact Zone

Ward

West End

Summary of Application

This is an application for a new Premises Licence. The Premises propose to operate as a Café and is located both within the West End Ward and West End Cumulative Impact Zone.

Activities and Hours applied for

[Retail Sale of Alcohol \[On and Off Sales\]](#)

Monday to Sunday 09.00 to 22.00

[Hours premises are open to the public](#)

Monday to Sunday 07.30 to 22.30

Representations Received

- The Metropolitan Police (PC Reaz Guerra) - **Withdrawn**
- The Licensing Authority (Jessica Donovan)
- One local resident objecting to the application

Summary of issues raised by objectors

- The applicant was encouraged to consider Model Condition 38 to bring it in line with policy RTN1 where the supply of alcohol at the Premises shall only

be to a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal.

- The applicant was required to provide submissions as to how the operation of the Premises would not add to cumulative impact in the West End cumulative impact area.
- The opening of another licensed premises in the area would create noise and disturbance in a street containing many residential properties.

Policy Position

The Premises was located within the West End Cumulative Impact Area and as such various policy points had to be considered under the City Council's Statement of Licensing Policy (SLP), namely policies CIP1, HRS1 and RTN1.

SUBMISSIONS AND REASONS

Having considered all the submissions made by all parties, the Licensing Sub-Committee decided to partly grant the application.

The Presenting Officer introduced the application and confirmed that the Police had withdrawn their representation following the agreement of conditions with the Applicant.

Mr Spiegler, representing the Applicant, introduced the application and advised that the Premises was an existing café located in Soho. The Applicant had owned the Premises since 2014 and it had a capacity of 50 customers across both the ground and basement floors. Due to the Covid-19 pandemic the Applicant was having to adjust the previous business model in order to ensure the viability of the Premises and this was why the food menu was being extended along with the proposal to provide an ancillary alcohol provision. There was no intention to alter the style of the Premises to one which was alcohol-led and as such various conditions had been proposed to provide reassurance. These included ensuring the sale of alcohol on the Premises was ancillary to it operating as a café, the supply of alcohol would be by waiter/waitress service and to customers seated only and the consumption of alcohol would be ancillary to food.

Mr Spiegler drew the Sub-Committee's attention to the fact no representations had been received from Environmental Health (EH) or the Soho Society and the Police had withdrawn their representation following the agreement of conditions with the Applicant. It was recognised that the primary area of concern raised by objectors related to cumulative impact. Mr Spiegler confirmed that the Premises would not operate as a bar, pub or fast-food takeaway and would be heavily controlled by the proposed conditions, therefore the CIP1 policy to refuse such applications need not apply in this instance. In addition, the Council's SLP stated that where a Premises which did not clearly meet any of the definitions of a licensed premises, the policy which most closely reflected the style of operation would apply and Mr Spiegler considered therefore that under policy RTN1 the application could be granted. The Sub-Committee was advised that the application was within Core Hours with alcohol ceasing to be sold by 22:00 hours every day. The Premises had a small capacity

with all customers seated and allied with a substantial food offer would mean it could not be classed as a high-risk Premises and subsequently would not add to cumulative impact in the local area.

In response to questions from the Sub-Committee Mr Spiegler confirmed that there was an external outside seating area for customers and it was intended for customers to use this area to consume alcohol. It was confirmed that the external area was not part of the licensed Premises but had been used historically as a seating area.

Miss Donovan, representing the Licensing Authority, confirmed that their representation was maintained as the Premises was located within a CIZ and some of the food items on the menu did not constitute a substantial meal. Therefore, the applicant was encouraged to consider placing Model Condition 38 on the licence in order to bring it in line with policy RTN1. The Licensing Authority welcomed the proposed conditions requiring customers consuming alcohol to be seated and the sale of alcohol on the Premises to be ancillary to the main function of the Premises as a café. The Sub-Committee therefore had to be satisfied that the application as presented would not add to cumulative impact in the West End Cumulative Impact Zone.

Mr Brown of the *Westminster* Citizens Advice Bureau *Licensing* Project addressed the Sub-Committee and advised that he was representing a local resident. The Sub-Committee was advised that the resident was concerned how the granting of the application would not add to cumulative impact in the local area. If granted another licensed premises would be operating in the area, the Premises would be open to later hours and customers would be permitted to consume alcohol in an external area.

Under the Council's *al fresco* scheme the local resident had been impacted by the siting of tables and chairs on the public highway which had caused difficulties in accessing her property. This had caused particular problems for the elderly and disabled where the increase in street furniture was not only an inconvenience but had caused serious difficulties in accessing their own residence. Therefore, the application's proposal to consume alcohol in an external area was a genuine cause for concern. Mr Brown questioned under what authority the Premises could currently place tables and chairs on the public highway and this was pertinent as proposed condition 23 referred to off sales of alcohol to this external area. The Sub-Committee was advised that the Premises did not have a tables and chairs licence for the external area and in fact two previous applications had been refused due to the access issues they would create for residents.

Dr Wendy M, a local resident addressed the Sub-Committee, she recognised that licensed premises had been experiencing difficult times due to the pandemic, however assisting them should not come at the expense of detrimentally impacting the local community. The Sub-Committee noted that the resident lived with her elderly, disabled mother and during the operation of the *al fresco* scheme she was unable to get her mother in and out of her property due to people drinking outside and was sorry to hear of those concerns. The Sub-Committee noted also the statement by the resident there had been a proliferation of alcohol licenses granted in the local area recently and a residential part of the area was changing in character

with pavements becoming increasingly difficult to traverse. The Sub-Committee was therefore requested to refuse any aspect of the application regarding the external area.

In response to questions from the Sub-Committee Mr Spiegler confirmed that the Applicant was content to accept MC24 on the licence requiring a direct telephone number to be available to local residents. Restaurant MC38 could not be accepted however as whilst substantial food would be available on the Premises some of the menu items did not fully meet the substantial food definition. In terms of the external area, Mr Spiegler advised this was a modest area consisting of only ten covers and to provide reassurance the Applicant was willing to accept an additional condition requiring all external tables and chairs to be made unusable at an allocated time. Regarding whether the external tables and chairs were on the public highway Mr Spiegler was unsure but stated that this area had been used for seating customers historically and had also been utilised during the operation of the recent al fresco scheme.

Conclusion

The Sub-Committee realises that it has a duty to consider each application in its individual merits and did so for the purposes of determining this application.

The Sub-Committee carefully considered the application and noted that the Premises was located within a Cumulative Impact Area and therefore the Applicant had to demonstrate that the application would not add to cumulative impact in the West End Cumulative Impact Zone. The Sub-Committee welcomed several of the proposed conditions including ensuring the supply of alcohol on the Premises would be ancillary to the main function of the Premises as a café with customers consuming alcohol having to be seated, served by waiter/waitress service and alcohol being ancillary to food. This provided reassurance that the Premises would not become a drink-led establishment and remain operating as café. The hours permitting the sale of alcohol were considered acceptable as they would remain within the Council's core hours policy, and it was deemed acceptable to extend the closing hour to 22:00 not 22:30 in order to replicate this.

To provide reassurance to local residents the Sub-Committee imposed, as specified below, conditions numbered 14, 15, 16, 17, 18, 19, 24, 25 and 26 on the Premises Licence as it was deemed these would prevent nuisance from occurring. These conditions would have the desired effect of allaying the concerns expressed by the resident who objected to the application and had lived in the area in excess of some 30 years. In turn these conditions would help promote the public nuisance licensing objective.

The Sub-Committee did however note the grave concerns of the one local resident that had objected to the application. The issues raised regarding the disturbance caused by people drinking outside and the problems encountered when trying to access or exit their property due to street furniture on the public highway was a serious concern for the Sub-Committee and as a result encourages the Applicant to work with residents in this regard to minimise disruption where possible. Therefore, it was decided that no Off Sales of alcohol would be permitted at the Premises although this had been applied for by the Applicant and so **Refused** this part of the

application. The Sub-Committee was not persuaded that this would not add to cumulative impact and the potential for customers seated at the external area drinking alcohol would likely cause a nuisance to nearby residents thereby undermining the Public Nuisance Licensing Objective.

Therefore, having taken into account all the evidence (with consideration being given to the representations received from local residents), the Sub-Committee was satisfied that part granting the application would make it suitable for the local area and address the concerns raised. The application as now presented was appropriate, with the conditions proposed proportionate enough to ensure that the licensing objectives were promoted, ensure there would be no increase in cumulative impact in the West End Cumulative Impact Zone and mitigate the concerns raised by local residents. The Sub-Committee therefore part granted the application accordingly.

Having carefully considered the committee papers and the submissions made by all of the parties, both orally and in writing, **the Committee has 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 for the **On Sale of Alcohol Monday to Sunday 09:00 to 22:00 hours. To Refuse the Off Sale of Alcohol.** There are no seasonal variations.
2. To grant permission for the **Opening Hours of the Premises: Monday to Sunday 07:30 to 22:00 hours.** There are no seasonal variations.
3. That the Licence is subject to any relevant mandatory conditions.
4. That the 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

5. The sale and supply of alcohol on the premises shall at all times be ancillary to the main function of the premises as a café.
6. The consumption of alcohol at the premises shall only be by a person seated and for consumption by such a person as ancillary to food.
7. Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
8. The supply of alcohol on the premises shall be by waiter or waitress service only to persons seated.
9. The number of persons seated in the premises at any one time shall not exceed [TBA with EHCT] persons excluding staff.

10. There shall be no self-service of alcohol on the premises.
11. A Challenge 25 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.
12. 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.
13. 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.
14. 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.
15. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
16. 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.
17. 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 or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.
18. Except for deliveries of bread, dairy and fresh groceries, no deliveries to the premises shall take place between 23.00 hours and 08.00 hours.
19. No waste or recyclable materials, including bottles, shall be moved, removed or placed in outside areas between 23.00 hours and 08.00 hours.
20. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the

premises by the police or an authorised officer of the City Council at all times whilst the premises are open.

21. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police, which will record the following:
 - a. all crimes reported to the venue
 - b. all ejections of patrons
 - c. any complaints received
 - d. any incidents of disorder
 - e. any faults in the CCTV system.
 - f. any visit by a relevant authority or emergency service.
22. This Premises Licence will have no effect until the Licensing Authority are satisfied that the premises is constructed or altered in accordance with the reasonable requirements of Westminster Environmental Health Consultation Team, at which time this condition will be removed from the Licence.
23. Before the premises are open to the public, the plans deposited with the application or subsequently substituted plans will be checked by the Environmental Health Consultation Team to ensure they are an accurate reflection of the premises constructed
24. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.
25. There shall be no sales of alcohol for consumption off the premises.
26. All outside tables and chairs shall be rendered unusable by 21:00 each day.

If problems persist then a Review of the Premises Licence can be made.

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

**The Licensing Sub-Committee
14 October 2021**

3. 1.00 PM - 101 BELL STREET LONDON W2 1NT

WCC LICENSING SUB-COMMITTEE NO. 3

Thursday 14th October 2021

Membership: Councillor Jim Glen (Chair), Councillor Heather Acton and Councillor Aicha Less

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Aaron Hardy
Committee Officer: Tristan Fieldsend
Presenting Officer: Emanuela Meloyan

Application for a New Premises Licence 21/05642/LIPN

Full Decision

Premises

101 Bell Street
London
NW1 6TL

Applicant

A1 Bottles Limited

Cumulative Impact Area?

Not in a Cumulative Impact Area

Ward

Church Street

Summary of Application

The Premises proposed to operate a commercial office which would be used for distribution of online sales of prosecco and champagne.

Proposed Activities and Hours

[Retail Sale of Alcohol \[Off Sales\]](#)

Monday to Sunday 11.00 to 23.00

Representations Received

- Environmental Health Services (Maxwell Koduah)
- One local resident in objection.

Summary of issues raised by objectors

- The application as presented would have the likely effect of causing an increase in Public Nuisance and may affect Public Safety within the area.
- The application would negatively impact on the amenity of local residents. The Premises would be receiving deliveries on a regular basis and delivery drivers would be continuously pulling up to the Premises to collect deliveries of alcohol. These activities would increase noise, pollution and congestion in a residential area.

Policy Position

Policies HRS1 and OS1 would have to be considered under the City Council's Statement of Licensing Policy (SLP).

DECISION

The Presenting Officer introduced the application and confirmed that the Applicant was not in attendance to present the application. The Sub-Committee was informed that written confirmation had been received that the Applicant would not attend and following discussions with a Director of the Applicant Company further confirmation had been given that they would not attend the hearing, or any hearing rescheduled for a future date.

Mr Koduah, representing the Environmental Health Service (EHS), informed the Sub-Committee that their representation was maintained as the resident objecting to the application was unable to attend the hearing. The Sub-Committee noted that conditions had been agreed between EHS and the Applicant and Mr Koduah advised that these were sufficient to mitigate any concerns regarding public nuisance. These conditions included restricting when deliveries could take place to the Premises to between 07:00 and 23:00 hours and ensuring all deliveries would be undertaken by personnel employed directly by the licence holder or by the licence holder himself.

In response to questions from the Sub-Committee Mr Koduah confirmed that the street the Premises was located on was of a residential nature, however it was not considered proportionate to require all deliveries to be undertaken by bicycle in order to reduce any potential public nuisance. The Sub-Committee also noted that the opening hours for the operation had not been provided and expressed grave disappointment that the Applicant was refusing to attend the hearing in order to provide further clarification on how the business was intended to operate that would help promote the licensing objectives.

Conclusion

The Sub-Committee carefully considered the application and noted that it was not located within a Cumulative Impact Area (CIA) or Special Consideration Zone.

Therefore, the Sub-Committee had a duty to consider the application on its individual merits and took into account all the Sub-Committee papers, the proposed conditions and the oral evidence given by Mr Koduah on behalf of EH during the hearing in its determination of the matter.

The Sub-Committee noted that the Applicant had failed to attend the hearing despite being given ample opportunity to do so and was even contacted again on the day of the hearing by the Licensing Authority but refused to participate and give oral evidence. The Applicant had also declined the offer of an alternative date to attend any future Sub-Committee. The Sub-Committee was disappointed to note this and considered it was imperative for the Applicant to have attended the hearing to answer pertinent questions of the Sub-Committee regarding the proposed venture.

After considering all the evidence and the Revised Home Office Guidance the Sub-Committee was not persuaded by the Applicant that the application should be granted and therefore refused the application. The Applicant's attendance was considered imperative so that the relevant questions could be asked of him, and clarification sought on any aspect of the application together with details as to how the Premises is to be run on a day to day basis when selling alcohol, in particular the non-recording of hours for the appropriation and preparation of goods, potential issues around the Premises relating to noise, deliveries to private residences and the proper supervision of delivery drivers likely to congregate outside of the Premises so as not to cause a nuisance to nearby residents.

The Sub-Committee was of the view that the lack of engagement by the Applicant provided no confidence that the licensing objectives would be promoted, in particular the public nuisance licensing objective given the many concerns raised by the resident objection. Furthermore, based on the information the Sub-Committee had before it, it concluded that no proper consideration had been given regarding the character of the street, namely that it was residential in nature and the likely impact the operation would have on residents from a nuisance perspective.

The lack of engagement by the Applicant also provided no confidence that the proposed licensing conditions would be complied with particularly when it came to age verification and safeguarding the prevention of children from harm licensing objective. As a result, there was insufficient information to determine the matter that would ultimately give rise to the promotion of the licensing objectives and the policy requirements contained under Policy OS1 of the SLP.

The Sub-Committee decided that the above issues were all material in nature and went to the very heart of the promotion of the licensing objectives and how ultimately the Applicant is to run the Premises. Regrettably due to the Applicants failure to attend the hearing and with these events in mind it is not the role of the Sub-Committee try and second guess how the licensing objectives are to be upheld with very limited information.

The Sub-Committee decided that the Applicant had not provided sufficient reasons as to why the granting of the application would promote the licensing objectives and therefore refused the application in all the circumstances of the case.

The Application is ***Refused.***

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

The Licensing Sub-Committee

14 October 2021

The Meeting ended at 1.25 pm

CHAIRMAN: _____

DATE _____