



CITY OF WESTMINSTER

# MINUTES

## Licensing Sub-Committee (3)

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (3)** held on **Wednesday 24th November, 2021**, This is a virtual Teams Meeting.

**Members Present:** Councillors Jim Glen (Chairman), Maggie Carman and Jacqui Wilkinson

#### 1. MEMBERSHIP

1.1 There were no changes to the Membership.

#### 2. DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

### APPLICATIONS

#### 2. 51-53 RUPERT STREET, W1D 7PQ

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

Wednesday 24 November 2021

Membership: Councillor Jim Glen (Chairman), Councillor Jacqui Wilkinson and Councillor Maggie Carman

Officer Support    Legal Adviser:            Horatio Chance  
                          Policy Officer:            Kerry Simpkin  
                          Committee Officer:        Georgina Wills  
                          Presenting Officer:        Emanuela Meloyan

### Application for a New Premises Licence in respect of 51-53 Rupert Street London W1D 7PQ 21/07130/LIPN

Suresh Kanapathi of Arka Licensing (Representing Applicant, Mr Abdullah Abdul Dodhiya), Mr Abdullah Abdul Dodhiya (Applicant), Kevin Jackaman (Licensing Authority), James Hayes (City Inspector), Anil Drayan (Environmental Health), Ms J

Doyle (The Soho Society) and Mr Richard Brown (Legal Representative of The Soho Society)

**Premises**

51-53 Rupert Street London W1D 7PQ

**Applicant**

Mr Abdullah Abdul Dodhiya

**Cumulative Impact Area**

West End

**Ward**

West End

**Special Consideration Zone**

None

**Summary of application**

The Sub-Committee has determined an application for a New Premises Licence under the Licensing Act 2003 ("The Act"). The Premises operates as a small convenience shop in the soho area. The Premises sells chocolates, soft drinks, snacks, tobacco, household goods and hot food in a hot cabinet. This will include the sale of alcohol for consumption Off the Premises to those regular customers who either live or work locally. Similar, to tobacco sales from concealed cabinet, the Premises would like to have alcohol available, in closed cabinets.

The Sub-Committee noted that following consultation, the Applicant reduced the hours for the provision of late-night refreshment from 23:00 to 05:00 Monday to Sunday to Westminster core hours. The Premises is located both within the West End Ward and West End Cumulative Impact Zone. The Special Consideration Zone does not apply. There is a resident count of 255.

This application seeks the following licensable activities and operating hours: -

**Late Night Refreshment (Indoors)**

Monday to Thursday 23:00 to 23:30 hours  
Friday to Saturday 23:00 to 00:00 hours  
Sunday N/A

### **Sale by Retail of Alcohol (Outdoors)**

Monday to Sunday 10:00 to 22:00 hours

### **Opening Hours of the Premises:**

Monday to Sunday 00:00 to 23:59 hours

There are no seasonal variations

The Sub-Committee noted that representations were received from the Metropolitan Police Service (MPS) Environmental Health Service (EHS) the Soho Society and 6 residents. The thrust of those objections cited issues regarding public nuisance and crime and disorder.

### **Representations received**

- Environmental Health Service (EHS) (Anil Drayan)
- Metropolitan Police Service (PC Bryan Lewis) **WITHDRAWN**
- Licensing Authority (Kevin Jackaman)
- The Soho Society
- 7 Local Residents

### **Summary of issues raised by objectors**

The Environmental Health Service had maintained representation on the grounds of the Prevention of Public Nuisance. The Licensing Authority, The Soho Society and seven local residents had maintained representation on the Prevention of Crime and Disorder, Prevention of Public Nuisance, Public Safety and the Protection of Children from Harm. The main issues are summarised as follows:-

- I strongly object to the addition of a licence to sell alcohol from this shop, and any extension of hours for the sale of food. This particular shop is already a problem for residents. It attracts large, noisy groups of people late at night, and seems to have become a meeting point for pedicabs, which sit outside often playing music at obnoxious volume, well past midnight.
- The main concern I have is regard to noise. Rupert Street has a history of being noisy at night, and is a destination for rowdy behaviour. This business already has groups of people loitering out front, including several pedicabs (often playing music) waiting for fares. This is not the behaviour of a responsible business working with the residents in the area.
- As someone who manages an Airbnb let on Brewer St, there is already a local shop/off-licence on Rupert street and as this area is one where rickshaws and pimps and dealers already congregate, having another vendor that sells alcohol will make this even more of a hot-spot.
- This area is of particular concern and well known as a drugs hotspot, where pedicabs congregate and play loud music late into the night. We are in no doubt if this application is granted it will fail to promote the licensing objectives and increase crime and disorder and public nuisance in the West End Cumulative Impact Zone.

- I wish to object to this application on the strongest possible grounds. The applicant wants to remain open until 5am. This particular corner on Rupert Street is notorious for anti-social behaviour. There is drug dealing and the noise due to pedicabs' and minicabs' boom-boxes has been unbearable for those of us in the immediate vicinity - especially over the past year. We have endured enough sleepless nights already and some of us are struggling with mental health as a result. If these premises are granted this licence, the cumulative effect will be horrendous. The Police and the Westminster Noise Team are simply not equipped to deal with the existing problems we have. It will become an even more lawless free-for-all. This is a public health issue.

### **Policy Position**

Policies HRS1 and SHP1(B) apply under the City Council's Statement of Licensing Policy (SLP).

### **SUBMISSIONS AND REASONS**

The Sub-Committee considered an application by Mr Abdullah Abdul Dodhiya for a New Premises Licence in respect of 51-53 Rupert Street London W1D 7PQ. The Presenting Officer provided a summary of the Application and advised that representations had been maintained by the Metropolitan Police Service (MPS) Environmental Health Service (EHS) the Soho Society and 6 residents. The Applicant had submitted additional information, and this was circulated to all parties. The Metropolitan Police Service withdrew their representation following the Applicant reducing the hours for late night refreshment. The Premises is situated in the West End Ward and in the West End Cumulative Impact Zone.

Mr Suresh Kanapathi, Agent appearing on behalf of the Applicant addressed the Sub-Committee and advised that due regard had been had to the policy requirements and the licensing objectives when considering the application. Mr Kanapathi advised that the Applicant had also liaised with the Metropolitan Police and was aware of the concerns regarding the Premises location. He advised that the application was within core hours.

Mr Kanapathi stated that alcohol would not be displayed and would cease to be sold after 22:00 and that this hour was well before revellers would leave the nightclubs which were situated nearby and that alcohol would largely be sold to local customers and that an array of Conditions had been agreed. These include not selling single cans and adopting measures which would ensure that the Premises does not add to the West End Cumulative Impact Zone.

Mr Kanapathi advised that the Applicant was aware of the high number of objections regarding the provision of late-night refreshments and commented that the Premises was not a 'take away business. He advised that food would only be heated up or toasted. He said that the Premises would be refurbished and that the operation for late night refreshments had not fully started. The Applicant had amended the Premises operational hours following representations made by the Responsible Authorities and objectors. He commented that the granting of the Licence would

ensure that the Premises is regulated, and that the licensing objectives are promoted.

Mr Kanapathi commented that concerns regarding the locality such as individuals congregating in the area and causing anti-social behaviour should not solely be attributed to the Premises. He commented that customers would purchase confectionary from the Premises and congregate outside whilst waiting for clients who attended other venues. The Sub-Committee noted that the Applicant had placed a sign on the Premises which requested for customers not to congregate near the shop. The Sub-Committee were reminded that this would be difficult to manage as the external area was in any event part of the public highway.

Mr Kanapathi advised that the Applicant was apologetic for providing late night refreshment despite not being authorised and licensed under the Act to do so. He advised that employees had not viewed the time when late-night refreshment had taken place. He advised that there was a high demand for late night refreshment, and this was the reason why an application had been made. Mr Kanapathi stated that the Applicant had over a decade experience in working in Premises located in the West End.

In response to questions from the Sub-Committee, Mr Kanapathi advised that alcohol would not be advertised, and customers would be required to request these beverages before purchasing. He advised that these measures would prevent customers who 'wished to party' from purchasing these beverages. He stated that the Applicant would be familiar with the regular customer base. Following further questions from the Sub-Committee, Mr Kanapathi advised that the Premises layout would be retained following the refurbishments and that the shop would have a hot food container. The Sub-Committee noted that the Applicant had operated the Premises in this way for a period of two years.

Mr Kanapathi advised that alcohol sales would be controlled and not advertised, and sales would cease after 22:00 and this would ensure that the Premises would not add to the West End Cumulative Impact Zone. He commented that alcohol would only be sold to customers who frequented the Premises regularly. In response to questions from the Sub-Committee Mr Kanapathi advised that customers would be required to bring food from the shop floor to the counter and this would be heated by staff members and that these items were placed in paper packages. He said that petty cab drivers purchased hot food items and consume these goods in their vehicles. He advised that there would be no food preparation on the Premises and that the Applicant would continue to ensure that the external area is kept clear of litter. Signage would be displayed which would request for litter to be put in bins and these instructions would also be printed on bags which are used to wrap food. Mr Kanapathi commented that the Premises locality was highly monitored and that there would be CCTV in operation.

Mr Kanapathi advised that the Premises was opened 24 hours and commented that the locality was frequented by individuals during all hours. He advised that alcohol would be sold between 10:00 to 22:00 and that during these periods local customers would purchase these beverages. Mr Kanapathi commented that the Premises was monitored and that the Applicant had taken additional steps to ensure that the operations were compliant, and these included using paper bags. He advised that

the Premises also sold cold food, tobacco and confectionary. In response to questions from the Sub-Committee Mr Kanapathi confirmed that alcohol would not be accessible to customers and that there was signage on the Premises requesting customers to not make any noise.

Mr Anil Drayan appearing on behalf of the EHS advised that the Applicant had agreed to Conditions which had been proposed by EHS and this included the sale of alcohol to be within policy and how the alcohol is displayed. He stated that provision of late-night refreshment had been reduced by the Applicant from 05:00 to 00:00 Friday to Saturday and 23:30 Monday to Thursday. He advised that the Applicant had proposed for late refreshment for immediate consumption off the Premises and commented that the Sub-Committee should obtain guidance from the Policy Officer on how this provision would comply with the Cumulative Impact Policy. Mr Drayan advised that he was satisfied that concerns regarding public safety and public nuisance had been addressed. The Premises has not generated any complaints regarding its operation. He advised that concerns raised were regarding individuals congregating outside the shop and therefore the provision sought for immediate consumption of food outside the Premises needed to be reviewed.

Kevin Jackaman appearing on behalf of the Licensing Authority advised that the Premises was in the West End Cumulative Impact Zone and needed to be considered under the Cumulative Impact Policy CP1. He advised that the Application had been previously considered under the Fast Food and Off Sale Policy and commented that the Premises is largely a convenience store. Mr Jackaman advised that a revised Licensing Policy had been introduced which reviewed premises which were largely shops and that this Application fell under the new policy SHP1. He advised that the new Policy required the Applications for shops in the cumulative area to be considered on their own merit and were required to meet the requirements of the Policies CD1, PS1 PN and CH1. Mr Jackaman advised that it was welcomed that the hours had been reduced to core hours by the Applicant and said that the Sub-Committee needed to be satisfied that the Premises would not add to the cumulative impact zone. Mr Jackaman advised that there had been concerns raised regarding the Applicant being able to promote the Licensing Objectives.

James Hayes, City Inspector, advised that part of his remit was licensing enforcement, noise nuisance and Anti-Social Behaviour (ASB) in the Soho Area. Mr Hayes advised that he worked with the Metropolitan Police in relation to ASB and commented that there had been several concerns raised about the Premises. The Sub-Committee was advised that there had been several incidents regarding the Premises and the first was on 27 September. Mr Hayes advised that the Police had reported a large congregation of pedicabs outside the Premises on 26 October and had linked the incident to the provision of late-night refreshments. He stated that the Police had liaised with the Applicant. He advised that there were concerns regarding customers congregating in the immediate area and these occurrences could lead to public nuisance. Mr Hayes advised that the late-night refreshment provided by the Premises were often small pieces of food which were normally consumed immediately.

Mr Hayes stated that there had been several educational visits to the Premises to help ensure that the Applicant promoted the licensing objectives and was compliant. The Sub-Committee was advised that during a recent visit to the Premises by the

City Inspectorate it was found that the Applicant was still providing late night refreshment despite not having a Premises Licence in place. Mr Hayes advised that the Premises was not regulated and should not currently be providing any late-night refreshment. He advised that there were concerns regarding the Applicants ability to promote the Licensing Objections if the Application was granted.

In response to questions from the Sub-Committee, Mr Hayes advised that there are various steps taken when Premises are found not to be complying with licensing requirements and this included advice and guidance, educational visits and potential prosecution. He advised that prosecutions were undertaken in cases where there were repeated breaches by an operator. Mr Hayes advised that a Condition which required for alcohol not to be displayed could be included and that there were concerns on whether this condition would be complied with. He commented that vendors could be pressurised by customers to sell them alcoholic beverages. The Sub-Committee noted that a Condition had been agreed by the Applicant which required for alcohol not to be displayed in the Premises.

Richard Brown, appearing on behalf of Ms J Doyle of The Soho Society, advised that Ms Doyle sat on the Soho Society Licensing Committee and was the Chair of the Safer Neighbourhood Ward Panel. He advised that Ms Doyle was able to give an accurate record of concerns regarding Rupert Street. Mr Brown advised that there were concerns regarding the Applicants comments that alcohol and late-night refreshments would only be sold to local residents and workers. He commented that this had not transpired, and this had been evidenced by the Soho Society. Mr Brown advised that other customers other than residents would be attracted to the Premises. He advised that the Premises had become a meeting point for pedicabs to congregate and get refreshments and this had led to public nuisance. Mr Brown advised that the first prompt for a city inspection was due to the high number of petty cab drivers congregating outside the Premises and not for the unauthorised sales of late-night refreshment.

Mr Brown advised that the provision of late-night refreshment usually attracted interest to Premises and evidence had been provided which supported this. Mr Brown stated that an inspection had been undertaken during the early hours of the morning and that there were shared concerns on whether the Applicant would be able to comply with the Licensing requirements. He advised that the Applicant had to demonstrate that that they would not add to the cumulative impact and commented that Soho had become a 'destination point' since the end of the Covid-19 Pandemic lockdown and therefore an additional premise would exacerbate concerns. Mr Brown stated that the Application was within the core hours and commented that Policies required for Premises to be compliant with the licensing objectives and for them not to add to the cumulative impact.

Ms Doyle advised that there were three late night premises in the vicinity and that the establishment was one of two 24 hours Units that had recently been opened. Ms Doyle said that the Premises was the only one which had attracted attention. She stated that the locality attracted a high number of ASB. Ms Doyle advised that the Premises was small and had no doorway and that the food cabinet could be immediately viewed when entering the shop. She advised that Soho had become a destination for 'street drinking' and this caused public nuisance. Ms Doyle said that it would be difficult to prevent individuals from congregating outside the Premises.

In response to questions from the Legal Advisor to the Sub-Committee, the Applicant Mr Abdullah Abdul Dodhiya, advised that he was aware of the Licensing Objectives and read out the four objections of the Act namely; The Protection of Public Safety, The Prevention of Public Nuisance, The Protection of Children from Harm and The Prevention of Crime and Disorder. Mr Dodhiya advised that there were two staff members present at the Premises. He said that staff were instructed to ensure that only certain customers be sold alcohol and for individuals to be requested not to congregate outside the Premises. He advised that all Conditions would be complied with.

Mr Kanapathi advised that Conditions which required for signage to be displayed which requested for patrons to leave the Premises quietly and for the Manager's contact number to be provided to residents and business in the vicinity would be agreed and was understood by the Applicant.

The Policy Officer to the Sub-Committee advised that the Application needed to be considered under the Shop Policy (SHP1). The Application would need to be considered on its own merits and was subject to the Licensing objectives set out under these Policies. The Sub-Committee was advised that they had to determine whether the granting of the application would undermine the licensing objectives and whether the Applicant had demonstrated that the Premises would not add to cumulative impact and had put forward mitigations which would address the concerns raised by the Objectors. The Sub-Committee was advised that the late-night refreshment was an ancillary part of the Premises, and the establishment was not a fast-food premise. The Policy Officer advised that all potential nuisances should be considered under the licensing objectives and Policy criteria. Mr Drayan advised that Model Condition 86 which requires late night refreshment to be ancillary to the Premises being a shop should be included.

Mr Brown stated that Premises which provided late night refreshments attracted customers to localities and advised that the 'fast food' Policy should be taken into consideration. He advised that 'hot food' encouraged individuals to congregate in stress areas during the later hours. Mr Brown commented that the Premises locality had a high number of ASB in the vicinity and acknowledged that this could not solely be attributed to the Applicant. However, alcohol and late refreshment would encourage individuals to congregate in the locality. Mr Brown stated the Conditions offered did not adequately address concerns raised by the residents and that the view that granting the licence would ensure that the Premises was regulated would not suffice.

Mr Kanapathi advised that it was acknowledged that there were concerns regarding Soho and commented that the Premises was contributing to the area via their Business Rates. He advised that the licensing objectives would be promoted, and that the Premises would not add to the cumulative impact zone. He advised that the Premises was not a fast-food premises and food would only be warmed up. Mr Kanapathi commented that there were a large number of petty car drivers in the City and that drivers came to the locality in order to collect clients and would purchase food from the Premises. He advised that all additional Conditions would be accepted included those proposed by EH. Mr Kanapathi advised that the Applicant was aware



that he had previously been in breach of licensing requirements and had received support to ensure that all future operations are compliant with all regulations.

## **Conclusion**

The Sub-Committee realises that it has a duty to consider each case on its individual merits and did so for the purposes of determining the application. It considered all the committee papers, the proposed conditions and the oral evidence given by the Applicants Agent Mr Kanapathi, Mr Drayan on behalf of the EHS and Mr Brown appearing on behalf of the Soho Society.

The Sub-Committee noted that the Premises operates as a small convenience shop in the Soho area selling chocolates, soft drinks, snacks, tobacco, household goods and hot food in a hot cabinet. The Sub-Committee understood that the Premises is seeking Off sales of alcohol to be in closed cabinets (like tobacco sales in a concealed cabinet) to those regular customers who either live or work locally but admittedly anyone can frequent the shop and purchase alcohol that does not have a local connection.

The Sub-Committee noted that Late Night Refreshment is to be provided in the form of heated food in a paper bag and that following consultation, the Applicant had reduced the hours for Late Night Refreshment from 23:00 to 05:00 Monday to Sunday to Westminster's Core Hours and this concession was welcomed. The Premises is located both within the West End Ward and West End Cumulative Impact Zone so there is a policy presumption to refuse the application unless the Applicant can demonstrate that the granting of the application will not add to cumulative impact in the West End Cumulative Impact Zone.

The Sub-Committee had several issues to contend with before deciding whether the application should be considered "exceptional" in order that the policy presumption to refuse was overcome by the Applicant. It considered that the main issues were threefold in nature. The first issue was whether the Applicant had persuaded the Sub-Committee that the requirements of the Shops Policy (SHP1) under the SLP had been met, secondly whether the Applicant's general management of the Premises was at the required level that would lead to the promotion of the licensing objectives and compliance with licence conditions and thirdly whether the many concerns raised by local residents and the Soho Society the implications for selling hot food at a later hour in the West End Cumulative Impact Zone had been fully addressed by the Applicant in his operating schedule and submissions. These matters are dealt with in turn as follows:-

### **Shops Policy SHP1**

The Sub-Committee had regard to Policy SHP1 under the City Council's SLP when considering the matter. The Policy goes on to state that Applications for a shop inside the West End Cumulative Impact Zone will be considered on their own merits and subject to: 1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1. 2. The hours for licensable activities are within the council's Core Hours Policy HRS1. 3. The operation of any delivery services for alcohol meeting the council's Ancillary Alcohol and/or Late-night Refreshment Delivery Service Policy DEL1.

The Sub-Committee concluded that in the final analysis the application did not meet the policy requirements under the terms of the policy. Whilst the hours had been reduced significantly the fact remains the Premise are in Soho which is a very busy and vibrant area within the West End Cumulative Impact Zone which would give rise to problems regarding nuisance. The Sub-Committee had regard to the various considerations contained on page 32 of the SLP under Policy PN1 which include but are not limited to the following matters:-

- Minimising and controlling noise from customers arriving at the premises, or open-air site outside it and departing from it including noise and other nuisance caused by customers' transportation and how dispersal is managed.
- Identifying whether people standing or sitting outside premises are likely to cause obstruction or other nuisance.
- Identifying whether the premises are under or near to residential accommodation.
- Limiting the hours of the sale of alcohol in open containers or food for consumption outside the premises.
- Introducing measures to make sure that customers move away from outside premises when such sales cease.

The Sub-Committee in its determination of the matter had regard also to the reasons for Policy PN1 on page 33 of the SLP at Paragraph C13 which states:

*“Westminster has a substantial residential population and the council as the Licensing Authority has a duty to protect it from nuisance. In certain areas, the increased concentration of entertainment uses, and the longer hours of operation have adversely affected local residents. Commercial occupiers of premises also have a legitimate expectation of an environment that is attractive and helps sustain their businesses. The role of the council as Licensing Authority is to maintain an appropriate balance between the legitimate aspirations of the entertainment industry and the needs of residents and other users of the city including businesses, workers, shoppers and visitors. It will need to satisfy itself that adequate measures to prevent public nuisance are in place and will be maintained. These principles apply also to events in open air sites”*

### **The Applicant's management of the Premises**

The Sub-Committee noted that the Applicant had been working in West End businesses in the last 10 years. However, the Sub-Committee was a little surprised that given his experience gained in Westminster this experience did not necessarily translate when the Applicant was questioned about his understanding of the licensing regime and the specifics of the application coupled with his long term commitment to hold a premises licence by demonstrating that he would be a responsible operator that would comply fully with his licence conditions and promote the licensing objectives . It was apparent that the Applicant did not have a proper grasp of the matters in hand and why the application should be considered exceptional to overcome the specific concerns with cumulative impact and thus be granted.

The Sub-Committee was concerned that on two separate occasions including one just days before the hearing the Applicant was caught selling hot food well past the permitted hours without the appropriate authorisation in place. The Sub-Committee noted that the Applicant had been given a previous warning from the Council's City Inspector for Licensing and therefore knew very well what the rules were for selling hot food a significant time after which Late Night Refreshment would be required.

The Sub-Committee concluded that it had no confidence that the licensing objectives would be promoted by the Applicant in particular the public nuisance licensing objective given the many concerns raised by residents, the Soho Society and the Licensing Authority who had previously given advice and guidance to the Applicant in respect of best practice and the consequences for selling hot food without a licence.

Whilst the Sub-Committee noted that no complaints had been made directly about the Premises it decided that breaching the provisions of the Act was a cause for concern when it came to selling hot food without a Premises Licence in place and the potential for selling Off sales of alcohol in a very busy area with a range of problems regarding public nuisance and crime and disorder was therefore not the conduct expected of a responsible and competent operator that would promote the licensing objectives.

### **Concerns of residents and the Soho Society**

The Sub-Committee noted the many concerns from residents and the Soho Society who had objected to the application. It noted that as far as residents were concerned the Premises attracted large noisy groups of people late at night and appears to have become a meeting point for pedicab drivers who sit outside the Premises playing loud music disturbing residents. Whilst the Applicant stated that he would take such steps to prevent this from happening the Sub-Committee was not persuaded that the Applicant and his staff would be proactive enough to tackle this thorny issue from a management perspective.

The Sub-Committee fully appreciates that a balance must be struck when considering the needs of business and residents when dealing with applications that are located within the West End Cumulative Impact Zone. However, the Sub-Committee did not have the confidence that the conditions offered by the Applicant would in fact be complied with by the Applicant to mitigate the concerns raised by residents and the Soho Society. Moreover, the issues identified by residents are like those covered also within Policy PN1 and again the Sub-Committee did not have the confidence that the measures outlined in the policy would be adhered to by the Applicant and his staff.

The Sub-Committee had no confidence that the proposed licensing conditions would be complied with by the Applicant particularly when it came to public nuisance and safeguarding the public nuisance licensing objective and the likely impact the operation would have on residents from a nuisance perspective particularly late at night notwithstanding the resident count of 255.

The Applicant failed to persuade the Sub-Committee that it would be a responsible operator by employing good management practices when selling Off sales of alcohol

(even in closed cabinets) to customers until 22:00 hours and Late Night Refreshment particularly on Friday and Saturday until Midnight being those busy days of the week when there are already large crowds of people in the cumulative impact area – the fears of the Sub-Committee were not alleviated in this respect.

The Sub-Committee did not take the decision to refuse the application lightly as it must have good cause to refuse an application. It duly considered when considering the matter all aspects of the April 2018 Revised Home Office Guidance issued under section 182 of the Act. **Paragraph 9.43 on page 75 of the Guidance states that “The authority’s determination should be evidence based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.”**

The Sub-Committee decided that based on the evidence the Applicant had *not* provided sufficient reasons as to why the granting of the application would promote the licensing objectives in the West End Cumulative Impact Zone and therefore ***refused*** the application and that its actions are considered appropriate and proportionate.

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

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

**The Licensing Sub-Committee  
24 November 2021**

3. **20 BERKELEY STREET, W1J 8EE**

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

**Wednesday 24 November 2021**

Membership: Councillor Jim Glen (Chairman), Councillor Jacqui Wilkinson and Councillor Maggie Carman

Officer Support Legal Adviser: Horatio Chance  
Policy Officer: Aaron Hardy  
Committee Officer: Georgina Wills  
Presenting Officer: Emanuela Meloyan

**Application for a New Premises Licence in respect of 20 Berkeley Street**  
**London W1J 8EE 21/07322/LIPN**

Other Parties Present: Saba Naqshbandi (Legal Representative, Novators Hospitality (Berkeley) Limited), Thomas O'Maoileoin of Thomas & Thomas Solicitors (Agent, Novators Hospitality Limited), Alex D'Aguiar (Operational Director, Novators Hospitality Limited), Phil Campbe (Chef de la Maison, Novators Hospitality Limited), Anil Drayan (Environmental Health), Dr Ulrich Brandt-Pollmann and Richard Brown (Legal Representative representing Mr J Zand, Mr U Brandt-Pollman, Ms JA Chang and M Dunn)

**Full Decision**

**Premises**

20 Berkeley Street London W1J 8EE

**Applicant**

Novators Hospitality (Berkeley) Limited

**Cumulative Impact Area**

None

**Ward**

West End

**Special Consideration Zone**

West End

**Summary of Application**

The Sub-Committee has determined an application for a New Premises Licence under the Licensing Act 2003 (“The Act”). The Premises proposes to operate as a fine dining restaurant. The Premises is located both within the West End Ward and West End Buffer Special Consideration Zone (SCZ). The Premises previously had the benefit of a premises licence (17/01674/LIPT) which was granted in July 2014 and lapsed in August 2020. The Applicant prior to the hearing provided written submissions addressing the SCZ including the significant financial investment ploughed into the proposed venture which was noted by the Sub-Committee.

There is a resident count of 93.

### **Representations received**

- Environmental Health Service (Anil Drayan).
- 17 Berkeley Street Residents Association.
- 6 local residents.

### **Summary of issues raised by objectors**

The Environmental Health Service had maintained representation on the grounds of the Prevention of Public Nuisance. The 17 Berkeley Street Residents Association and 6 residents had maintained representation on the Prevention of Crime and Disorder and the Prevention of Public Nuisance.

### **Policy Position**

Policies SCZ1, HSR1 and RNT1 apply under the City Council’s Statement of Licensing Policy apply (SLP).

## **SUBMISSIONS AND REASONS**

The Sub-Committee considered an application by Novators Hospitality (Berkeley) Limited for a New Premises Licence in respect of 20 Berkeley Street London W1J 8EE. The Presenting Officer provided a summary of the Application and advised that representations had been maintained by Environmental Health, The 17 Berkeley Street Residents Association and 6 local residents. The Premises is situated in the West End Ward and in the West End Buffer SCZ.

Ms Saba Naqshbandi Counsel appearing on behalf of the Applicant advised that it was proposed for the Premises to operate as a high-end restaurant which offered premium food and beverages. The Premises operational hours would be within Westminster’s core hours. The Sub-Committee was advised that the Premises had been vacant for over 5 years and the previous premise licence had lapsed due to the former occupiers going into liquidation in August 2020. Ms Naqshbandi advised that it was proposed for the Restaurant to open in 2023 and that some five million pounds had been invested in the Premises. She advised that the Creative Restaurant Group were a good operator and had experience of successfully working collaboratively with residents and other interested parties. The Company operated two restaurants

in the Capital which are located within residential settings and there have been no concerns regarding these establishments.

Ms Naqshbandi advised that the Premises would have a pool of 50 staff and each employer would undergo in house training. There would be three personal licence holders on site during all periods. This will include a general manager and two deputy managers. The staff employed would be of a 'good pedigree' and had extensive experience in the industry and working in premises that were situated in residential areas. She stated that patrons would be greeted at reception and that there would be a holding space for up to 8 persons located on the same floor. The Sub-Committee noted that there would be no external seating and that seating on the upper floor would be flexible. There would be no increase in the Premises capacity, however, there would be two private dining areas on the ground floor, and both had a capacity of 25. The Premises capacity would be between 125 and 200 patrons.

Bookings would be staggered, and this was to ensure that patrons received a high level of service whilst visiting the Premises and that patrons leaving the Premises would also be staggered in terms of dispersal. Ms Naqshbandi advised that the Applicant had had dialogue with both Environmental Health and residents. She stated that the Applicant was aware the Premises was situated in the SCZ and had agreed to an array of Conditions with Environmental Health. These included that no noise is generated from the Premises, the display of quiet notices within the restaurant, deliveries, waste disposal, CCTV and smoking. Ms Naqshbandi advised that all planning applications regarding the Premises had been made by the Freeholder and confirmed that the Premises would operate as a restaurant and not a nightclub. The Model Restaurant Condition would be adopted. She advised that the Applicant continue to actively engage with residents and that the Premises Managers direct contact number would be made available if residents had any issues.

In response to questions from the Sub-Committee Ms Naqshbandi advised that the restaurant had a capacity of 200 and commented the kitchen had a 'turn over' time. She advised that it would not be possible for 200 patrons to be served food at a single time and these individuals would also not leave the Premises at the same time. Ms Naqshbandi commented that the agreed Conditions would ensure that concerns raised by objectors are addressed and these included noise nuisances and staff congregating in areas. She advised that management were aware of these concerns and commented that they were similar to other establishments which they operated and therefore would be addressed appropriately. Ms Naqshbandi advised that a Dispersal Plan would be provided, and that the Applicant did not want to cause any nuisance and would actively work with the relevant authorities.

Mr Alex D'Aguiar, Operational Director for the Applicant, advised that peak times were around lunch and evening times. He stated that the staff members were aware of local businesses in the vicinity and would work collaboratively with these parties.

In response to questions from the Sub-Committee Mr D'Aguiar advised that the sale of alcohol would be within Westminster's core hours policy and that bookings started at 11:00 hours. He advised that it was proposed to introduce a breakfast service in the future. The Premises doors would be manned by door staff, the basement area

would be used for food preparation and that there would be adequate toilet facilities for patrons. The Applicant was reported to have agreed to the Works Condition which required for the Premises to be assessed by Environmental Health before it starts to trade and carry out any licensable activities. Mr Alex D'Aguiar advised that a maximum number of 10 patrons would be permitted to smoke outside the Premises and that these individuals would be supervised by staff accordingly.

Anil Drayan, appearing on behalf of the Environmental Health Service confirmed that he was satisfied with the application and that sufficient information regarding the mitigation of noise breakout including through plant machinery had been supplied as part of the application. He advised that the application was like the lapse licence and that the capacity of the new Premises may be increased. Mr Drayan advised that there were concerns about patrons leaving the Premises and potential noise nuisance during these times. He advised that Model Condition 37 (MC37) should be imposed and commented this would require for the capacity of the Premises to be determined following the clearance of the Works condition and said that numbers should be limited to 200 patrons. Mr Drayan stated that Environmental Health would access capacity on means of escape and how many toilets are being provided. The Sub-Committee noted that an amendment would be added to the Works Condition which would require for new plans to be submitted should there be any minor changes during the construction phase. In response to the Sub-Committee Ms Naqshbandi advised that the Conditions which had been put forward by Mr Drayan would be accepted.

Richard Brown, appearing on behalf of local residents advised there were some confusion with the Application as the licence granted in 2014 was still shown as the current licence on the Licensing Register. Mr Brown stated that a planning permission for the Premises had been refused and that an application to extend the operational hours of the previous licence had been made. He stated that the previous licence had lapsed, and the application was to replace the former licence.

Mr Brown commented that the Applicant had applied for 'Off Sales' and this was not present in the former Licence and that the Premises licensable activities were to increase. The Sub-Committee were informed that some notable Conditions on the previous licence had not been included in the new Licence. He advised that in the previous licence the Premises capacity was capped at 125. Mr Brown confirmed that the Applicant had engaged with residents and advised that it was disclosed that the Premises' capacity would be limited to 175. The Sub-Committee were advised that residents had concerns over the Premises capacity being increased to 200. Mr Brown commented that Conditions on 'Off Sales' should be imposed which included for alcoholic beverages to be in sealed containers and restrictions on sales. He advised that a Condition for smokers was welcomed and stated that the number of smokers allowed in the previous premises was 6 and this had now been increased to 10.

Mr Brown advised that it was acknowledged that patrons leaving the Premises would be staggered and commented that a significant number of individuals would leave the restaurant during high turnovers and at the terminal hour. The Sub-Committee were advised that this would have a significant impact and were reminded that the Premises was situated in a SCZ. Mr Brown advised that residents at Berkley Street had a long history of engaging with the Licensing process and that it had been



reported that the area had the same characteristics of a 'Cumulative Impact Area'. He advised that there were concerns regarding anti- social behaviour, public nuisance and crime and disorder and this was the reason the locality was designated as a SCZ.

Mr Brown advised that the SCZ required Applicants to demonstrate that they had considered issues which were prevalent in these areas and must detail the mitigations factors which would address these concerns in their operational schedule. Mr Brown commented that this had not been undertaken. He advised that the application could not meet these requirements if the Premises capacity is increased. Mr Brown advised that the timings for removals and waste collections had changed. He advised that imposing MC 37 would not address residents' concerns and that the capacity of the Premises was to increase by 55%.

Dr Brandt-Pollmann local resident advised that there were concerns regarding the increased capacity of the Premises and commented that Berkley Street and Berkley Square were 'stress areas. He advised that the area had evolved and now attracted patrons with 'expensive sport cars' and that the area was used as a 'runway' to showcase these vehicles. Dr Brandt-Pollmann advised that patrons arriving and leaving premises alongside 'car parades' caused congestions in the area. He commented that an increase in the Premises capacity would only exacerbate the highlighted concerns. He advised that the Premises would attract a large number of patrons who use private vehicles. The Sub-Committee were advised that increasing the number of smokers permitted to congregate outside the restaurant would ensure that there is a large audience for motorists to display their sports vehicles. Dr Brandt-Pollmann advised that the locality had now become an area where sports vehicles are paraded. He commented that these types of vehicles caused noise nuisance and would add to the 'stress area'.

Dr Brandt-Pollmann advised that the capacity for the previous premises was 125 and this number was a compromise. The Sub-Committee noted that the previous Premises did not trade, and the former Licence Holders did not operate any venues in the capital and that previous Conditions had not been tested. Dr Brandt-Pollmann advised that residents were concerned that the locality may transform into the 'New Soho'.

In response to questions from the Legal Advisor to the Sub-Committee , Ms Naqshbandi advised that Model Conditions MC22, MC23, MC24, MC35, MC37, MC43 MC57 and MC8 would be accepted. Ms Naqshbandi advised that a Dispersal Policy would be devised and be implemented by the Applicant and would be made available for inspection to the Responsible Authorities. The Sub-Committee noted that the Applicant had agreed to the Conditions proposed by Environmental Health regarding capacity and minor changes to the new plan.

In summing up Mr Drayan confirmed that the previous licence was never operated and that the Unit had been vacant for several years. Mr Drayan advised that a capacity of 125 had been proposed by the former Applicant and reminded the Sub-Committee that each case needed to be determined on its own merits.

In summing up Mr Brown advised that the locality was now deemed as a SCZ and this grading was not present when the previous licence application had been made.

He commented that an increase in capacity was not necessary and should remain at 125. Mr Brown advised that objectors had proposed several conditions during mediations with the Applicant and this included smokers using external areas to be limited to 6, and that no queues are formed outside Hay Hill and Berkley Street. In response to the Sub-Committee Ms Naqshbandi advised that the Applicant agreed for only 6 smokers to be permitted to congregate outside the Premises and that no queues are formed at both Hay Hill and Berkley Street.

In summing up Ms Naqshbandi reminded the Sub-Committee that the Premises was a fine dining high end restaurant and did not wish to attract patrons who wanted to use the locality to parade their 'sports cars'. She commented that there had been liaison with the responsible authorities and residents about the Premises throughout the application process. She advised that the Applicant wished to work with all interested parties and that the Applicant had taken a pro-active approach and had agreed to additional conditions proposed during the Hearing. This included reducing the number of smokers permitted outside.

Ms Naqshbandi advised that the Applicant was a responsible operator and did not wish to add to the concerns raised by the residents and that nature of the restaurant, operational style and proposed Conditions would ensure that the Premises would not cause nuisance whilst having a capacity of 200 and this limit had been granted on a previous planning permission. She state that a capacity of 200 was required to ensure that the Premises is commercially viable. A dispersal policy would be in place and patrons leaving the Premises would be staggered to keep disruption to a minimum for residents.

## **Conclusion**

The Sub-Committee realises that it has a duty to consider each application on its individual merits and did so for the purposes of this application. It welcomed the fact that the Applicant had engaged with residents prior to the hearing and was prepared to work with them and the Responsible Authorities by agreeing conditions and that the hours applied for were within Westminster's core hours.

The Sub-Committee noted that this venture is to introduce a brand-new premium food and beverage concept to Mayfair in the heart of Berkeley Street with views over Berkeley Square. The Premises will operate first and foremost as a restaurant and will be over 3 floors with main dining room, cocktail bar area, raw bar with seating, wine cellar, 2 private dining rooms and state of the art kitchen. The concept is to have the best fresh produce from the land and sea with classic, signature and regular chef specials depending on the time of the year. The Bar and Wine program will be best in class with world leading mixologists and sommeliers creating a world class wine and cocktail program The Premises is to be fitted to a very high specification with an anticipated opening in 2023 with the help of a five-million-pound investment to facilitate the process.

Based on the evidence before it the Sub-Committee considered the potential for nuisance that might be caused to residents and took the view that the noise conditions imposed on the licence should mitigate the concerns raised by residents.

The Sub-Committee noted that the style, nature and character of the Premises as described by the Applicant would be that of a restaurant, i.e. food and not alcohol led and this was endorsed by the fact that restaurant Model 66 had been accepted by the Applicant, therefore this added protection would prevent the Premises morphing into a night club venue as might have been feared by residents and so the Sub-Committee concluded that the right balance has been struck.

The Sub-Committee was persuaded by the Applicant's assurances and undertakings, including the ongoing commitment to work in partnership with local residents by forming a fruitful and meaningful dialogue when it came to the day to day running and management of the Premises. This would also extend to the established practices and procedures already in bedded over time that exist within the Applicants premises portfolio and are to be applied and adopted for these Premises which would ultimately have the effect of promoting the licensing objectives.

The Sub-Committee had no reason to believe that the operator would not be a responsible operator that would run his Premises well in accordance with the promotion of the licensing objectives.

The Sub-Committee considered the potential for public nuisance in relation to the terminal hour for when patrons would be leaving the Premises but was reassured by the Applicant that the measures the Applicant was to put in place regarding a dispersal policy of its patrons will help safeguard the public nuisance licensing objective and that a telephone number for the Manager at the premises will be made available to residents. These requirements are now conditioned on the Premises Licence.

The Sub-Committee noted from the Applicant that should the layout of the Premises change then updated plans would be provided to the Licensing Authority before the issue of the Licence. Smokers would also be encouraged to smoke away from the Premises by using the pavement area on Hay Hill and this would be limited to 6 in number to prevent nuisance.

The Sub-Committee noted that the Premises was in the West End Buffer SCZ and the matters contained in paragraph D48 on page 55 of the SLP had been satisfied by the Applicant based on the evidence before it and so there was no real justification to refuse the application.

The Sub-Committee was reassured that had there been specific concerns expressed by the Police with regard to robberies, theft, anti-social behaviour, ambulance call outs at night to the location as a result of intoxication, injury related to intoxication and/or assault they probably would have objected to the application because these pertinent issues would have been considered material to the application when it came to matters of crime and disorder. The fact that the Police failed to object strengthened the application as to why it should be granted in the SCZ. Moreover, conditions have now been imposed on the Premises Licence relating to CCTV, an incident log, that there be no sales of alcohol for consumption off the Premises after 23:00 hours and all off sales of alcohol are to be in sealed containers are conditions which will have the ultimate effect of promoting the crime and disorder licensing objective.

The Sub-Committee decided that the Applicant had provided valid reasons as to why the granting of the application would promote the licensing objectives.

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

1. **To grant permission for Late Night Refreshment (Indoors)**. Monday to Thursday 23:00 to 23:30 hours Friday and Saturday: 23:00 to 00:00 hours Sunday N/A. **Seasonal Variations:** On Sundays immediately prior to bank holidays 23:00 - 00:00. From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.
2. **To grant permission for the Sale of Alcohol (On and Off)** Monday to Thursday 09:00 to 23:30 hours Friday and Saturday: 09:00 to 00:00 hours Sunday N/A **Seasonal Variations:** On Sundays immediately prior to bank holidays until 00:00. From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.
3. To grant permission for the **Opening Hours of the Premises:** Monday to Thursday: 08:00 to 23:30 hours Friday and Saturday: 08:00 to 00:00 hours Sunday: 08:00 to 22:30 hours **Seasonal Variations:** On Sundays immediately prior to bank holidays until 00:00. From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.
4. To grant permission for **Seasonal Variations:** Sundays immediately prior to a bank holiday Midday to 22:00 hours.
5. That the Licence is subject to any relevant mandatory conditions.
6. That the Licence is subject to the following additional conditions and Informative imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

#### **Conditions imposed by the Committee after a hearing**

7. (a) The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team.  
(b) All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.  
(c) 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.  
(d) All recordings shall be stored for a minimum period of 31 days with date and timestamping. (e) Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.

8. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
9. 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.
10. There shall be no sales of alcohol for consumption off the premises after 23.00 hours.
11. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
12. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
13. 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.
14. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police. It must be completed within 24 hours of the incident and will record the following:
  - (a) all crimes reported to the venue
  - (b) all ejections of patrons
  - (c) any complaints received concerning crime and disorder
  - (d) any incidents of disorder
  - (e) all seizures of drugs or offensive weapons
  - (f) any faults in the CCTV system, searching equipment or scanning equipment
  - (g) any refusal of the sale of alcohol
  - (h) any visit by a relevant authority or emergency service.
15. There shall be no sales of hot food or hot drink for consumption off the premises after 23.00 hours.
16. No deliveries to the premises shall take place between 23.00 and 08.00 hours on the following day.
17. No deliveries from the premises, either by the licensee or a third party shall take place between 23:00 and 08:00 hours on the following day.
18. The premises shall only operate as a restaurant,
  - (i) in which customers are shown to their table or the customer will select a table themselves,

- (ii) where the supply of alcohol is by waiter or waitress service only,
- (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table,
- (iv) which do not provide any takeaway service of food or drink for immediate consumption off the premises,
- (v) where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

Notwithstanding this condition customers are permitted to take from the premises part consumed and resealed bottles of wine supplied ancillary to their meal.

For the purpose of this condition 'Substantial Table Meal' means – a meal such as might be expected to be served as the main midday or main evening meal, or as a main course at either such meal and is eaten by a person seated at a table, or at a counter or other structure which serves the purposes of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure servicing the purposes of a table.

19. The premises may remain open for the sale of alcohol and the provision of late-night refreshment from the terminal hour for those activities on New Year's Eve through to the commencement time for those activities on New Year's Day.
20. No fumes, steam or odours shall be emitted from the licensed premises so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated.
21. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke or make a phone call, shall be limited to 6 persons at any one time.
22. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
23. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number and/or is to be made available to residents and businesses in the vicinity.
24. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 23.00 hours and 08.00 hours on the following day.
25. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 08.00 hours on the following day.

26. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke or make a phone call, shall not be permitted to take glass containers with them.
27. No licensable activities shall take place at the premises until the premises has been assessed as satisfactory by the Environmental Health Consultation Team at which time this condition shall be removed from the Licence by the licensing authority. In the event that the layout of the premise's changes then the Premises Licence Holder shall provide revised plans to the Licensing Authority detailing those changes.
28. The number of persons permitted on the premises at one time (including staff) shall not exceed (X) persons (which for the avoidance of doubt shall be determined by Environmental Health on clearance of the works condition and to be no more than 200 people in any case).
29. The Premises Licence Holder shall devise and implement an Operational Dispersal Policy which shall be kept updated from time to time. A copy of the policy shall be made readily available to the Responsible Authorities upon request.

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  
24 November 2021**