



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (2)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (2)** held on **Wednesday 2nd February, 2022**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Tim Mitchell (Chairman), Heather Acton and Maggie Carman

1. MEMBERSHIP

1.1 There were no changes to the membership.

2. DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1. ANTIKA, 4 LAUDERDALE PARADE, LAUDERDALE ROAD, W9 1LU

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 2 **("The Committee")**

Wednesday 2 February 2022

Membership: Councillor Tim Mitchell (Chairman)
Councillor Heather Acton and Councillor Maggie Carman

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Aaron Hardy
Committee Officer: Georgina Wills
Presenting Officer: Kevin Jackaman

Others Present also: Mr Julian Overton TV Edwards Solicitors on behalf of the Applicant Antika Bar Ltd, Mr Davood Najafloo - Applicant: Antika Bar Ltd, Mr Richard Brown Westminster's Citizens Advice representing Paddington Waterways and Maida Vale Society, (E Virgo), N Kribi, J Stein; R Omosco; S Kenyon-Muir; and D Wheal) E Virgo, N Kribi, D Wheal and Mr Anil Drayan Environmental Health Services

**Application for a Variation of a Premises Licence in respect of Antika
4 Lauderdale Parade Lauderdale Road London W9 1LU 21/07529/LIPV**

FULL DECISION

Premises

Antika
4 Lauderdale Parade
Lauderdale Road
London
W9 1LU

Applicant

Antika Bar Ltd

Cumulative Impact Area?

N/A

Ward

Maida Vale

Special Consideration Zone

N/A

Licensable Activities and Hours applied for

To add the provision of Late Night Refreshment

Monday to Thursday 23.00 to 23.30
Friday and Saturday 23.00 to 00.00.

To add the Sale by Retail of Alcohol (On Sales)

Monday to Thursday 10.00 to 23.30
Friday and Saturday 10.00 to 00.00
Sunday 10.00 to 22.30.

To vary the hours for the Sale by Retail of Alcohol (Off Sales)

Monday to Thursday 10.00 to 23.30
Friday and Saturday 10.00 to 00.00
Sunday 10.00 to 22.30.

Opening Hours of the Premises:

Monday to Thursday: 08.00 to 23.30 hours
Friday to Saturday: 08.00 to 00.00 hours
Sunday: 10:00 to 23:30

To remove condition 6 and 7 from the licence

Condition 6 reads:

Alcohol shall not be sold or supplied except during permitted hours.

In this condition, permitted hours means:

- (a) On weekdays, other than Christmas Day, 08:00 to 23:00
- (b) On Sundays, other than Christmas Day, 10:00 to 22:30
- (c) On Christmas Day, 12:00 to 15:00 and 19:00 to 22:30
- (d) On Good Friday, 08:00 to 22:30

The above restrictions do not prohibit:

- (a) during the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
- (b) ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
- (c) sale of alcohol to a trader or club for the purposes of the trade or club;
- (d) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces.

Alcohol shall not be sold in an open container or be consumed in the licensed premises.

Condition 7 reads:

Alcohol shall not be sold in an open container or be consumed in the licensed premises.

Representations Received

- Environmental Health Service (Anil Drayan)
- Metropolitan Police Service (PC Bryan Lewis) **Withdrawn**
- 16 Local Residents
- Paddington Waterways & Maida Vale Society (Elizabeth Virgo)

Summary of Objections

The Environmental Health Service, Paddington Waterways & Maida Vale Society and 16 local residents had maintained representation on the grounds of the Prevention of Public Nuisance. Following agreement of the hours and conditions with the applicant the Metropolitan Police Services withdrew their representation on 29 September 2021.

Summary of Application

The Sub-Committee has determined an application for a Variation of a Premises Licence under the Licensing Act 2003 ("The Act") in respect of 4 Lauderdale Parade Lauderdale Road London W9 1LU. The Applicant is Antika Bar Ltd. The Premises has been licensed since 2005 under reference number (21/05106/LIPDPS). The Premises previously operated as an off licence. The Applicant sought to change the operation of the Premises to a restaurant.

The Applicant is seeking to add Late Night Refreshment for an extra 30 minutes Monday to Thursday and for one-hour Friday and Saturday. To extend the On Sale of Alcohol Monday to Thursday 10.00 to 23.30, Friday and Saturday 10.00 to 00.00 and Sunday 10.00 to 22.30. To vary the hours for the sale of Alcohol for consumption Off the Premises from 08:00 to 23:00 Monday to Saturday and Sunday 10:00 to 22:30 to Monday to Thursday 10.00 to 23.30 Friday and Saturday 10.00 to 00.00 and Sunday 10.00 to 22.30 together with the removal of Conditions 6 and 7 from the Premises Licence.

The Premises is located within the Maida Vale Ward and is not situated in either a Special Consideration Zone or a Cumulative Area Zone.

There is a resident count of 234.

Policy Considerations

Policies HRS1 and RNT1 (A) apply under the City Council's Statement of Licensing Policy (SLP).

SUBMISSIONS AND REASONS

Mr Jackaman, Senior Licensing Officer summarised the application set out in the report before the Sub-Committee. He explained that the application was for a variation of a Premises Licence in respect of 4 Lauderdale Parade London W9 1LU. The Applicant, Antika Bar Ltd seeks to change the use of the Premises into a restaurant as it previously operated as an off licence with adding licensable activities for Late Night Refreshment, the sale of alcohol On and Off the Premises and the removal of 2 conditions. Representations have been received from the Environmental Health Service, 16 Local Residents and the Paddington Waterways & Maida Vale Society (Elizabeth Virgo represented by Richard Brown from the Westminster Citizens Advice. The Metropolitan Police Service did originally object but withdrew their objection after agreeing conditions with the Applicant.

Mr Jackaman advised that additional submissions had been received from Mr Brown and two objectors and these had been circulated to all the relevant parties before the Sub-Committee Hearing. The Premises are located within the Maida Vale Ward and is not situated in either a Special Consideration Zone or the West End Cumulative Impact Zone.

Mr Julian Overton, Solicitor appearing on behalf of the Applicant, advised that the Applicant had sought for a variation of the Premises Licence as they wished to

replicate other successful establishments which they operated. He advised that the Applicant was a good operator and had experience of operating premises that were situated in a mixed location which included both residential and commercial buildings. He advised that the Applicant had ten years' experience of successfully operating a restaurant in Maida Vale and during this period had not received any complaints regarding this Premises. The Applicant was reported to have liaised with the Metropolitan Police and as result they had withdrawn their representation. He advised that Conditions proposed by Environmental Health had also been accepted and that there had been correspondence with residents. Mr Overton stated that the Applicant had a proven track record of complying with Licensing Conditions.

Mr Overton advised that the hours applied for by the Applicant had been reduced and this was due to concerns raised regarding public nuisance. He advised that the Premises would close at 23:00 Monday to Saturday and 22:30 Sunday. Mr Overton advised that permitted diners outside the external areas which included a Courtyard would be reduced from 15 patrons to 12 and this had been undertaken to mitigate concerns of interested parties. There will also be no deliveries between 18:00 and 10:00. Mr Overton stated that a Condition which prohibits take-away deliveries an hour before closing (23:00) would also be accepted. Mr Overton advised that it was envisaged that delivery services would not be frequently used. The Sub-Committee noted that measures had been put in place to ensure that the Premises is 'soundproof' and that Environment Health had imposed a works condition which required for building works 'to be signed off' before the Restaurant could start to trade and carry out licensable activities. Mr Overton said this condition would ensure that all remedial works concerning noise insulation is appropriate.

The Sub-Committee was advised that a Planning Application had been submitted and that consultation had been sought regarding these submissions. Mr Overton refuted the objectors view that the effectiveness of the Premises plant equipment would not be scrutinised. He commented that the Planning Service would impose conditions which required for all equipment to be tested to ensure they are effective in eliminating undesirables such as odour. Mr Overton said that the application would be rigorously scrutinised by both the Planning and Environmental Health Service Departments. The Sub-Committee was advised that CCTV had yet to be installed and would be fitted to ensure that the gadget points at an angle to avoid capturing images and protecting the privacy of residents and non-patrons. Mr Overton said that residents would be consulted about the CCTV and that the gadget would be used as a tool to protect the Premises.

In response to questions from the Sub-Committee. Mr Overton advised that the Premises kitchen would be built in the basement and would not operate as a full kitchen. He said that the Applicant wanted to operate within the terms of the Licence that was sought, and only minimum food preparation would take place in the Premises. This included reheating food and a small amount of frying. The Sub-Committee noted that the Premises would require further development in order for a full kitchen to operate. Mr Overton confirmed that meals will be prepared at the sister restaurant and couriered to the Premises - the food will be couriered over to the Premises three times per week. Following further questions from the Sub-Committee Mr Overton advised that the same delivery companies used at the sister restaurant would be contracted again and that the Applicant would accept an informative which required delivery companies not to use noisy vehicles.

Mr Anil Drayan appearing on behalf of the Environmental Health Service advised that a visit to the Premises had been undertaken and confirmed that the Applicant had agreed to all proposed conditions. Mr Drayan said that he was satisfied with the proposed works to be undertaken and this included measures to ensure that no odours emanate from the restaurant and there are no nuisances from the external plants. He advised that these aspects would be covered under the Works Conditions which had been agreed by the Applicant. Mr Drayan said that further discussions may need to be held regarding the internal transfer of noise and this was previously dealt under Planning. He said in the main Applicants would be requested to produce evidence of sound installation, and this was required under the Works Condition.

Mr Drayan said that the installation of CCTV was a requirement of the Metropolitan Police and Environment Health. He advised that it was preferred for CCTV to be pointed at the entrance of the Premises. Mr Drayan commented that the Police Licensing Team will liaise with the Applicant regarding the positioning of the CCTV to ensure it meets their requirements and addresses residents' concerns regarding privacy. The Sub-Committee noted that the Applicant had agreed to a Condition which requires alcohol to be served only to patrons who are seated and consuming a substantial table meal. Mr Drayan advised that the proposed Condition for the installation of a Noise Limiter was now redundant as the Applicant had reduced their operational hours accordingly.

In response to questions from the Sub-Committee, Mr Drayan advised that noise and environmental concerns which were previously dealt under the Planning regime had now been absorbed into Planning Policy for the Council. He confirmed that the Applicant's proposed works were satisfactory and this included sound proofing and odour elimination. Mr Drayan said that an acoustic consultant will be liaised with regarding sound insulation. The Sub-Committee was advised that the CCTV was inspected by the Metropolitan Police to ensure that camera angles and footages were satisfactory. These components would all be part of the Works Conditions. Mr Drayan said that mitigation works undertaken by the Applicant would be reviewed to ensure that their proposed works do not cause nuisance. The Sub-Committee noted that the Applicant would be 'frying food at the Premises. Mr Drayan said that the Applicant had been advised to undertake all mitigation works rather than do further remedial works. This will ensure that the Applicant is able to do more detailed intensive cooking in the future. Mr Drayan said that the Licence could be subject to the Review process if it was found to cause a statutory nuisance or have failed to comply with set Conditions.

Following further questions from the Sub-Committee, Mr Drayan advised that the Applicant needed to have regard to the Food Hygiene Legislation and be required to adopt a Food Safety Policy. The Food Safety Policy must include matters such as cooking, transfer, storage, and hygiene. The onus would then be on the Applicant to demonstrate to the Council's Food Team how the Food Safety Policy is to cover how operation from food preparation to delivery will be made safe. Mr Drayan stated that there had been concerns regarding refuse collection in the locality and that no complaints had been received regarding noise nuisance in the vicinity.

Mr Richard Brown appearing on behalf of the Paddington Waterways and Maida Vale Society, N Kribi, M Iglauer and D Wheal advised that there were a considerable

number of residential buildings in the Parade. Mr Brown said that residents were objecting to the Application and most of these concerns fell under the prevention of public nuisance. He said that the Premises previously operated as an off licence and under the previous operation there was no 'On Sales, on site cooking, patrons remaining in the Premises for extended periods and outside activities. Mr Brown said that residents had been informed that the Premises would operate as various operations, and this included a wine bar and a snack bar. He advised that there was still uncertainty about food preparation in the Premises.

Mr Brown stated that the insulation in the Premises was insufficient and that noise transmission from the Premises was still audible inside resident's homes. Mr Brown said that residents should be liaised with to ensure that mitigating measures placed by the Applicant are adequate. He commented that reductions in the Premises hours of operation should be further reduced to 22:30 and there were concerns that other premises would apply to increase their operational hours. Mr Brown advised that bi folding windows if left open would cause noise nuisance. Mr Brown said that there was uncertainty and concerns about the extract fan and grill equipment. He reminded the Sub-Committee that they need to be satisfied that the Application would promote the Licensing Objectives and that the Premises are in a heavily residential setting.

Ms N Kribi, local resident, advised the Sub-Committee that her accommodation was directly above the Premises and that she had experienced nuisance during the refurbishment of the building. She said that the current noise insulation in the building was inadequate and that contractors' conversations were audible. She said that the noise levels would be intolerable when the Premises is occupied with up to 30 patrons and would worsen when these individuals consume alcohol. Ms Kribi advised that the air conditioner unit and extractor fan were located directly above resident's bedrooms and during warmer weather would cause nuisance. She advised that there were concerns regarding odour from the grills being transferred into residents' flats. Ms Kribi commented that the bi-folding windows would act as noise transmitters and advised that the Applicant had installed units and grills without consent from the Freeholder and had not taken residents views into account. Overall she said that the proposed operations of the Premises would cause public nuisance.

Mr D Wheal advised that there were some discrepancies regarding the use of the Premises kitchen and said that it had been communicated by the Planning Service that no food preparation would take place at the restaurant. He advised that residents had complained to appropriate Authorities about individuals loitering in the vicinity until midnight. Mr Wheal said that external seating outside the Premises would encourage individuals to congregate outside the Restaurant. The Sub-Committee was informed that there were also concerns regarding individuals smoking and cigarette smoke entering residents' homes.

Mr Wheal said that the area which the Premises had access to was only the internal and front area and this was detailed in the Land Registry Plans. He said that deliveries which are undertaken through the backdoor would be via the resident courtyard. Mr Wheal said that the Applicant would need to advise how deliveries would operate and informed that the air conditioning unit had been installed in the courtyard and extractor fan faced this area. He advised that these issues would have been reviewed if the Applicant had consulted residents in the preliminary stages of

their application. He advised that Officers were aware of the infringements and commented that applications were done retrospectively. The Sub-Committee was informed that they had to ensure that operations are lawful and address concerns of residents. Ms N Kribi commented that the rear door of the Premises was located directly beneath her front door and that odour and noise would still enter her property if doors or windows are left open.

Ms Virgo advised that she had resided at her dwellings since 1992 and that bedrooms directly overlooked Lauderdale Parade. She said that 6 units in the Area now operated as a restaurant or café and had outdoor dining and moped deliveries. She said that some Premises had supply deliveries in the early morning. Ms Virgo stated that it was acknowledged that these Premises contributed to the area 'being vibrant'. She commented that the existing units were local and non-destination venues. Ms Virgo advised that the Premises operational style was different to other units and would be more 'alcohol based' and attract patrons from outside the area. She advised that the vicinity had a heavily residential setting and would be unable to accommodate a 'lively unit'. The Sub-Committee was informed that the locality used to be quiet and had become busier. Ms Virgo advised that a Sushi Bar located in the vicinity had been closed and this was due to nuisance being caused by the Premises and patrons parading expensive sport vehicles.

Mr Brown stated that there were uncertainties about the noise transmission and external odour and recommended that residents should be liaised with during the discharge of the Works Conditions. In response to questions from the Sub-Committee, Mr Drayan advised that various measurements would be taken from residents' premises by the Acoustic Consultant, and this would be undertaken to test the sound installation of the Premises and ensure that the sound proofing was adequate. Mr Drayan said that the Works Conditions would ensure that the level of works are appropriate and informed that the requirement for residents to be consulted following the discharge of the Works Conditions could be included.

Mr Drayan advised that proposed Condition 14 required for all external seating to be rendered unusable at 23:00 as this would help to mitigate concerns regarding individuals loitering in the Parade. He advised that an additional Condition which requires for all windows and doors of the Premises to be closed after 21:00 save for immediate access and regress should be included. The Sub-Committee noted that a further Condition which required the Applicant to encourage residents not to congregate and to leave the Premises quietly should be included.

Following questions from the Sub-Committee Mr Overton advised that additional Conditions which requires for windows and doors to be closed by 21:00 would be accepted and said that the bi-folded windows were double glazed and would insulate sound. He advised that all external seating would be rendered unusable at 23:00 and that smokers would be directed not to cause any nuisance and be managed and that smokers would be limited to two persons. Mr Overton said that an Informative which stipulates that no shisha be smoked in the Premises or external area would be accepted.

Mr Chance, the Legal Advisor to the Sub-Committee went through the agreed additional Conditions and these included doors and windows to be closed after 21:00, Model Condition 21 (MC21) requiring notices requesting for patrons to

respect the needs of local residents and business when leaving the Premises be prominently displayed, that only two smokers be permitted in the external area and be directed not to cause any nuisance and that Condition 7 be amended to only permit 12 patrons in the external seating area. The Applicant had also agreed an Informative which stipulates that there is to be no smoking of shisha on the Premises or external area.

In summing up Mr Brown stated that the operational hours had been reduced and that there were still concerns regarding noise transmissions from the Premises and nuisance in the external areas. He said that 12 patrons in the external areas until 22:00 would cause nuisance and welcomed that residents should have input during the discharge of the Works Condition.

In summing up Mr Overton confirmed that there had been constructive and helpful discussions during the Hearing. He said that the Applicant was a good operator and wished to replicate their other Premises and on that basis the application should be granted. He then went on to say that the restaurant model condition had been accepted and that the Premises would not be drink led. Any concerns raised by residents would be continued to be addressed and that a positive relationship with the residents would be pursued and developed.

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 determining this application. The Premises are not located within the West End Cumulative Impact Zone so there is no presumption to refuse the application

In reaching their decision, the Sub-Committee considered all the committee papers, supplementary submissions made by the Applicant, and the oral evidence given by all parties during the hearing in its determination of the matter.

The Sub-Committee noted that matters regarding the respective Freehold and Leasehold interests were landlord and tenant issues and are therefore outside the scope of the Sub-Committee's remit and powers. The Sub-Committee acknowledged and welcomed the fact that the Applicant had made several concessions to the Application during the Hearing, and this included the reduction of the operational hours, reducing the number of patrons permitted in the external seating area to 12 and ensuring that all doors and windows are closed after 21:00 hours so as to prevent nuisance to nearby 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 conditions 38 and 41 have been accepted by the Applicant. This added protection would mean that there is no danger of the Premises morphing into a Wine Bar as feared by local residents. The model would require that the sale of alcohol is ancillary to a substantial table meal and waiter and waitress service when alcohol is served.

The Sub-Committee concluded that the right balance has been struck here when considering the needs of local residents and the Applicant's ability to run his

Premises in an efficient and effective manner that will lead to the promotion of the licensing objectives.

The Sub-Committee considered that the conditions it has imposed on the Premises Licence would mitigate the concerns raised by local residents when it came to noise emanating from the Premises, smoking, dispersal of customers which in turn would have the desired effect of promoting the public nuisance licensing objective.

The Sub-Committee considers that the safeguards put in place by the extensive use of conditions will deal with the concerns raised by residents regarding public nuisance. In any event the Environmental Health Service is to undertake an inspection of the Premises as per the works condition before licensable activities can take place and this will address the issue of the works to the Premises and capacity as well as address noise issues emanating from the Premises with plant and machinery and address any issues arising following future changes of the Premises.

The Sub-Committee decided to grant the variation to add the sale of alcohol with amended hours On and Off the Premises, amended opening hours together with the removal of conditions 6 and 7. However, due to the terminal hour being amended Monday to Saturday to 23:00 hours Late Night Refreshment was no longer sought as a licensable activity.

The Sub-Committee considered that the conditions imposed on the premises licence were appropriate and would ensure that the four licensing objectives were promoted.

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

The 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 To Add Sale by Retail of Alcohol for consumption On the Premises** Monday to Saturday 10.00 to 23.00 and Sunday 10.00 to 22.30 **Seasonal Variations: N/A**
2. **To grant permission To Vary the Hours for Sale by Retail of Alcohol for consumption Off the Premises** Monday to Saturday 10.00 to 23.00 and Sunday 10.00 to 22.30. **Seasonal Variations: N/A**
3. **To grant permission for the Hours the Premises are Open to the Public** Monday to Saturday: 08.00 to 23.00 Sunday 10:00 to 22:30 **Seasonal Variations: N/A**
4. That Conditions 6 and 7 on the Premises Licence are hereby removed and cease to have effect.
5. That the varied licence is subject to any relevant mandatory conditions.
6. That the existing conditions on the licence shall apply in all respects except in so far as they are varied by this Decision.

7. That the varied 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 licensing hearing

8. 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.
9. A noise limiter must be fitted to the musical amplification system set at a level determined by and to the satisfaction of an authorised officer of the Environmental Health Service, so as to ensure that no noise nuisance is caused to local residents or businesses. The operational panel of the noise limiter shall then be secured by key or password to the satisfaction of officers from the Environmental Health Service and access shall only be by persons authorised by the Premises Licence holder. The limiter shall not be altered without prior agreement with the Environmental Health Service. No alteration or modification to any existing sound system(s) should be effected without prior knowledge of an authorised Officer of the Environmental Health Service. No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.
10. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
11. 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.
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. 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.
14. The outside area will close each night by 22.30 for licensable activities and after this time 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
15. No deliveries to the premises shall take place between (18.00) and (10.00) hours on the following day
16. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.

17. 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 unless it is during the times for the Council's own waste collection service for the street
18. No collections of waste or recycling materials (including bottles) from the premises shall take place between (23.00) and (08.00) on the following day unless it is during the times for the Council's own waste collection service for the street
19. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business
20. The approved arrangements at the premises, including means of escape provisions, emergency warning equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order
21. 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. If there are minor changes during construction new plans shall be submitted to the Licensing Authority when requesting removal of this condition.
22. 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 and all the external seating areas.
 - (d) All recordings shall be stored for a minimum period of 31 days with date and time stamping.
 - (e) Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.
23. 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
24. 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.

25. The sale and supply of alcohol for consumption off the premises shall be restricted to alcohol consumed at the outside tables and chairs shown on the licence plan, shall be by waiter or waitress service, served only to a person seated taking a substantial table meal there and for consumption by such a person as ancillary to their meal.

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

26. 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.
27. The number of persons permitted in the premises at any one-time (excluding staff) shall not exceed (30) persons, and the front external area (15).
28. 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.

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 a '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.

29. The supply of alcohol shall be by waiter or waitress service only.
30. 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.
31. All windows and external doors shall be kept closed after (21:00) except for the immediate access and egress of persons.

32. Patrons permitted to temporary leave and then re-enter the premises e.g., to smoke shall be limited to 2 persons at any one time.
33. Deliveries shall only take place at the front of the premises

Informative:

34. **The Premise Licence Holder shall ensure that no shisha smoking takes place at any time on the Premises.**
35. **The Premise Licence Holder is strongly encouraged to require the appointed delivery company to use electrical vehicles or walking bikes for the purposes of being environmentally friendly.**
36. **The Premises Licence Holder is advised to make the relevant planning application and obtain planning permission in respect of the various outstanding matters to the Premises and liaise accordingly with the Licensing Authority.**

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

**The Licensing Sub-Committee
2 February 2022**

2. CHILTERN FIREHOUSE, 1 CHILTERN STREET, W1U 7PA

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 2
("The Committee")

Wednesday 2 February 2022

Membership: Councillor Tim Mitchell (Chairman)
Councillor Heather Acton and Councillor Maggie Carman

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Aaron Hardy
Committee Officer: Georgina Wills
Presenting Officer: Kevin Jackaman

Present also: Gary Grant - Counsel - Keystone Law - Chiltern Street Hotel Limited,
Marcus Lavell – Keystone Law - Chiltern Street Hotel Limited,
Hamish Thompson Director of Operations – Applicant, Chiltern Street Hotel
Limited Richard Vivian – Acoustics Expert, Chiltern Street Hotel Limited
Richard Brown – Westminster’s Citizens Advice (representing, J Lee, D Cook and V
Cook, J Sohi and Marylebone Association (Guy Austin) J Lee, Guy Austin
Dave Nevitt– Environmental Health Services

**Application for a Variation of a Premises Licence in respect of Chiltern
Firehouse, 1 Chiltern Street, W1U 7PA 21/08705/LIPV**

FULL DECISION

Premises

Chiltern Firehouse,
1 Chiltern Street,
W1U 7PA

Applicant

Chiltern Street Hotel Limited

Cumulative Impact Area?

N/A

Ward

Marylebone High Street

Special Consideration Zone

N/A

Activities and Hours applied for

To vary condition 46 which states:

46. All tables and chairs shall be removed from the outside area or rendered unusable by 21:00 each day save that up until 30 September 2021 the hour shall be extended to 22:00 in respect of the courtyard only after which time the condition shall be reinstated and thereafter remain in full force and effect

To the following:

46. ***All tables and chairs shall be removed from the outside area or rendered unusable by 21:00 each day save that up until 30 September 2022 the hour shall be extended to 22:00 in respect of the courtyard only after which time the condition shall be reinstated and thereafter remain in full force and effect***

Opening Hours of the Premises:

Monday to Sunday: 00.00 to 00.00

Sale by Retail of Alcohol

Residents, their bona fide guests and patrons of the hotel proprietor

Monday to Sunday: 00.00 to 00.00

Chiltern restaurant and pre-booked events in the ground floor meeting room

Monday to Sunday: 07.00 to 01.00

Ground floor meeting room

Monday to Sunday: 08.00 to 23.00

Hotel Lounge Bar/Function Space

Monday to Sunday: 10.00 to 01.00

Representations Received

- Environmental Health Service (Ian Watson)
- 5 Local Residents

Summary of Objections

The Environmental Health Services, Marylebone Association and five local residents had maintained representation on the prevention of Public Nuisance.

Policy Considerations

Policies HRS1 and RTN1 apply under the City Council's Statement of Licensing Policy (SLP).

Summary of Application

The Sub-Committee has determined an application for a Variation of a Premises Licence under the Licensing Act 2003 ("The Act") in respect of Chiltern Firehouse, 1 Chiltern Street, W1U 7PA by the Applicant Chiltern Street Hotel Limited. The Premises currently operates as a hotel. The Applicant sought to vary Condition 46 to allow for the usage of the external chairs and tables to be extended by an additional hour until the period up to September 2022.

The Premises is located within the Marylebone High Street Ward and is not situated in either a Special Consideration Zone or a Cumulative Area Zone.

There is a resident count of 186.

DECISION AND REASONS

Mr Jackaman, Presenting Officer summarised the application set out in the report before the Sub-Committee. He explained that the application was for a variation of a premises licence in respect of Chiltern Firehouse, 1 Chiltern Street, W1U 7PA by the Applicant Chiltern Street Hotel Limited which sought to vary the current Condition 46 on the Premises License to allow for the usage of the external chairs and tables be extended by an hour until September 2022. He further advised that additional submissions had been received from the Applicant and Environmental Health which had been circulated to all the relevant parties before the Sub-Committee hearing.

Mr Gary Grant, Counsel appearing on behalf of the Applicant addressed the Sub-Committee, he advised that the application was modest and highlighted that the Premises was situated outside of any special consideration zones. Mr Grant said that the Applicant sought to temporarily extend the usage of the Premises courtyard for an additional hour until September 2022. He advised that the application was time limited and would only apply during Thursday to Saturday evening between 21:00 to 22:00. Mr Grant advised that representations could only focus on these extensions. The Sub-Committee were advised that Condition 58 on the Premises Licence which had been added by a previous Licensing Sub-Committee on 8 April 2021 would be affected. He advised that this Condition was added when the initial application to extend the use of the external seating was granted for seven days of the week. The Sub-Committee were informed that Condition 58 stipulated for alcohol to be served only to seated patrons which are waited. He advised that the Condition would need to be amended if the Sub-Committee were minded granting the application. Mr Grant stated that the Application was an extension of a former application and the reasons for the variation were the same as the previous request. He advised that the former requests for a variation of the Premises Licence was during the Covid-19 Pandemic and stated that patrons continued to prefer to be seated in the courtyard and felt safe in this area.

Mr Grant advised that the Applicant was still trying to recuperate the loss of trade which occurred during the Covid-19 Pandemic lockdown. The Premises previously operated as a major fire station for a period of 160 years and closed in 2005. He advised that the building was reconstituted and refurbished into a hotel. Mr Grant advised that the windows overlooking the courtyard were hotel bedrooms and the Applicant would need to regulate noise in this area so that guests occupying these rooms are not disturbed. Mr Grant reminded that the Government had extended the Business and Planning Act 2021, and this included the provisions for external dining. Mr Grant advised that the application reflected these changes and that the Applicant had received planning permission for the operations sought and advised that Environmental Health had provided evidence at the Planning Applications Sub-Committee. He informed that Environmental Health did not object to the application and that they were satisfied with the measures set out in the Premises Acoustic Report for reducing noise impact on residents during extended hours. Mr Grant said that the Premises Acoustic Report had since been updated and that there had been extensive noise monitoring during the evening and nights by noise experts and Premises staff. The Sub-Committee was advised that the Application would not cause any public nuisance. Mr Grant advised that there was a core group of residents who had raised concerns regarding the Premises. He said that a wide group of individuals were consulted regarding the Premises Planning and Licensing Applications as one would expect.

Mr Grant said that a number of residents were in support of the Hotel and informed that the Applicant operated a 'Neighbourhood Scheme'. The scheme offers discounted foods and hosts bi-monthly residential meetings. The Sub-Committee were informed that a considerable number of bookings at the Premises were made by residents. The Sub-Committee were informed that the Premises was required to have a Street Warden by Condition and this staff member patrolled the area and was on duty during set hours. The hours of patrol are extended to the later hours during the end of the week. He advised that the Street Warden monitored incidents which emanated from both the Premises and other establishments. Mr Grant confirmed that the Applicant had taken noise attenuation measures in the courtyard. He advised that these actions were indicative of the Applicant's commitment to ensure that residents are not negatively impacted. The Sub-Committee were advised that complaints regarding the Premises were not in relation to the courtyard and its extended use.

In response to questions from the Sub-Committee Mr Grant reiterated that complaints received regarding noise nuisance from the Premises were not related to the courtyard. He advised that there is no recorded or live music played at the courtyard or the basement of the Premises. Mr Hamish Thompson, Director of Operations, Chiltern Street Hotel Limited informed that the Premises always had two bell staff and these employees were tasked with managing the arrival and departure of guests. There are also several host staff members who are responsible for the dispersal of guests. Mr Thompson advised that owners of 'parade cars' are deterred from parking near the Premises and requested to turn engines off whilst stationed near the Hotel. He advised that the Council's Parking Enforcement Team were liaised with about managing these motorists.

The Sub-Committee noted that noise nuisance was subjective and that residents may be more affected from disturbances in a home setting. The Sub-Committee were informed that Enforcement Health had visited residents' dwellings following complaints regarding noise nuisance from the Premises and had found that that audio in the home was minimal.

Mr Dave Nevitt, Environmental Health appearing on behalf of Environmental Health addressed the Sub-Committee, he confirmed that the Application was for an extension of a current temporary licence. He advised that the application was more modest than the current temporary licence and was in line with the planning permission that had been granted to the Applicant. Mr Nevitt confirmed that Environmental Health had liaised with the Planning Officer regarding the Applicants planning Application and rigorous questions were asked regarding potential nuisance to residents. He advised that the Applicants Acoustic Report was considered and confirmed that its contents were satisfactory. The Acoustic Report was reported to have been reviewed and adjusted. Mr Nevitt commented that focus would be put on whether the operation in the courtyard had caused any nuisance under the previous operation or would under the proposed used. Mr Nevitt confirmed that focus could only be placed on the Courtyard.

Mr Nevitt advised that there was nothing substantiative to indicate that the Courtyard would be a source of concern and that no additional conditions would be required, or further restrictions needed to be implemented. Mr Nevitt advised that representation had been maintained to ensure concerns of residents are addressed. The Sub-Committee were informed that use of courtyards was a contentious issue within the Borough. Mr Nevitt informed that detailed notes are written following response to calls regarding nuisance omitting from premises and judgements are made whether audio heard in dwellings are unreasonable and amount to a statutory nuisance. He advised that there were no concerns regarding the Premises which warranted for any action to be taken by Environmental Health. Mr Nevitt advised that there were no reports of Police incidents at the Premises.

In response to questions from the Sub-Committee, Mr Nevitt advised that the glass screen in the courtyard walkway could either reflect or screen sounds. He advised that there had been no concerns raised about the glass screen. Mr Richard Vivian, Acoustics Expert, Chiltern Street Hotel Limited advised that the glass screen acted as an acoustic barrier. Mr Vivian advised that the courtyard had soft furnishing and planting, textile finishing, upholstered seating and multi diffraction surfaces. Mr Vivian said that these measures ensured the courtyard be made less acoustic reverberant. He advised that the large number of patrons using this area would also reduce noise leakages.

Richard Brown from the Westminster's Citizens Advice appearing on behalf of the Maida Vale Society, D Cook and V Cook, J Sohi and Marylebone Association (Guy Austin) addressed the Sub-Committee, he advised that there were more than five objectors and that individuals making submissions represented a raft of individuals which included a recognised Amenity Society. He advised that there were eight objections made in relation to the Applicants Planning Application. Mr Brown advised that further representation would have been made if residents were aware of the application and advised these individuals also had 'representation fatigue'. Mr Brown

said that Ms J Lee was personally affected by the noise emanating from the Premises.

Mr Brown stated that hotel guests was less likely to be in their rooms during use of the courtyard and could not be used as a comparable to residents. He advised that residents would be affected by the prolonged use of the courtyard. Mr Brown commented that it was acknowledged that the Covid-19 Pandemic had had an adverse effect on business and that residents were sympathetic, and pragmatic regarding the previous application made by the Applicant. He advised that the Business and Planning Act 2021 had been extended and that the courtyard was currently in use. Mr Brown advised that there were concerns regarding its usage to be extended by an hour and informed that the Premises had a large external area.

Mr Brown informed that Ms Lee had emailed the Premises regarding noise emanating from the courtyard and this had been lodged before September 2021 and she continues to experience nuisance. Mr Brown advised that complaints made directly to Premises are not recorded by the Council. He advised that the commentary on the Planning Service Report had acknowledged the use of the courtyard would have a detrimental effect on neighbouring residents' amenities. Mr Brown also highlighted that there was further commentary which said that the perimeter glass bolster would be unlikely to attenuate peak noise in the courtyard and that extended use in the area would increase in late noise activity. Mr Brown said that the Sub-Committee were required to ensure that the Licensing Objectives are upheld and explore possible mitigating factors to enable this.

Ms J Lee, local resident addressed the Sub-Committee and referred to the complaint lodged on 2 December detailed on Page 21 of the Agenda Pack and said that she wanted to refute the comments which stated that there was corruption at Westminster City Council. She commented that it was acknowledged that Environmental Health undertook a difficult role. Ms Lee commented that there had been a reduction in the number of residents' complaints, and this was due to the lapse of time between which noise nuisances are experienced and when Environmental Health Officers arrive following 'call out'. She advised that noise nuisance was intermittent and could not be heard during 'call out' visit and informed that residents had resorted to contact the Premises directly instead. This was either be by a telephone call or written correspondence.

Ms J Lee advised that she had been contacted by three other residents regarding the application and it was widely recognised in the local and neighbouring areas about the nuisance experienced. Ms Lee stated that only a small number of letters of support had been received by the Premises. She advised that it was recognised that patrons preferred to remain in the courtyard and highlighted the conditions which were present during the previous application had now changed and that guests would be more inclined to be seated inside the Premises. Ms Lee advised that expensive 'super cars' were regularly parked outside the Premises, and it was fashionable for these vehicles to be photographed outside the Hotel.

Ms Lee advised that there was no noise emanating from the Premises whilst it operated as a fire house and that disturbances largely occurred when fire vehicles left the building during response to emergency calls. She advised that residents had been misled and that numerous emails had been sent to the Premises regarding

noise nuisance. She advised that the courtyard had been reconfigured and the glass walkway had been removed and that there were noise leakages from this area. Ms Lee advised that it had been advised that noise would leak from the Premises chimney and said that residential buildings had flat roofs. The Sub-Committee were also informed that noise from the Premises was audible in the stairway and this area in the residents building did not face the Hotel or have windows facing the front. Ms Lee stated that Environmental Health would be liaised with to monitor noise levels in residents' flats.

Ms Lee said that it had been requested for the Applicant to install more foliage in particular moss. She advised that sphagnum moss was international used and was effective in absorbing sound and pollution. The Sub-Committee were advised that the noise dampening measure implemented by the Applicant was not satisfactory. She advised that there was a Planning Condition on the Premises which stipulated that no noise should emanate from the Hotel after 18:00 and commented that this needed to be enforced. Ms Lee advised that noise leakage had considerably worsened after the Covid-19 Pandemic despite the Applicants reassurance that this would not occur. She emphasised that this was due to poor noise dampening measures being in place and little foliage. She advised that the glass canopy reflected noise and areas where there was no coverage noise was therefore amplified.

Ms Lee advised that her flat had double glazing and that patrons using the courtyard were audible inside her home and caused a nuisance. She advised that noise levels escalated in the afternoon and continued until the courtyard closed. Ms Lee stated that she had to close her windows for long periods and was disturbed by both patrons and staff members of the Premises. She advised that residents amenities were affected and said that Conditions were breached. Ms Lee advised that nuisance had direct a bearing on how she uses areas within her home.

Mr Guy Austin, from the Marylebone Association addressed the Sub-Committee, he advised that he did not reside near the Premises and was present to provide support to residents. Mr Austin said that the locality in his opinion should not be classified as part of Central London and that Marylebone was largely a residential area and not a drink led destination. He advised that there had been numerous representations made from residents to Marylebone Association about nuisance emanating from the Premises over a long period. Mr Austin advised that the locality was quiet and mimicked a village and should be viewed as such.

Mr Brown advised that residents had made recommendations about how concerns regarding nuisance could be mitigated and this include there being restrictions on the number of patrons permitted in the courtyard, more noise dampening measures such as foliage and signage requesting that guests leave the Premises quietly.

The Legal Advisor to the Sub-Committee drew the Sub-Committee's attention to Paragraph 2.15 on Page 9 of the Revised Home Office Guidance regarding those matters that constitute public nuisance, the considerations that need to be borne in mind and deciding what appropriate action should be taken to prevent it. The Sub-Committee noted that they were also required to consider the impact of licensable activities on persons living and working near the Premises as per the wording of Paragraph 2.15.

Mr Grant advised that the number of objections regarding the Premises Planning applications which was quoted had been taken from the Council's portal. He advised that foliage in the courtyard was growing and would improve. Mr Grant advised that there was no current Condition which required for no noise to emanate after 18:00 hours and said that a similar Condition which required no noise from building excavation work was present. He advised that the restriction of numbers in the courtyard would not meet the Premises business plan and that extending its usage by an hour would ensure that the establishment remains viable.

Mr Grant acknowledged that a balance between residents and the business viability had to be made and said that this had already occurred. He highlighted that planning permission had been received, the number of days of the extension had been reduced to Thursday to Saturday and that the application was temporary until September 2022. Mr Grant advised that the courtyard would also be used by residents. He informed that the Premises vicinity could not be compared to a village and that surrounding noise levels were much higher. He advised that the Applicant continue to work with residents to mitigate concerns. Mr Thompson advised that there was signage on the Premises requesting that guests on dispersal leave the Hotel quietly so as not to cause a nuisance.

Mr Nevitt advised that Environmental Health made decisions concerning whether audio leakages amounted to statutory nuisance or public nuisance. He advised that it had to be determined whether noise levels were unreasonable and explored whether measures put in place by operators to address nuisance were adequate. Mr Nevitt advised that there were no issues at the Premises which warranted actions and advised that this position could change. He advised that Environmental Health would continue to liaise with the Applicant on mitigation measures that are in place, sources of noise leakages and how these areas could be improved. Mr Nevitt advised that the concerns of residents had been communicated and noted.

Mr Brown stated that objections regarding planning permission were lifted from the Planning Committee Reports. He advised that it was acknowledged that a balance needed to be struck between the business requirement of the Premises and resident's needs. The Sub-Committee was advised that an unlimited number guest in the courtyard until 21:00 hours was appropriate. He advised that the impact of Covid-19 Pandemic on the hospital sector was acknowledged and advised that the Premises would have received government grants and that reasons for additional usage were not substantial. Mr Brown commented on the submission which had been provided by Ms Lee and issues that residents faced.

Ms Lee advised that the Applicant had received substantial grants from the Government and requested that resident's access to Environmental Health be better improved.

Conclusion

The Sub-Committee realises that it has a duty to consider each application on its individual merits and did so when determining this application. There is no policy presumption to refuse the application.

In reaching their decision, the Sub-Committee took into account all the committee papers, supplementary submissions made by the Applicant, and the oral evidence given by all parties during the hearing in its determination of the matter.

The Sub-Committee was mindful that a balancing act needs to be struck when considering the interests of local residents when it came to the issue of potential nuisance and the Applicant's ability to run his Premises in a way that will promote the licensing objectives. In seeking this balance, the Sub-Committee considered the evidence before it and took a view as to what is appropriate and proportionate in all the circumstances of the case.

The Sub-Committee considered whether the extension of an hour in the courtyard area would give rise to nuisance that would be unreasonable when assessing the likely impact in this area. The Sub-Committee reminded local residents that if in the event they are adversely affected by nuisance they can make contact with the management of the Premises direct and report such incidents of nuisance to the Council's Environmental Health Department where complaints will be lodged accordingly investigated and where appropriate the relevant action will be taken. There is also the Review mechanism in the Act which can be triggered if the nuisance becomes a serious problem as well as breaches of other potential licence conditions.

The Sub-Committee agreed that the noise emanating from the Premises courtyard during current hours was not so substantial in which to allow for the Application to be refused. The Sub-Committee noted the actions undertaken to dampening noise from the courtyard which included planting and usage of other materials. The Sub-Committee also noted that there was a Condition which required for signage regarding the regress from the Premises. The Sub-Committee also noted that there are existing Conditions which required for noise levels to be monitored.

The Sub-Committee also noted that the Applicant had agreed to liaise with residents should there be problems experienced in the courtyard area so that any noise issues can be dealt with efficiently and effectively. In reaching its decision, the Sub-Committee concluded that the conditions attached to the licence would alleviate the residents' concerns and were appropriate and would promote the licensing objective.

The Sub-Committee decided to grant the Variation application meaning that Condition 43 is now varied for a temporary period to allow for an hour's extension in the courtyard area Thursday to Saturday until 22:00 hours up until 30 September 2022 and the agreed Conditions which are all imposed on the Premises Licence.

The Sub-Committee decided that the Applicant had provided valid reasons as to why the granting of the application with the following Conditions and Informative which are considered appropriate and proportionate to promote the licensing objectives.

Having carefully considered the committee papers and the submissions made by all the parties, both orally and in writing, **the 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 to vary Condition 43** specified and renumbered below on the Premises Licence up until 30 September 2022 where the hour shall be extended to 22:00 in respect of the courtyard only after which time the condition shall be reinstated and thereafter remain in full force and effect and for the avoidance of doubt this shall read "All tables and chairs shall be removed from the outside area or rendered unusable by 21:00 each day".
2. That the varied licence is subject to any relevant mandatory conditions.
3. That the existing conditions on the licence shall apply in all respects except in so far as they are varied by this Decision.
4. That the varied licence is subject to the following additional conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

Conditions imposed by the Committee after a licensing hearing

5. The Premises Licence Holder shall, if requested in writing by local residents, host publicised meetings with local residents to discuss concerns relating to the operation of the Premises Licence. Notice of such meetings shall be notified in writing to local residents and other interested parties who have registered their wish to be notified to the Premises Licence Holder. The notice period shall be at least 10 days.
6. The Premises Licence holder shall appoint a competent Acoustic Consultant who is registered with the Institute of Acoustics to:
 - (i) carry out a survey,
 - (ii) produce a report and
 - (iii) assist the Premises Licence Holder in producing a 'Noise Mitigation Policy'. The Noise Mitigation Policy shall have regard to all matters contained in the 'Guidance on Noise' Section of the City Council's Licensing Policy (currently Appendix 11 of the 2011 Policy).
7. The Premises Licence Holder shall ensure that the Noise Mitigation Policy is:
 - (i) implemented in full to ensure that, so far as is reasonably practicable, risk of Public Nuisance is minimized;
 - (ii) made available to local residents and to authorised Officers of the City Council upon request.
 - (iii) reviewed from time to time or in response to complaints or concerns received from local residents and, if necessary, amended. The Policy shall also be reviewed and amended if requested by the Environmental Health Consultation Team.
8. A copy of the policy shall be kept at the Hotel reception and shall be available immediately upon request by any local resident or licensing officer.
9. At all times the Hotel will be overseen by at least two SIA Door Supervisors.
10. The licence holder shall maintain a comprehensive CCTV system that ensures all public areas of the licensed premises are monitored, including all

entry points, and which enable frontal identification of every person entering in any light condition. All cameras shall continually record whilst the premises are open to the public and the recordings shall be kept available for a minimum of 31 days with time and date stamping. Recordings shall be made available to a duly authorised City Council officer or a police officer together with facilities for viewing. The recordings for the preceding 31 days shall be made available immediately on request. The CCTV system shall be operated in accordance with the Data Protection Act 1998.

11. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open to the public. This staff member shall be able to show Police recent recording with the absolute minimum of delay when requested.
12. The pavement from the building line to the kerb edge immediately outside the premises, including gutter/channel at its junction with the kerb edge, is swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.
13. All refuse will be stored internally prior to collection.
14. Notices shall be prominently displayed at exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.
15. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
16. No unauthorised advertisements of any kind (including placard, poster, sticker, flyer, picture, letter, sign or other mark) is inscribed or affixed upon the surface of the highway, or upon any building, structure, works, street furniture, tree, or any other property, or is distributed to the public, that advertises or promotes the establishment, its premises, or any of its events, facilities, goods or services.
17. 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.
18. When films are shown cinema style linked seating will not be provided except as agreed with the Environmental Health Consultation Team.
19. Any special effects or mechanical installations shall be arranged and stored so as to minimise any risk to the safety of those using the premises. The following special effects will only be used on 10 days prior notice being given to the Licensing Authority where consent has not previously been given:-
 - dry ice and cryogenic fog (except for food presentations)
 - smoke machines and fog generators
 - pyrotechnics including fire works
 - firearms
 - lasers

- explosives and highly flammable substances.
 - real flame (except for candles)
 - strobe lighting.
20. No person shall give at the premises any exhibition, demonstration or performance of hypnotism, mesmerism or any similar act or process which produces or is intended to produce in any other person any form of induced sleep or trance in which susceptibility of the mind of that person to suggestion or direction is increased or intended to be increased.
NOTE: (1) This rule does not apply to exhibitions given under the provisions of Section 2(1A) and 5 of the Hypnotism Act 1952.
21. The approved arrangements at the premises, including means of escape provisions, emergency warning equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.
22. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.
23. All exit doors on designated escape routes shall be available at all material times without the use of a key, code, card or similar means.
24. All self closing doors shall be effectively maintained and not held open other than by an approved device.
25. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
26. Curtains and hangings shall be arranged so as not to obstruct emergency signs.
27. The certificates listed below shall be submitted to the Licensing Authority upon written request.
- Any emergency lighting battery or system
 - Any electrical installation
 - Any emergency warning system.
28. Except for the hotel bedrooms, the licensee shall not permit striptease in the premises. Except for the hotel bedrooms, the Licensee shall not permit nudity and all persons shall be decently attired at all times.
29. With the exception of the showing of films in Hotel Bedrooms, no entertainment, performance, service, or exhibition involving nudity or sexual stimulation which would come within the definition of a sex establishment in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Greater London Council (General Powers) Act 1986 (whether or not locally adopted), shall be provided under the authority of this licence.

30. With the exception of public and life safety emergency speakers, Loudspeakers shall not be located in the external entrance lobby or outside the premises building.
31. With the exception of designated smoking bedrooms (if any), 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.
32. Waiter or Waitress service will be available at all times.
33. Capacities:
Ground floor:
The maximum number of persons accommodated at any one time (excluding staff) shall not exceed 620, with no more than;
Restaurant 200 persons
Lounge Bar/Function Bar 340 persons

3. BAKER AND SPICE, 54-56 ELIZABETH STREET, SW1W 9PB

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 2
("The Committee")

Wednesday 2 February 2022

Membership: Councillor Tim Mitchell (Chairman)
Councillor Heather Acton and Councillor Maggie Carman

Officer Support: Legal Advisor: Horatio Chance
Policy Officer: Aaron Hardy
Committee Officer: Georgina Wills
Presenting Officer: Kevin Jackaman

Present also: Thomas Bushnell Counsel - Baker and Spice (London) Limited
Matthew Gill (Applicant) Baker and Spice (London) Limited, J Osborne (Local Resident) Mr Dave Nevitt (Environmental Health Services)

Application for a Variation of Premises Licence in respect of Baker and Spice, 54-56 Elizabeth Street London SW1W 9PB 21/09405/LIPV

FULL DECISION

Premises

Baker and Spice,
54-56 Elizabeth Street
London
SW1W 9PB

Applicant

Baker and Spice (London) Limited

Cumulative Impact Area?

None

Ward

Knightsbridge and Belgravia

Special Consideration Zone

None

Activities and Hours applied for

The application proposes to vary the premises licence as follows:

- Regularise changes to the Premises layout as shown on the plans appended to the application.
- Extend the permitted hours for the sale of alcohol for consumption (On and Off) the Premises to 22:30 each day.
- Extend the Opening Hours to 23:00 each day.

Conditions being varied, added or removed

- Vary condition 20 as follows:

From

The consumption of alcohol in any area appropriately authorised for the use of tables and chairs shall cease at 21:00 hours

To

The consumption of alcohol in any area appropriately authorised for the use of tables and chairs shall cease at 22:00 hours.

- Vary condition 23 as follows:

From

There shall be no draught beer and spirits.

To

There shall be no draught beer and spirits, except for cocktails.

- Vary condition 32 as follows:

From

The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a café/delicatessen.

To

The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a cafe/delicatessen/restaurant

Opening Hours of the Premises:

Current Hours

Monday to Sunday: 07.30 to 21.00

Proposed Hours

Monday to Sunday: 07.30 to 23.00

Sale by retail of alcohol (On and Off)

Current Hours

Monday to Saturday: 10.00 to 21.00

Sunday: 12.00 to 21.00

Proposed Hours

Monday to Saturday: 10.00 to 22.30

Sunday: 12.00 to 22.30

Representations Received

- Environmental Health Service (Dave Nevitt)
- 4 Local Residents

Summary of Objections

The Environmental Health Service and four local residents had maintained representation on the grounds of the prevention of Public Nuisance and Public Safety.

Policy Considerations

Policies HRS1 and RTN1 apply under the City Council's Statement of Licensing Policy (SLP) .

Summary of Application

The Sub-Committee has determined an application for a variation of a Premises Licence under the Licensing Act 2003 ("The Act"). The Premises have had the benefit of a premises licence since January 2007 under reference 21/08753/LIPDPS. The Premises trade as a local delicatessen serving Coffee all day, homemade cakes and a full range of deli items and a dine in menu offering brunch and light mains. The Applicant sought to extend their licensable activities, regularise changes to the Premises layout and vary Conditions 20, 23 and 32.

The Premises is located within the Knightsbridge and Belgravia Ward and is not situated in either a Special Consideration Zone or the West End Cumulative Impact Zone.

There is a resident count of 142.

DECISION AND REASONS

Mr Jackaman, Presenting Officer summarised the application set out in the report before the Sub-Committee. He explained that the application was for a Variation of a Premises licence in respect of Baker and Spice, 54-56 Elizabeth Street London SW1W 9PB with the Applicant being Baker and Spice (London) Limited. The application seeks the extension of their operational hours for On and Off Sales of alcohol, regularise changes to the Premises layout and to vary Conditions 20, 23 and 32. Additional submissions had been received from the Applicant and a local resident and these had been circulated to all the relevant parties before the Sub-Committee hearing. Mr Jackaman advised that Mr J Osborne, local resident, was unable to make a submission at the Hearing and had emailed concerns regarding the Application and this had been taken into consideration by the Sub-Committee.

Mr Thomas Bushnell, Counsel appearing on behalf of the Applicant addressed the Sub-Committee and outlined the application. He advised that the application was in six parts, and as a point of reference these were listed on Page 132 of the Agenda Papers. The Sub-Committee were informed that no objections had been raised regarding changes to the Premises layout and sales of alcohol. Mr Bushnell advised that the Applicant sought a modest extension of the Premises evening offer, and this had been undertaken to ensure that the business remain viable, and its operations be within the core hours. He advised that the Applicant had some 25 years of experience and was a good operator. He advised that the Premises would be the flagship store and be a model for other establishments. There have been substantial investments made into the Premises.

Mr Bushnell advised that the Applicant took over the Premises in 2018 and that the Premises was initially run as a café / deli offering light meals. He said that the Covid-19 Pandemic had a detrimental effect on the business and that the Premises had begun to recover in Autumn 2020. He stated that the Premises had built a positive reputation and that it was decided that the establishment be developed and that the evening offering be extended. The Premises was closed for refurbishment in 2021 and has since attracted more patrons following its reopening. Mr Bushnell said that the Premises was successful and provided a good local offer to the community. He advised that an application had been sought to reflect these developments.

The Sub-Committee noted that most of the patrons visiting the Premises were local residents. Mr Bushnell advised that the Applicant continue to build a positive relationship with residents. He advised that the Premises main objection was to celebrate the food and culture of the Mediterranean region and would not be 'drink led'. The existing restaurant conditions would not be varied. Mr Bushnell stated that the relevant Policies had been identified and highlighted and that the Premises was not located in the Cumulative Impact Zone or Special Consideration Zone. He advised that the proposed hours of operations applied for by the Applicant were less than the core hours recommended under the HRS1 Policy. He said that the application was a modest variation and informed that the Applicant had a proven track record and previously operated the Premises during the proposed hours following being granted Temporary Event Notices (TENS). There were no concerns raised whilst TENS were in operation by either Environment Health or residents.

Mr Bushnell advised that the Applicant had sought to extend the use of the external area by an hour and said that this timing was less than the core hours. He advised that al fresco dining was reflective of the Mediterranean style of cuisine and this offer would help to assist with the business recovery following the Pandemic. The Sub-Committee were advised that the Applicant would draft a policy on the management of the external area and would agree for Model Condition 99 to be amended which removes the requirement for a Dispersal Policy for an External Seating Management Policy. He advised that the External Seating Management Policy would be made readily available to the Metropolitan Police and authorised Officers of the Council. Mr Bushnell advised that these measures would address the concerns of residents regarding the use of the external seating area. Mr Bushnell said that the application met policy requirements and that the Premises was a low key and attractive neighbourhood venue. He reminded the Sub-Committee that the Premises had successfully operated TENs without any complaints.

In response to questions from the Sub-Committee, Mr Bushnell advised that the Premises had operated 18 TENS during the period between 10 September 2021 to 16 October 2021. Mr Bushnell stated that the Premises opened at 07:30 and had been in operation at the site for over a decade. An evening offer had always been available under the existing licence and that further Restaurant Conditions had been sought to extend this offer and to allow the alcohol offer to be extended.

Following questions from the Sub-Committee Mr Matthew Gill, Director- Baker and Spice (London), advised that delivery companies were utilised and were beneficial during the Covid-19 Pandemic Lockdown. Mr Gill informed that they were now less reliant on delivery companies following easements in restrictions and patrons have meals inside the establishments. He advised that an Informative would be accepted which requires for delivery companies to be instructed to use environmentally friendly vehicles. The Sub-Committee were advised that there no concerns raised by residents regarding nuisance caused by delivery companies.

Mr Dave Nevitt, appearing on behalf of the EHS advised that representation had been maintained to ensure that concerns of local residents were addressed by the Sub-Committee. He said that the application was not contentious, and that the Applicant had operated several TENs without any complaints. There is no history of complaints regarding the Premises. Mr Nevitt confirmed that the Premises was not situated in a Cumulative Impact Area and that no special Policies were applicable. He advised that operational hours that were sought were within core hours. The Sub-Committee were informed that existing Conditions were suitable and sufficient. He advised that current Conditions included the Model Condition 38 which required patrons to have a seated meal and another Condition which required off sales to be ancillary to a takeaway meal.

The Sub-Committee noted that the Premises capacity was 32 seated customers, and this was modest. Mr Nevitt advised that the Premises would not be drink led and reminded the Sub-Committee that Mr J Osborne, local resident, was unable to make representation at the Hearing and had submitted an email detailing his concerns. He advised that there had been concerns raised about the resident's daughter being affected by noise nuisance emanating from the Premises during early evening alcohol led dining. Mr Nevitt said that the Premises was a restaurant and not drink led and that alcohol would be ancillary to food. He stated that the restaurant

conditions would continue to remain, and this dispelled the view that the application was a 'Trojan Horse' and that the Premises would eventually transform into a bar. Mr Nevitt advised that existing and proposed Conditions would mitigate the concerns raised by residents.

In response to questions from the Sub-Committee Mr Nevitt advised that there may be issues with the Premises sound installation and that a visit to the establishment would be conducted to investigate concerns regarding noise breakout into residents' homes. Mr Bushnell advised that all external seating would be rendered unusable at 22:00.

Mr Bushnell advised that an additional Condition for an External Seating Management Policy would be accepted and that residents would be liaised with regarding its contents and other concerns regarding nuisances. He advised that the Premises was a low-key operation which was supported by Environmental Health and operational hours were within core hour and met Policy requirements.

Conclusion

The Sub-Committee realises that it has a duty to consider each application on its individual merits and did so when determining the application. There is no policy presumption to refuse the application.

In reaching their decision, the Sub-Committee took into account all the committee papers, supplementary submissions made by the Applicant, and the oral evidence given by all parties during the hearing in its determination of the matter.

The Sub-Committee noted that the Applicant was a good operator and that the licensable activities sought were all within the core hours. The Applicant had agreed to the Restaurant Condition and the establishment would not be drink led as might have been feared by local residents because all alcohol will be served ancillary to food and by waiter and waitress service. This also included a Condition that the Premises will only operate as a Café/Delicatessen/Restaurant where the style nature and character of the Premises would not change.

The Sub-Committee noted that the Applicant had successfully operated a number of TENs and had not received any complaints during their operations. It was therefore persuaded that this was a good example of how in the future going forward the Applicant is to manage the Premises efficiently and effectively in accordance with the promotion of the licensing objectives

The Sub-Committee also noted that the Applicant had agreed to a Condition which required them to produce an External Seating Management Policy and that this would address resident concerns regarding nuisances' emanating from this area of the Premises and thus promote the public nuisance licensing objective.

The Sub-Committee also noted that the Applicant had agreed to liaise with residents on a regular basis so that any issues can be dealt with. In reaching its decision, the Sub-Committee concluded that the conditions attached to the licence would alleviate the residents' concerns and were appropriate and would promote the licencing objective.

The Sub-Committee decided to grant the Variation application with the revision to the licence plans, extending the terminal hour for the sale of alcohol and opening and the modification of Conditions 20, 23 and 32 and the agreed Conditions.

The Sub-Committee decided that the Applicant had provided valid reasons as to why the granting of the application with the following Conditions and Informative which are considered appropriate and proportionate to promote the licensing objectives.

Having carefully considered the committee papers and the submissions made by all the parties, both orally and in writing, **the 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 the revision of the layout of the Premises in accordance with the submitted plans.
2. **To grant permission to vary the terminal hour for the Sale of Alcohol (On and Off Sales)** Monday to Saturday: 10.00 to 22.30 Sunday: 12.00 to 22.30 **Seasonal Variation: N/A**
3. **To grant permission to vary the terminal hour for the Opening Hours of the Premises** on Monday to Sunday: 07.30 to 23.00 **Seasonal Variation: N/A**
4. That Conditions 20, 23 and 32 specified and renumbered below are hereby modified on the Premises Licence remain in full force and effect.
5. That the varied licence is subject to any relevant mandatory conditions.
6. That the existing conditions on the licence shall apply in all respects except in so far as they are varied by this Decision.
7. That the varied licence is subject to the following additional conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

Conditions imposed by the Committee after a licensing hearing

8. The supply of alcohol at the premises shall only be to persons seated at tables.
9. All sales of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the premises, except for alcohol provided to patrons seated at tables within the authorised external seating area.
10. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers

remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.

11. 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.
12. A Challenge 21 or 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.
13. 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 is open.
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. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
16. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business. Conditions proposed by the Environmental Health and agreed with the applicant so as to form part of the operating schedule.
17. The supply of alcohol at the premises, including any area appropriately authorised for the use of tables and chairs, shall only be to a person seated taking a table meal there and for consumption by such a person as ancillary to their meal.
18. The supply of alcohol at the premises, including any area appropriately authorised for the use of tables and chairs, shall be by waiter or waitress service only.
19. The consumption of alcohol in any area appropriately authorised for the use of tables and chairs shall cease at 21:00 hours.
20. The consumption of alcohol in any area appropriately authorised for the use of tables and chairs shall cease at 22:00 hours.

21. All tables and chairs shall be removed from the outside area by 22:00 hours each day.
22. 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.
23. There shall be no draught beer and spirits, except for cocktails.
24. Save for alcohol consumed at any area appropriately authorised for the use of tables and chairs, the sales of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the premises.
25. Save for bottled red, white or rose wine from the retail range, the sales of alcohol for consumption off the premises shall only be supplied with, and ancillary to a take-away meal.
26. A direct telephone number for the manager at the premises shall always be publicly available when the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.
27. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
28. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between 21.00 hours and 08.00 hours on the following day.
29. No collections of waste or recycling materials (including bottles) from the premises shall take place between 21.00 and 08.00 hours) on the following day.
30. With the exception of milk and bread fresh produce, no deliveries to the premises shall take place between 21.00 and 08.00 hours on the following day.
31. The number of seated persons permitted in the premises at any one time (excluding staff) shall not exceed 32 persons.
32. The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a café/delicatessen.
33. The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a cafe/delicatessen/restaurant.
34. That an External Seating Management Policy be devised and be made readily available to the Metropolitan Police or authorised Officer of the Council.
35. A copy of the External Seating Management Policy shall be made readily available at the premises for inspection by a police officer and/or an authorised officer of Westminster City Council.

Informative:

36. The Sub-Committee expects that the Premises Licence Holder will actively encourage delivery and collection companies to use environmentally friendly electric vehicles and walking bikes.

37. The Sub-Committee expects that the Premises Licence Holder aims to meet regularly with residents to ensure that a fruitful and meaningful dialogue is maintained when it comes to the management of the Premises.

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

**The Licensing Sub-Committee
2 February 2022**

4. GRAVITY HOUSE, 65-66 FRITH STREET, W1D 3JR

This application was Granted under Delegated Authority.