



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (3)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (3)** held on **Thursday 23rd February, 2023**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Robert Eagleton (Chair), Concia Albert and Melvyn Caplan

1. MEMBERSHIP

1.1 There were no changes to the membership.

2. DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1. BASEMENT AND GROUND FLOOR, 52 QUEENSWAY, W2 3RY

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 3

23 February 2023 – ITEM 1

Membership: Councillor Robert Eagleton (Chair), Councillor Concia Albert and Councillor Melvyn Caplan

Officer Support: Legal Adviser: Vivienne Walker
Policy Officer: Daisy Gadd
Committee Officer: Jack Robinson-Young
Presenting Officer: Emanuela Meloyan

Other parties present: Richard Brown (SEBRA), Sally Fabbricatore (Environmental Health Service), John Zamit (Bayswater Residents' Association)

Application for a New Premises Licence in respect of Basement and Ground Floor 52 Queensway W2 3RY 22/11938/LIPN

Full Decision

Premises

Basement and Ground Floor
52 Queensway
London W2 3RY

Applicant

Mr Subramaniam Kamalanathan

Cumulative Impact Zone

None

Ward

Lancaster Gate

Special Consideration Zone

Queensway and Bayswater

Summary of Application

This is an application for a New Premises Licence under the Licensing Act 2003. The premises propose to operate as a local convenience store. The applicant has previously operated at 10 Queensway.

There is a resident count of 325.

Representations received

- Metropolitan Police (PC Tom Stewart)
- Environmental Health (Sally Fabbicatore)
- 3 Ward Councillors (Councillors Jude, Ormsby, Cunningham)
- 2 Residents association (South-East Bayswater Residents Association and Bayswater Residents Association)
- 2 Local residents

Summary of issues raised by objectors

The Metropolitan Police Service and Environmental Health Service raised concerns that if granted, this licence could increase crime and disorder in the area. The Responsible Authorities have proposed conditions which have been agreed with the applicant. The Ward Councillors also objected grounds of increase crime and disorder. The South-East Bayswater Residents Association raised a specific point about a lack of clarity on arrangements for Bank Holidays. The Bayswater Residents

Association objected and supported all points raised by the South-East Bayswater Residents Association. The local residents objected on the grounds that the application would increase anti-social behaviour in the area.

Policy Position

SCZ1

Applications within a designated Special Consideration Zone should demonstrate that they have taken account of the issues particular to the Zone, in question as identified within the Cumulative Impact Assessment and should set out any proposed mitigation measures in relation to those issues within their operating schedule.

HRS1

Applications within the core hours set out in this policy will generally be granted for the relevant premises uses, subject to not being contrary to other policies in the Statement of Licensing Policy.

SHP1

Applications for a shop outside the West End Cumulative Impact Zone will generally be granted subject to:

1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1.
2. The hours for licensable activities are within the Council's Core Hours Policy HRS1.
3. The Applicant having taken account of the Special Consideration Zone Policy SCZ1.

SUBMISSIONS AND REASONS

Ms Emanuela Meloyan, Senior Licensing Officer, summarised the application set out in the report before the Sub-Committee. She advised that the premises were located within the Lancaster Gate Ward and are within Queensway and Bayswater Special Consideration Zone, but not within the Cumulative Impact Zone. Four representations were withdrawn following the applicant's agreement to the proposed conditions.

The applicant, Mr Subramaniam Kamalanathan, introduced himself by explaining he had a prior premises close by and was simply moving to a new premises. He has been operating in Westminster for 10 years without any complaints. He confirmed that he has agreed to all conditions proposed by the Responsible Authority.

In response to a question from the Sub-Committee the applicant explained his landlord is developing the property, so he has been forced to move. Ms Sally Fabbriatore for Environmental Health Service advised the Sub-Committee she was there to answer any questions the Sub-Committee may have and was pleased to note that the hours of operation of the premises are core hours.

Mr Richard Brown representing South-East Bayswater Residents Association advised the Sub-Committee that residents were conscious that although the applicant is moving premises, the premises are within a Special Consideration Zone and wanted to ensure that the conditions were agreed. Mr Brown was pleased that Mr Brown sought clarification of the use of the basement area and that it was the ground floor which was to be licensed. In response, Mr Kamalanathan explained the basement is for storage only, and the layout of the premises would be half convenience shop and half souvenir, similar to the previous premises.

Mr John Zamit for the Residents' Association also asked for clarity on the purpose of the premises and stated that he was pleased to see that the conditions were accepted.

The Legal Advisor asked that a condition for a Personal License Holder be present during the hours permitted to supply alcohol and there will be no self-service of spirits except for spirit mixers not above 5.5% ABV. This was agreed to by the applicant.

In summing up, the Environmental Health Officer stated that there a works condition would apply until premises were opened.

Conclusion

The Sub-Committee have a duty to determine each application on its individual merits and took into account all the committee papers and the oral evidence given by all parties during the hearing in its determination of the matter.

The Sub-Committee noted that the applicant has been trading in the vicinity for ten years and he had agreed to have similar conditions to the new Premises Licence as those in relation to the previous premises.

The Sub-Committee placed weight on the fact that conditions had been agreed with the responsible authorities and residents, noting that their representations had been withdrawn.

In reaching its decision the Sub-Committee decided that the Applicant had provided valid reasons as to why the granting of the application would not undermine 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 determined**, after taking into account all the individual circumstances of this application and the promotion of the four licensing objectives:

1. To grant permission for **Sale by Retail of Alcohol (Off Sales)** Monday to Saturday 09:00 to 23:00 hours Sunday 09:00 to 22:30 hours.
2. To grant permission for the **Opening hours for the Premises** Monday to Sunday 09:00 to 23:00 hours
3. That the Licence is subject to any relevant mandatory conditions.

4. That the Licence is subject to the following conditions which are considered appropriate and proportionate to promote the licensing objectives.

Conditions imposed by the Committee after a hearing with the agreement of the Applicant

6. 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.
7. All tills shall automatically prompt staff to ask for age verification identification when presented with an alcohol sale.
8. There shall be no self-selection of spirits on the premises, save for spirit mixtures less than 5.5% ABV.
9. No more than 15% of the sales area shall be used at any one time for the sale, exposure for sale, or display of alcohol.
10. All sales of alcohol for consumption off the premises shall be in sealed containers only.
11. 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.
12. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
13. All windows and external doors shall be kept closed after 21:00 hours except for the immediate access and egress of persons.
14. 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.
15. No deliveries to the premises shall take place between 23.00 and 08.00 hours on the following day.
16. 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.
17. 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.
18. 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 are open for licensable activities and during all times when customers remain on the premises and will include the external area immediately outside the premises entrance. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.
19. 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 are 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.
20. There shall be a personal licence holder on duty on the premises at all times when the premises are authorised to sell alcohol.
21. 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.
22. All sales of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the premises.
23. Prominent signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises, where alcohol is on public display and at the point of sale.
24. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
25. No rubbish, including bottles, shall be removed or placed in outside areas between 23:00 hours and 08:00 hours.
26. Outside of the hours authorised for the sale of alcohol within the trading area is to be secured behind locked grills/screens or secured behind locked cabinet doors.

27. No super-strength beer, lagers or ciders of 5.5% ABV (alcohol by volume) or above shall be sold at the premises save for premium beer or ciders in glass bottles.
28. No self-service of spirits except for spirit mixers not above 5.5% ABV.
29. On the Sunday and Monday of the Notting Hill Carnival:
 - There shall be no sale of alcohol in glass vessels from the premises;
 - There will be no external advertisement of alcohol promotions at the premises; and
 - There shall be no sale of alcohol from the premises after 20:00 hours.
30. No miniature bottles of spirits of 20cl or below shall be sold at the premises.

**This is the Full Decision reached by the Licensing Sub-Committee.
This Decision takes immediate effect.**

**Licensing Sub-Committee
23 February 2023**

2. WOK AND FIRE, 33 HAYMARKET, SW1Y 4HA

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 3

23 February 2023 – ITEM 2

Membership: Councillor Robert Eagleton (Chair), Councillor Concia Albert and Councillor Melvyn Caplan

Officer Support	Legal Adviser:	Vivienne Walker
	Policy Officer:	Daisy Gadd
	Committee Officer:	Jack Robinson-Young
	Presenting Officer:	Emanuela Meloyan

Other parties present: Siraf Mohammed (Applicant), David Dadds (Dadds LLP Licensing Solicitors), Sally Fabbricatore (Environmental Health Service), Kevin Jackaman (The Licensing Authority) PC Steve Muldoon (Metropolitan Police Service)

Application for a New Premises Licence in respect of Wok and Fire 33 Haymarket SW1Y 4HA 22/11862/LIPN

Full Decision

Premises

Wok and Fire
33 Haymarket
London SW1Y 4HA

Applicant

WK Piccadilly Limited

Ward

St James's

Cumulative Impact Zone

West End

Special Consideration Zone

None.

Summary of Application

The is an application for a new Premises Licence application. The premises proposed to operate as a noodle restaurant and takeaway.

There is a resident count of 31.

Representations received

- Metropolitan Police (PC Dave Morgan)
- Environmental Health (Sally Fabbricatore)
- Licensing Authority (Kevin Jackaman)

Summary of issues raised by objectors

The Responsible Authorities raised concerns about undermining of all the Licensing Objectives and made specific reference to the fact that this venue is within the West End Cumulative Impact Zone and that the provision of late-night refreshment at the hours sought may cause an increase in public nuisance and may impact on public safety. The premises would become a focal point for late night revellers who may have been consuming alcohol.

Policy Position

CIP1

It is the Licensing Authority's policy to refuse applications within the West End Cumulative Impact Zone for fast food premises, other than applications to:

1. Vary the hours within Core Hours under HRS1, and or
2. Vary the licence to reduce the overall capacity of the premises.

Applications for other premises types within the West End Cumulative Impact Zone will be subject to other policies within this statement and must demonstrate that they will not add to cumulative impact.

HRS1

Applications for hours outside the core hours set out in Clause C will be considered on their merits, subject to other relevant policies and with regard to the demonstration of compliance in the requirements of Policies CD1, PS1, PN1 and CH1.

FFP1

It is the Licensing Authority's policy to refuse applications within the West End Cumulative Impact Zone for fast food premises, other than applications to:

1. Vary the hours within Core Hours under HRS1, and or
2. Vary the licence to reduce the overall capacity of the premises.

SUBMISSIONS AND REASONS

Ms Emanuela Meloyan, Senior Licensing Officer, presented the report that was before the Sub-Committee, she noted that representations had been received from the Metropolitan Police Service, Licensing Authority and Environmental Health Service. The Premises are located in St. James's Ward and are within the West End Cumulative Impact Zone.

Mr David Dadds, solicitor for the applicant addressed the Sub-Committee, he advised that the conditions proposed by Environmental Health Service and the Metropolitan Police had been agreed and the applicant understood that the premises were within a Cumulative Impact Zone, but similar premises were granted 5 a.m. licence. The applicant was only requesting a 1 a.m. licence. Mr Dadds explained that queuing would not be a large issue for this venue and there would be no sale of alcohol.

The Sub-Committee sought clarification with regard to the opening hours on a Sunday. In response, Mr Dadds explained that 01:30 a.m. had been changed. The premises would operate as a kiosk service, meaning there would not be patrons inside from this time.

The Sub-Committee sought reassurance as to how the premises would not impact on the Cumulative Impact. Mr Dadds replied that an SIA would be employed from 21:00 until closing. The serving food would not add to a concentration of people,

and there would be no increase to traffic. He stated that the applicant had used Temporary Event Notices to help prove these points.

Mr Dadds stated that he did not feel that people would be drawn to the area simply for this venue as there are other venues already there and this would only serve to spread patrons around wider. He did not believe that people would stay in the area because they are not allowed to stay on the premises, they are served, and they then leave.

In response to a question from the Sub-Committee Mr Dadds advised that the premises were not a fast-food kebab shop that might attract a certain group of persons and that the food served were healthy and are served quickly. This is a new business with a much more presentable frontage.

In response to a question from the Sub-Committee, Mr Dadds advised that food would be served in recyclable paper containers.

PC Muldoon on behalf of the Metropolitan Police Service, addressed the Sub-Committee. He advised that the premises are near to a tube station and several bus stops. He drew the Sub-Committee's attention to the crime maps submitted and stated this is a major crime hotspot nationally. The Sub-Committee asked about the hours sought and whether lesser hours were welcomed. PC Muldoon, replied, that the Police view was always to keep the hours to within core hours for such venues.

Ms Sally Fabbriatore on behalf of Environmental Health Service (EHS), advised the Sub-Committee that EHS maintained their objection because of the location of the premises and the hours sought. She pointed out that there were no WC facilities services available at the premises, and as such the Sub-Committee may be minded to place a limit on the number of persons. It was welcomed that there would be no deliveries to the premises.

Mr Kevin Jackaman, Senior Licensing Officer, for the Licensing Authority stated that their objection was based on the location and that the premises were a fast-food premises open past core hours, serving hot food which are more attractive than a premises serving cold food. He explained that the policy presumption to refuse the application.

The Policy Adviser asked in relation to Condition 6, whether it had been agreed. In response, Mr Dadds stated that the condition was agreed, and this showed the applicant's way of operation from 21:00 until close.

Mr Jackaman referred the Sub-Committees to the map of premises and informed the Sub-Committee that there are very few venues open until this time serving this type of food and at this speed.

Mr Dadds on behalf of the applicant accepted the point from Mr Jackaman and said this further speaks to his argument that this venue would help spread people out more and lead to a lesser concentration of people queueing, congregating and loitering. Mr Dadds stated that the food being served, would attract those who would be likely to impact on crime. He advised that the applicant's desire was for 01:00 a.m. and the applicant was happy to accept a limit on the number of persons to 10. In response to a question from the Sub-Committee, Mr Dadds replied that the applicant would be content to have a SIA on bank holidays.

Conclusion

The Sub-Committee has a duty to consider the application on its individual merits and took into account all the committee papers, submissions made by the applicant and the oral evidence given by all parties during the hearing in its determination of the matter.

It was noted that the Premises are situated within the West End Cumulative Impact Zone and so the policy presumption is to refuse the application unless exceptional circumstances can be proven under the Statement of Licensing Policy (SLP).

The Sub-Committee noted that representations were received from the Metropolitan Police Service, Environmental Health Service and the Licensing Authority. All representations were considered by the Sub-Committee.

It was noted that the Responsible Authorities maintained their representations because the Premises are within the Cumulative Impact Zone.

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

In terms of the policy considerations, the Sub-Committee had regard to Policy FFP1 which states: ***Fast food premises which are open after 11pm can attract large groups of customers, many of whom have been consuming alcohol in pubs, bars, or night clubs sometimes some distance away. The congregation of people around these premises leads to additional noise and disturbance and further congestion in the area. Although premises which serve cold food and drink are not subject to licensing and may stay open all night, they are not so attractive to people who have been drinking as those providing hot food and drink. The Council considers that the addition of hot fast food and hot drink adds to the attractiveness of premises to people who have been drinking and who are more likely to be involved in anti-social behaviour.***

The Sub-Committee appreciated it has discretion when considering the merits of the application but took the view that granting the application would be contrary to other policies. The Sub-Committee had regard to all relevant policies under the SLP, in particular Policy HRS1 which states: ***Applications for hours outside the core hours set out in Clause C will be considered on their merits, subject to other relevant policies and with particular regard to the demonstration of compliance in the requirements of Policies CD1, PS1, PN1 and CH1.***

The Sub-Committee also had regard to Policy CIP1 which states: ***It is the Licensing Authority's policy to refuse applications within the West End Cumulative Impact Zone for pubs, and bars, fast food premises and music and dancing and similar entertainment, other than applications to vary hours within core hours HRS1, and/or vary the licence to reduce the overall capacity of the premises. Applications for other premises types within the West End Cumulative Impact Zones will be subject to other policies within the SLP and must demonstrate that they will not add to cumulative impact.***

The Sub-Committee did consider whether the proposed conditions offered would mitigate the concerns of the Responsible Authorities but was not persuaded by the Applicant that he understood the Policy requirements.

The Sub-Committee was of the view that exceptional reasons had not been provided. The Applicant had not demonstrated as to why the Sub-Committee should have departed from the Policy requirements under the SLP.

Having carefully considered the committee papers and the submissions made by all parties, both orally and in writing, the Committee was not persuaded by the Applicant that the promotion of the licensing objectives would be upheld. The Committee when looking at the evidence had regard to the policy considerations arising under Policies HRS1 and FFP1 under the City Council's Statement of Licensing Policy. The Applicant failed to demonstrate why the premises would not add to the Cumulative Impact Zone.

The Committee decided that the Applicant had not provided sufficient reasons as to why the granting of the application would promote the licensing objectives and therefore **REFUSED** the application.

**This is the Full Decision reached by the Licensing Sub-Committee.
This Decision takes immediate effect.**

**Licensing Sub-Committee
23 February 2023**

3. SIMMONS, 11 WOODSTOCK STREET, W1C 2AE

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

Thursday 23 February 2023

Membership: Councillor Robert Eagleton (Chair) Councillor Concia Albert and
Councillor Melvyn Caplan

Officer Support: Legal Advisers: Vivienne Walker and Heidi
Titcombe (Principal Solicitor)
Committee Officer: Jack Robinson-Young
Presenting Officer: Emanuela Meloyan

Application for a Review of Premises Licence in respect of Simmons, 11 Woodstock Street, London, W1C 2AE (“the Premises) 22/11955/LIREVP
FULL DECISION

Applicants for the Review

Mr Marco Toschetti and Mr Federico Bixio represented by Mr Richard Brown of Citizens Advice Westminster. Both Applicants attended the hearing, but Mr Bixio attended virtually.

Premises Licence Holder (“PLH”)

Simmons Covent Garden Limited represented by Mr Gary Grant of Counsel. He was accompanied by Mr James Daghish and Mr Niall McCann (Keystone Law), Mr Nick Campbell, Chief Executive and founder of the Applicant Company and Mr Richard Vivian of Big Sky Acoustics.

Other Parties Present at the hearing

Mr Ian Watson of the Environmental Health Service, who was accompanied by Mr Martin Tuohy and Mr Dave Nevitt of the Council.

Current Licensable Activities and Hours on the Premises Licence are as follows:

Late Night Refreshment

Monday to Sunday:	23:00 to 00:30
Non-standard Timings:	New Year's Eve until 01:30

Sale by Retail of Alcohol (both on and off the Premises)

Monday to Saturday:	10:00 to 00:00
Sunday:	12:00 to 23:30
Sundays before Bank Holidays:	12:00 to 00:00
Non-standard Timings:	New Year's Eve until 01:30

Opening Hours

Monday to Saturday:	10:00 to 00:30
Sunday:	12:00 to 00:30

Summary of Application

1. This is an application for a Review of the Premises Licence of the premises known as Simmons, situate at 11 Woodstock Street, London, W1C 2AE (“the Premises”) under the Licensing Act 2003 (“The Act”). The Review was requested by two local residents on the grounds that the Premises are undermining the Prevention of Public Nuisance licensing objective as music

and vibrations was escaping into their homes from the Premises. Noise was also being created by customers outside the Premises.

2. Mr Richard Brown confirmed the Applicants were asking the Committee:-
 - (i) to remove the deregulation exemption provided under Section 177A of the Act so that,
 - (2) any existing conditions on the Licence in relation to the playing of music shall have legal effect and,
 - (3) to add five additional conditions on the Licence and to amend conditions 12 (noise/vibration)^[1] and 28^[2] (noise limiter) of the existing Licence to address the concerns raised in the review.

3. S.177A of the Act provides that the playing of recorded music between the hours of 08:00 and 23:00 is not regarded as a “licensable activity” where patrons are limited to 500 persons. Consequently, this Premises were able to play recorded music without having specific permission to play recorded music on their Licence. If they wanted to play recorded music outside these hours, they would need permission to do so.

4. The Premises operate as a cocktail bar and are situated within the West End Ward but are not located in the West End Cumulative Impact Zone. There is a resident count of 21 within the vicinity. The Premises have the benefit of a Premises Licence under reference number 22/11866/LIPVM.

Representations Received

5. The Review application was supported by Mr Ian Watson of the Environmental Health Service and two local residents on the grounds of the prevention of public nuisance.

Preliminary Matters

6. At the start of the hearing the Chair introduced the Members of the Committee, identified the parties attending the hearing who wished to speak and outlined the procedure for the hearing. No declarations of interest were made and all parties in attendance were given ample time to present their submissions.

7. The Chair noted that the committee report and the large Additional Information Pack which had been submitted on behalf of the PLH.

8. The Chair confirmed that the Committee had considered all the written evidence.

Adjournment Request – preliminary issue

9. Before the review hearing started Mr Grant, on behalf of the PLH requested an adjournment of the review so that it could be dealt with at the same time as the pending variation application which has been made by the PLH in February 2023. The variation application is seeking to add permission to play recorded music to the Licence as a licensable activity.

10. Mr Grant explained that the Premises can currently play recorded music under the exemption provided by Section 177A of the Licensing Act 2003 (the “Act”). As the Applicants and the Environmental Health Service are requesting the exemption be removed, and if the Committee were minded to agree to this request, this would mean that the Premises could not play recorded music on the Premises, apart from background music. As the Premises play music as part of its business model it would not be viable. The Premises would have to close, and this would lead to the loss of 15 jobs. Mr Grant explained that the PLH will ensure that residents will not be disturbed by noise escaping into their homes if the review hearing is delayed for a short while so that it can be heard with the variation application. He submitted that the adjournment request was not designed to delay the time for residents to find some relief from noise being experienced, but rather to enable the Council to enforce the conditions requested by the Applicants and the Environmental Health Service.

11. Mr Grant explained that should an adjournment not be allowed, then the PLH would be forced to lodge an appeal in order to maintain the viability of the business and to avoid job losses.

12. The request for the adjournment was opposed by the Applicants and the Environmental Health Service on the basis that the residents have been suffering from public nuisance as a result of music and vibrations escaping through the structure of the Premises into their homes. Residents have been impacted by this noise virtually on a daily basis since November 2022. At times the noise has been so bad that it not only constituted a public nuisance but also amounted to a statutory nuisance, resulting in the service of a Noise Abatement Notice. This review was requested on 15 December 2022, the nuisance created was serious and it was important that the review should be determined as quickly as possible so that the Committee could take steps to prevent noise escaping into residents’ homes, if they accept the concerns raised.

13. Mr Ian Watson from Environmental Health Service stated that the review should be heard today, as any delay could negatively affect the wellbeing of residents. He informed the Committee that there were four complaints

made since the noise limiter had been installed in January 2023. Mr Watson stated that historically, the Premises were a pub which played incidental background music. The problem is the new owners are not playing low level music as the Premises are now a disco bar. He also confirmed that residents had never raised noise complaints about the previous venue, but this was obviously a different venue operating in a different way.

Decision on adjournment request

14. The Committee carefully considered the representations made on behalf of the PLH and the Applicants and other Parties supporting the review. The Committee recognised that they had the power to adjourn the review to another date under Regulation 11^[3] if they considered it was in the “public interest” to do so. However, the review was requested on 15 December 2022 and the PLH had plenty of notice in the application that the Applicants were seeking the removal of the deregulation provision in Section 177A of the Act and yet the variation application was not made until almost two months later in February 2023. Moreover, the Applicants allege that they have been suffering nuisance caused by music escaping into their homes since November 2022, when the Premises opened. A noise limiter was set by the PLH in January 2023 but there have been four complaints since that time. The Committee therefore concluded that it would not be in the public interest to delay the review hearing as it is important that the serious issues raised in this review are considered and, if the Committee concludes that steps should be taken to address the issues, such steps need to be taken as quickly as possible to bring the nuisance to an end. Furthermore, any Decision the Committee makes does not come into effect until 21 days after the Decision has had been served, and if appealed, until the outcome of any appeal, so there is likely to be a short period before the variation application is either granted or, if there are representations, determined by the Committee.

15. The Committee also noted that the review application had been requested on 15 December 2022, and the variation application had not been requested until February 2023 and the latter application would need to follow the usual consultation process. If any representations are made to that application, it may not be determined for some time.

16. In the circumstances, the Committee agreed with the submissions made by the Applicants and the Environmental Health Service and refused the application for an adjournment.

The Review Application

17. The review hearing proceeded and Ms Meloyan, Senior Licensing Officer, outlined the basis for the review.

Submissions by the Applicants

18. Mr Brown advised that this review has been requested by two residents who live above and adjacent to the Premises primarily because they are being disturbed by music and vibration escaping from the Premises into their homes during the day and night. The music escape mainly affects three residential flats in the same block. There has also been some nuisance caused by the dispersal of customers from the Premises and this reflects the conditions being requested.

19. Mr Brown confirmed that the Applicants are seeking: -

(1) to remove the exemption in Section 177A of the Act, which effectively allows music to be played between the hours of 08:00 and 23:00 each day. He confirmed that the exemption can only be removed on a review application; and

(2) that any conditions on the existing licence relating to the playing of music become enforceable; and

(3) that five additional conditions are added to the Licence and conditions 12 and 28 of the existing Licence are amended to minimise the noise created by the playing of music and the dispersal of customers to promote the prevention of public nuisance licensing objective.

20. Mr Brown explained that the Applicants for the review have lived in the building above the licensed Premises for ten and twelve years respectively. They had not had any issues with the previous Operator, who operated the premises as a bistro pub with background music. The noise and nuisance problems started when the current PLH took over the Premises which is operated as a disco bar with music. Mr Brown advised that the list of complaints in the application^[4] demonstrates that the Applicants have had to suffer from loud music escaping into their homes from the first day of operation, on 9 November 2022 when there was a soft opening of the Premises. On this occasion, Mr Bixio went down and spoke to the management, but his complaint was not addressed proactively as the Operator indicated they were entitled to play music.

21. Music also escaped into the residential flats on 10 November 2022 (the official opening of the Premises) which resulted in the Applicants complaining on no less than three occasions on the same day. The nuisance caused was witnessed by Council Officers, who considered the music played on two occasions was so loud that they regarded the noise caused a “statutory nuisance”, which is a much higher threshold than the one required under the Act.

22. Mr Bixio attended the hearing virtually and apologised for not being able to attend in person. Mr Bixio wrote to the PLH and the Council on 15

November 2022 asking for the issues raised to be addressed. The PLH advised that an acoustic consultant was being engaged to assess where the music was escaping from. However, music continued to escape into the Applicants' homes and the music was so loud that between 9 and 22 November 2022, the Applicants had to complain on eight occasions in less than a month. The loud music could clearly be heard in the Applicants' homes, and this impacted on their ability to sleep and to generally enjoy their own homes.

23. On 22 November 2022 the Applicants and Council Officers met the PLH's sound technician in Flat 1 of the building in an attempt to assess the right level of music which could be played without causing a nuisance. However, no actual level was set on that occasion as the Parties could not agree on the level, as the PLH's consultant considered the level suggested by the Applicants and the Environmental Health Service was too low to enable the business to be viable.
24. Between 24 November 2022 and 12 December 2022, the Applicants had to complain a further ten times. In fact, the music was considered to be so loud that on 28 November 2022 a Noise Abatement Notice was served by the Council. However, as the PLH failed to address the noise issues being sustained the Applicants felt they had no alternative, and they issued the review application on 15 December 2022. Mr Brown referred the Committee to the chronology of complaints on pages 56 to 58 of the committee papers.
25. A meeting was subsequently held in Mr Bixio's flat on 12 January 2023 with the PLH's acoustic consultant and Council Officers to set the noise limiter so that music could be played without disturbing the residents. At the time Mr Bixio felt the noise limiter should have been set in the evening when ambient noise levels were quieter, as opposed to during the day when there was other noise being created in the street, especially the noise created by the nearby construction works taking place. Despite Mr Bixio's concerns the testing did take place during the day and the noise limiter was set. However, music has continued to escape into the Applicants' homes on four occasions since that time. Since the Premises opened, Mr Bixio stated that there had been numerous disturbances of music escape.
26. Mr Bixio advised that he was also the building manager and was representing others as well as himself. He stated that previous noise complaints had been made about the construction works being done before venue opened. Mr Bixio also explained that he was away over the Christmas period, and this is why there were no complaints from him during this period. He returned for the New Year, and the music was being played so loud that he was able to identify the track being played.

27. Mr Bixio said he had been cooperative with the PLH and the Council in allowing tests to be carried out in his flat and he was not sure what else he could have done. He had spoken to the manager about the noise being experienced but he found the response from management to be less than what is expected of a good operator.
28. Mr Toschetti, the second Applicant, stated that prior to the Simmons opening they had not experienced any disturbance despite having other venues open in the area. He stated that the previous bistro pub had not caused any noise issues. However, the music being played under the new management was at a level that was not able to be drowned out and was not something that could possibly go unnoticed when trying to sleep.
29. The Committee noted that Mr Toschetti described the music as being "audible" in his home. Mr Toschetti explained that sometimes this simply meant the bass could be heard and on other occasions the actual lyrics could be heard but he could not generally hear customers speaking in the Premises. The Committee asked what the relationship was like with those who ran the Premises and Mr Toschetti stated the management had been dismissive about their complaints. Mr Toschetti explained that the bedrooms in the building had been placed at the back to avoid noise from Oxford Street, and yet noise was being heard because of the Premises below. Mr Toschetti confirmed that on occasions he had asked customers to be quiet in the street.
30. Mr Brown confirmed that the evidence showed there has been serious issues of noise escaping into the Applicants' homes which has prevented them from sleeping and generally from enjoying their own homes. This music escape amounted to a public nuisance which undermined the prevention of public nuisance licensing objective. Indeed, the noise has been so bad that Council Officers had independently witnessed the nuisance being caused and concluded that the noise was so loud on four occasions on 10th, 12th, 17th and 26th November 2022, that it not only constituted a public nuisance under the Act but also a Statutory Nuisance under the Environmental Protection Act 1990 which led to a Noise Abatement Notice being served on 28 November 2022.
31. Mr Brown asked the Committee to remove the exemption afforded in Section 177A of the Act, so that the music being played is regarded as a licensable activity and the PLH will be obliged to comply with all relevant conditions on the existing licence to prevent public nuisance being caused as a result of the playing of music. Further, Mr Brown asked for some conditions to be amended and for a number of additional conditions to be attached to the licence in order to mitigate the noise coming from within the Premises, including: -
- to amend the existing noise limiter condition⁵ so it is consistent with

MC11. The Applicants also wanted to make a small amendment to MC11 so that the noise limiter should be set in conjunction with affected residents;^[6]

- to remove condition 12 of the existing licence and replace it with MC12 to prevent the noise associated with plant causing a nuisance;^[7]
- to add a condition that loudspeakers should not be located near the doors (MC13);^[8]
- to add a condition that all external windows and doors shall be closed when regulated entertainment takes place (amended MC 14).^[9]

32. Mr Grant confirmed during the hearing that the PLH does not agree to the exemption being removed but they agreed to all the other conditions proposed by the Applicants apart from the amendment to MC11. Mr Grant also confirmed that the PLH would comply with all these conditions even if the exemption were not removed as they do not want residents to suffer from any nuisance. The PLH was prepared to provide an Undertaking to this effect, even though it was understood that “undertakings” are not technically enforceable. However, Mr Grant emphasised that it was in the PLH’s interests to ensure nuisance was not caused.

33. Mr Brown also asked for three additional conditions to be attached to the licence to address dispersal issues, namely:

- MC26 to control queuing customers^[10];
- MC71 to control smokers and drinkers outside the Premises^[11];
- Amended MC99 requiring a dispersal policy^[12].

Again, Mr Grant confirmed these conditions were agreed by the PLH and they would undertake to comply with these conditions even if the exemption were not removed.

34. Mr Brown confirmed that it was essential to remove the exemption under Section 177A of the Act so that all the relevant conditions attached to the licence in relation to the playing of music could be enforced. He explained that this could only be done on a review. Mr Brown also explained that the additional conditions requested were needed in order to promote the licensing objectives. In relation to the noise limiter Mr Brown confirmed that the informal discussions in November 2022, did not help to alleviate any noise escape from the Premises. The setting of the limiter helped in January, but because it was tested during the day, the Applicants have concerns as to whether this will prevent noise escape during the evening.

Submissions of the Environmental Health Service

35. Mr Ian Watson of Environmental Health Service addressed the Committee and introduced Mr Martin Tuohy and Mr Dave Nevitt, who were both Environmental Health Officers who visited the premises to consider the issues being raised. Mr Tuohy explained that he had numerous meetings

and discussions with the PLH and the management of the Premises, particularly regarding the Noise Abatement Notice which had been served. Mr Nevitt was involved in setting the noise limiter. Mr Watson explained that it was not appropriate in November 2022 to set a formal limit to the limiter because there was no condition on the licence, and it could not be enforced until such time as the exemption was removed. Mr Watson stated that it was difficult to explain as to how the music had been escaping into the residential homes after the limiter was set in January 2023.

36. Mr Tuohy explained that his job was to investigate whether an Abatement Notice was necessary. In November 2022, there were four occasions when the noise was so bad that it was regarded as a statutory nuisance, and this led to the Noise Abatement Notice being served on 28 November 2022. Mr Tuohy stated that on one visit to the venue the Duty Manager informed him that music was being played at 70% of the limiter volume, and when he went back inside the building, he could not hear any noise. Mr Tuohy stated that he then went back downstairs and turned the volume up and down sporadically before re-entering the building and asked the resident if they had heard anything to which they replied, “no”. The resident had not heard this noise despite the limiter being turned up to 100% at one stage.
37. Mr Nevitt explained that they met Mr Bixio to set the timer on 12 January 2023 on the first floor of the building. The living room was towards the front of the building, but the rear bedroom is the nearest room to Simmons so it would be more sensitive to noise. Mr Nevitt recognised that the noise from Simmons travels through the internal structure of the building. On the day in question Mr Nevitt also identified a number of other external noise sources such as from the construction works near Oxford Circus, to the occasional rumble of tube trains, and noise from air conditioning units on nearby buildings. Mr Nevitt advised occasionally the sound of furniture being moved around from the restaurant below could be heard. During the gaps between these noise sources, Mr Nevitt confirmed the flat was very quiet. Mr Nevitt and Mr Bixio were able to agree a level setting for the limiter and he also asked the Premises to “trim” back some of the tracks to reduce the individual bass sound from certain tracks. Mr Nevitt was satisfied that it was appropriate to set the limiter during the morning, rather than in the evening because the noise complained of emanated from the internal parts of the building as opposed to the external areas.
38. Mr Nevitt explained that Mr Bixio wanted the noise to be “inaudible”, but this was not the benchmark from a licensing point of view. The question was whether any “unreasonable” noise could be heard. Once the limiter was set at the agreed level Mr Nevitt concluded that no unreasonable noise could be heard from Simmons in this flat. Mr Nevitt described how he had put his ear to the wall, and he could not hear any music. Mr Nevitt accepted that they had not yet been able to assess the noise from flat 1 and the level may need altering if it were to transpire that the noise level is too high. Mr Watson advised that since 12 January 2023 Environmental Health have not witnessed any “statutory” nuisance simply because we have not had access

to the flats. It should be recognised that in licensing terms noise does not need to be a statutory nuisance to undermine the public nuisance licensing objective.

39. The Committee asked whether there had been any noise complaints since the noise limiter was installed in January 2023. Mr Watson stated that there were four complaints, but Officers were unable to visit at the time to investigate. Mr Brown advised that a new resident was living in one of the flats and they were unfamiliar with the process for logging complaints.

Submissions of the PLH

40. Mr Gary Grant acknowledged that the PLH does not want to be causing a nuisance to its residents and this is why the PLH has agreed to attach conditions to the licence to address the concerns raised. Three of the agreed conditions relate to controlling the outside area, namely, MC26 (ensuring orderly queuing); MC71 (controlling smokers and drinkers outside the Premises) and amended MC99 (devising a dispersal policy to ensure patrons leave quietly). The PLH also agreed to add MC13 (so that loudspeakers are not located at the entrance or exits) and an amended version of MC14 to keep windows and external doors closed when music is being played). The PLH also importantly agreed that a noise limiter condition should be amended in line with MC11. The PLH was unable to agree that the noise limiter should be set at a level in conjunction with affected residents as that was too open ended, but they would agree the level with the Environmental Health Service, who would take into account the views of residents when setting the level. The PLH also agreed to replace condition 12 of the existing licence with MC12 (noise of plant) as this was more appropriate.
41. Mr Grant submitted that imposing the above conditions should address the concerns raised in the review about noise escaping into the Applicants' homes and any noise in the external area. Mr Grant does not consider it is necessary or appropriate for the Committee to remove the exemption provided in Section 177A of the Act. However, the Council's Legal Adviser pointed out that as the playing of recorded music would not be regarded as a licensable activity before 23:00 hours, the conditions being offered relating the playing of music, particularly the noise limiter condition (MC11) and conditions MC13 and MC14 would not be enforceable by the Licensing Authority as a matter of law. Mr Grant recognised this issue and confirmed that the PLH would provide an Undertaking to comply with all the conditions imposed on the licence, including MC11, MC13 and MC14 immediately, despite the legal issue because the PLH is keen to ensure that the residents are not suffering from any noise escape into their homes. The legal Adviser to the Committee pointed out that Undertakings are similarly not enforceable, but Mr Grant confirmed the PLH would comply with all the conditions on the licence.

42. Mr Grant stated it was not necessary to remove the S177A exemption because the complaints about noise has reduced since the noise limiter was set on 12 January 2023 and in his submission, this demonstrates that public nuisance is not taking place. He also referred the Committee to the Council Officer's observations that he was not able to hear any noise in one of the flats, despite the volume being turned up to 100% on the noise limiter. He confirmed that there had been no changes to the levels set since 12 January 2023. Mr Richard Vivian, the PLH's Acoustics Expert, also confirmed that he had not changed the limiter. Mr Grant indicated that if the Applicants have been disturbed by noise since the limiter level was set in January, then it is likely that that noise was coming from another premises.

43. Mr Grant stated that it was probable there were issues initially of noise escape into the Applicants' homes and he apologised for this. He said the Manager at the time could have done more to address these issues but pointed to the timeline presented to the Committee. Mr Grant explained that Mr Nick Campbell, the Premises Licence Holder has seven bars within Westminster and of those, five are located under residential premises. A few of the bars have had noise issues but none have been subject to a licence review. Mr Grant acknowledged that when the premises were opened some machinery in the ceiling needed to be removed, and upon Mr Vivian's recommendation, Mr Campbell had the ceiling insulated which benefitted the residents above. He advised that in January 2023, Westminster Council's Environmental Health Officers set a limiter at an appropriate level alongside a noise log that was taken by staff at Simmons which can be made available to the Committee. Referring to Mr Bixio's complaint that he could identify the particular track being played on one occasion at 11:45 p.m., however, on that night the music had been turned down at 11:00 p.m. to their minimum level. Mr Grant submitted that the noise Mr Bixio heard was emanating from somewhere else. He said residents had asked for inaudibility, but this was not only subjective but was an unrealistic proposition.

44. The Committee referred Mr Grant to the email dated 25 November 2022 on page 99 of the Additional Information Pack from Mr Campbell, the CEO and founder of Simmons bars to Council's Officers who were trying to resolve the noise, which was being created, some of which had been witnessed as being a statutory nuisance. Instead of trying to resolve the issues raised Mr Campbell was making certain unfavourable allegations about the complainant. Mr Grant accepted that the wording of the email was not conducive to a positive relationship with the residents concerned. Mr Grant said he had spoken to Mr Campbell, who regretted his choice of words. Mr Campbell then addressed the Committee, who unequivocally confirmed that even if the proposed conditions were not legally enforceable, he would still ensure they were complied with. He said that there was no benefit in playing music that makes noise to the point that it disturbs residents.

45. The Principal Solicitor raised a further point that if the Committee were minded not to remove the deregulation exemption at this stage and the Committee were to rely on the Undertaking provided by the PLH that they would comply with the noise limiter and other conditions mentioned and it were to materialise that music continues to escape into the residents homes, the residents could not bring another review for another year as recommended in the Guidance.^[13] Mr Grant replied that this was “guidance only” and the residents could theoretically issue another review within a year. Moreover, Mr Grant confirmed that the PLH would not object to the residents issuing a further review within a year if they were suffering nuisance and he was happy for this to be stated in this Decision.
46. In summing up, Mr Grant stated that he hoped the Sub-Committee would accept the Undertaking from the PLH that they would comply with all of the conditions proposed to be attached to the licence today and any existing conditions on the licence which would address the noise escape issues and the other issues raised by the Parties, without removing the exemption in Section 177A of the Act.
47. In summary up Mr Watson stated that he would support the Applicants’ request for the S.177A exemption to be removed to make all the conditions on and added to the licence in relation to the playing of music legally enforceable, especially as the sound level for the limiter had to be assessed with the occupier of Flat 1.
48. Mr Brown emphasized that it was crucial for the S.177A exemption to be removed so that the playing of music becomes a licensable activity. This will enable the Licensing Authority to legally enforce all conditions on the existing licence and imposed today to prevent the Applicants from suffering public nuisance. In his view these steps would be appropriate and proportionate in view of the clear public nuisance which the Applicants have and are suffering. Nuisance which has been witnessed by several independent Council Officers on several occasions since the Premises opened on 9 November 2022. To have so many complaints regarding one premises in such a short space of time is very unusual. Mr Brown did not consider it was sufficient to rely on the Undertaking of the PLH.
49. Mr Brown said that Mr Bixio is certain that the noise complained of came from these licensed premises. On the night when Mr Bixio could identify the track being played, this occurred at 11:15 p.m. and not at 11:45 p.m as suggested by Mr Grant and Mr Bixio was adamant it was coming from the Premises because had the music been coming from a different premises he would have been affected by the music in the living room, whereas the track was heard in his bedroom, which is directly adjacent to the wall of Simmons.

50. Mr Toschetti also stated that Noise Officers had witnessed the DJ playing music at an inappropriate level after 11:00 p.m. The new resident at Flat 1, had registered complaints about noise. Mr Bixio advised that the testing done in January 2023, took place during the day when the sound of heavy demolitions was being done across the road and during this test, he had to request that the music was played for longer because the construction works noise was affecting the noise levels. Mr Bixio was advised by the Environmental Health Service to keep a log of any noise complaints rather than having to ring the Council on each occasion as the Council was already aware of the noise issues.

Full Reasons for the Determination of the Committee

51. In reaching its decision the Committee has had regard to the relevant legislation, the Secretary of State's Guidance ("Guidance") particularly in relation to reviews and the Council's Statement of Licensing Policy ("SLP").

52. The Committee considered the Review application, the representations and submissions made by all the Parties involved, verbally and in writing.

53. The Committee recognised that the proceedings set out in the Act for reviewing premises licences represent a key protection for the community when problems associated with the licensing objectives occur as in this case which primarily relates to the prevention of public nuisance licensing objective. (Paragraph 11.1 of the Guidance).

54. The Act provides the Licensing Authority with a range of powers on determining a Review that it may exercise where it considers them appropriate and proportionate for the promotion of the licensing objectives. (Paragraph 11.16 of the Guidance).

55. "In deciding which of these powers to invoke, the Licensing Authority should so far as possible, seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response". (Paragraph 11.20 of the Guidance). Each case has to be determined on its own merits, on the balance of probabilities.

56. The Committee notes paragraph 9.43 of the Guidance which states "The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve."

57. In summary, the Committee concluded that the Applicants were right to make the application for a review in December 2022, because there was clear evidence that they were being disturbed by noise and nuisance, particularly, the sound of music and vibrations escaping from the Premises into their homes from the day the PLH had a soft opening of the Premises on 9 November 2022. The Premises opened formally on 10 November 2022 and the Committee accepted the evidence produced by the Applicants that between 9 November and the hearing of the review on 12 January 2023, the Applicants were being disturbed by the music noise escaping from the Premises on no less than twenty-two occasions. The Chronology of complaints demonstrated that the noise and nuisance was occurring during the day, in the evening and late at night. The Committee accepted that this amounted to serious nuisance which is contrary to the prevention of public nuisance licensing objective.
58. The Committee recognised that the review was supported by the Environmental Health Service, who regarded the number of complaints received in this relatively short space of time very unusual.
59. Many of the complaints made by the Applicants were witnessed by Council Officers and who considered the noise escaping into the residential flats above the Premises was so bad that they concluded the noise was not only a “public nuisance” under the Act but they concluded that it amounted to a statutory nuisance on four occasions on 10th, 17th, 22nd and 26th November 2022, which led the Council to serve a Noise Abatement Notice on 28 November 2022, within a month of the Premises opening. On 10 November 2022, the Applicants had to contact the Council on three occasions in one night which was unacceptable.^[14] Mr Watson confirmed in his evidence that at 18:13 that the music was so loud that it reverberated through the party wall of all three flats above the Premises. Complaints were made at 21:08 and at 23:00 hours and this was unacceptable.
60. Under the Licensing Act a lower threshold of nuisance has to be established in order for the Committee to take steps to address the noise being created, and based on the evidence received, the Committee had no doubt that residents above and adjacent to the Premises were being disturbed by the music being played, in the Premises. The Committee accepted that on occasions the music was so loud that one or more of the Applicants could clearly identify the tracks being played as the music was travelling through the structure of the building. This was unacceptable and contrary to the prevention of public nuisance licensing objective.

61. The Committee recognised that the two Applicants had lived in their homes for 10 and 12 years respectively and they had never had a problem with the previous licensed premises which was operated as a bistro pub which played background music. This Premises however, operate differently as a disco bar which plays music. The Committee recognised that the PLH did not dispute that music had been escaping into the residential homes in November and December 2022.
62. The Committee noted there was some attempt on 22 November 2022, to set a noise limiter at an appropriate level. However, there was disagreement as to what should be the appropriate level. The Applicants and the Environmental Health Service wanted a lower level, whereas the PLH felt the lower level was unacceptable as it would make the business unviable. Consequently, no level was set, and the Applicants continued to be disturbed by the noise escape from the property.
63. The Committee recognised that the Premises were entitled to play recorded music between the hours of 08:00 and 23:00 hours (subject to the limitation of their opening hours) as the playing of music was not regarded as “regulated entertainment” under Section 177A of the Act (deregulation provision). However, the Committee concluded that the PLH still had an obligation to ensure that the licensing objectives were being promoted and this meant the operation of their business must not undermine the prevention of public nuisance licensing objective so music should have been played at an appropriate level that did not disturb residents or cause a nuisance.
64. The Applicants had contacted the PLH to ask them to rectify the nuisance, but the Committee decided that the PLH’s initial response to the complaints from the residents was unhelpful and failed to resolve the nuisance being suffered. The Committee would have expected an experienced and responsible operator to have adopted a more proactive approach with local residents in trying to prevent music escaping into residents’ homes, especially having regard to the fact that these problems started almost immediately the Premises had opened. The Committee felt that early intervention was key to resolving the very real noise and nuisance problems being experienced and as this was not done, this inevitably led to the application for the review.
65. The Committee therefore concluded that the management’s handling of the situation could have been dealt with better as this might have dispelled the perception that the Premises were being somewhat dismissive of the residents’ concerns as indicated by an email from Mr Nick Campbell, the CEO of Simmons at page 99 of the Additional Information Pack. If the PLH had acted sooner and fostered a good relationship with local residents this might have prevented matters from escalating and the licence from being reviewed. Clearly, the noise and nuisance created did not promote the prevention of public nuisance

licensing objective.

66. The Committee noted that the Officers of the Environmental Health Service and other Officers of the Council had made every effort to work with the PLH and those residents affected to help to resolve the nuisance being caused.

67. The Committee noted that it was not until 12 January 2023, that the PLH agreed to a noise limiter being set at a level which now appears to have resolved the noise escaping into two of the residential properties affected. The Committee also recognised that further tests are required, particularly, in relation to Flat 1. However, that being said the Committee expects the PLH to work closely with Council Officers and residents in order to prevent noise and nuisance escaping into the residential flats affected. The Committee concluded that it was appropriate and proportionate for all the proposed conditions which have been agreed by the PLH (as specified in paragraphs 31 to 33 of this Decision) to be attached to the Licence to ensure that the issues raised are addressed and to promote the prevention of public nuisance licensing objective. The Committee amended the existing noise limiter condition (28), so it is consistent with MC11 as shown in paragraph 24 of the Conditions Schedule. The Committee did not consider it was appropriate to add the words "in conjunction with affected residents" after the words "to the satisfaction of the authorised Environmental Health Officer in (a) as this was too wide and the latter Officer would liaise with affected residents when setting the level.

68. With regard to the removal of the exemption, this was a difficult case. The Committee was very tempted to remove the exemption under Section 177A of the Licensing Act in relation to the playing of music, as there was clear and corroborated evidence that the Premises had been causing a public nuisance contrary to the prevention of public nuisance licensing objective up to 12 January 2023. However, the Committee recognised that Environmental Health Officer were not sure whether music was still escaping into some of the flats after the noise limiter had been set on 12 January 2023. There was a question mark as to whether the position had also been resolved in relation to flat 1 as Officers had not been able to assess the noise level from flat 1 and further tests need to be carried out. The Committee was also concerned that if the Section 177A exemption was not disapplied then any conditions to address the noise issues, including the noise limiter requirement would not be legally enforceable. However, the PLH provided an Undertaking during the hearing that the Premises would still ensure all that the noise conditions attached to the existing Licence, including all conditions proposed and agreed at this hearing relating to the playing of deregulated music (for example the noise limiter condition) would be complied with even though they are not legally enforceable between 08:00 and 23:00 hours.

69. In light of the Undertaking given by the PLH and the additional conditions attached to the licence (as specified as conditions 24 to 30 of the Conditions Schedule) the Committee concluded it would not be appropriate or proportionate to remove the exemption under section 177A of the Act, at this stage because there was insufficient evidence to show that public nuisance was still occurring from 12 January 2023 and removing the exemption might have an adverse financial impact on the PLH.

70. However, the Committee wanted to emphasise that should the PLH fail to comply with all the conditions that have been imposed on the Premises Licence, (even those relating to the playing of deregulated recorded or live music) and if the residents continue to suffer public nuisance as a result of noise escaping into their homes, then they would be entitled to issue a further review of the licence, either themselves or through the Environmental Health Service, despite the Secretary of State's Guidance suggesting that residents cannot issue a review within 12 months of a review. Indeed, Mr Grant confirmed on behalf of the PLH, that the PLH would not seek to challenge a further review being issued by the local residents within 12 months of this hearing.

71. The Committee concluded that it is vital that the PLH complies with the noise limiter condition and all the conditions added by this Committee (including conditions 24 to 30 of the Conditions Schedule below), as these are appropriate and proportionate to address the issues raised in this review and to promote the prevention of public nuisance licensing objective.

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

1. To modify the Conditions on the Premises Licence as follows:-

(1) to replace condition 12 of the existing licence with the following condition^[15]:-

“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”, as specified as in condition 25.

(2) to amend condition 28 of the existing Licence (noise limiter) as shown in

red in condition 24 of the Conditions Schedule below so it complies with MC11.^[16]

(3) to add conditions 26, 27, 28, 29 and 30 to the licence as specified in the Conditions Schedule below.

2. That the varied Licence is subject to any relevant mandatory conditions.

3. That the varied Licence is subject to the existing conditions of the Licence (as specified as conditions 5 to 24 of the Conditions Schedule below) and the additional and amended conditions imposed on the Licence by the Committee (as specified as conditions 25 to 30 of the Conditions Schedule below), which are considered appropriate and proportionate to promote the licensing objectives.

4. That the Licence is subject to the Undertaking given by the Premises Licence Holder that it they will comply with conditions 24, 25, 26, 27, 28, 29 and 30 below throughout the period when the Licence is in operation (as stated in the informative below).

Conditions Schedule

(Note the Mandatory Conditions will apply to the Licence in addition to the following conditions)

A. Existing conditions on the Licence.

5. 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
6. Waiter/waitress service shall be available throughout the premises
7. The number of persons permitted in the premises at any one time (including staff) shall not exceed 60 persons, with no more than 35 persons in the basement.
8. ~~No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.~~
Now replaced by condition 25 below.
9. There shall be no sales of alcohol for consumption off the premises after 23.00
10. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises
11. People drinking and/or smoking outside the premises shall be restricted to the private forecourt as defined on the attached plans.
12. All outside tables and chairs shall be rendered unusable by 23.00 each day

13. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
14. 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
15. 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.
16. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
17. No deliveries to the premises shall take place between 23.00 and 07.00 on the following day.
18. 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.
19. The approved arrangements at the premises, including means of escape provisions, emergency warning equipment, in the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.
20. 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.
21. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
22. The ventilation system to the kitchen area shall be switched off at 23.00 hours.
23. No licensable activities shall take place in the outside area after 23.00 hours.
24. A noise limiter must be fitted to the musical amplification system and maintained in accordance with the following criteria: -
 - (a) the limiter must be set at a level determined by and to the satisfaction of an authorised Environmental Health Officer so as to ensure that no noise nuisance is caused to local residents or businesses;
 - (b) The operational panel of the noise limiter shall then be secured by key or password to the satisfaction of the authorised Environmental Health Officer and access shall only be by persons authorised by the Premises Licence Holder;
 - (c) The limiter shall not be altered without prior written agreement from the Environmental Health Consultation Team;

- (d) No alteration or modification to any existing sound system(s) should be affected without prior knowledge of the Environmental Health Consultation Team; and
- (e) No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device. (MC11 which amends the noise limiter condition on the existing Licence).

B. Conditions imposed by the Committee at the Review with agreement of the Premises Licence Holder

- 25. 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. (Replaces condition 12 on the existing licence). (MC12).
- 26. Loudspeakers shall not be located in the entrance and exit of the premises or outside the building. (MC13).
- 27. All windows and external doors shall be kept closed at any time when regulated entertainment and the playing of music takes place except for the immediate access and egress of persons. (Amended MC14).
- 28. The premise licence holder shall ensure that any queue to enter the premises which forms outside the premises is orderly and supervised by door staff so as to ensure that there is no public nuisance or obstruction to the public highway. (MC26).
- 29. The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises do so in an orderly manner and are properly supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway. (MC71).
- 30. The premises licence holder shall devise and maintain a dispersal policy. The purpose of this policy shall be to ensure that there is no public nuisance caused by customers leaving the premises. A copy of the premises' dispersal policy shall be made readily available at the premises for inspection by a Police Officer and/or an authorised officer of Westminster City Council. (Amended MC99).

INFORMATIVE:

The Premises Licence Holder gave an undertaking to comply with conditions specified in paragraphs 24, 25, 26, 27, 28, 29 and 30 above, throughout the period when the Licence is in operation.

This is the Committee’s Full Reasoned Decision in relation to the Review which does not have effect until the end of the period given for appealing against the Full Reasoned Decision, or if the Decision is appealed against, until the appeal is disposed of.

The Licensing Sub-Committee
23 February 2023

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- [\[1\]](#) Page 67 of the Committee papers
 - [\[2\]](#) Page 68 of the Committee papers
 - [\[3\]](#) Licensing Act 2003 (Hearings) Regulations 2005
 - [\[4\]](#) Pages 56 to 58 of the Committee papers
 - [\[5\]](#) Prior to the review the noise limiter condition is number 28 of the existing Licence.
 - [\[6\]](#) The unamended version of condition MC11 was attached to the Licence at paragraph 24 of the Conditions Schedule.
 - [\[7\]](#) This condition has been added to the Licence as specified in paragraph 25 of the Conditions Schedule.

 - [\[8\]](#) This condition has been added to the Licence as specified in paragraph 26 of the Conditions Schedule.

 - [\[9\]](#) This condition has been added to the Licence as specified in paragraph 27 of the Conditions Schedule.

 - [\[10\]](#) This condition has been added to the Licence as specified in paragraph 28 of the Conditions Schedule.

 - [\[11\]](#) This condition has been added to the Licence as specified in paragraph 29 of the Conditions Schedule.

 - [\[12\]](#) This condition has been added to the Licence as specified in paragraph 30 of the Conditions Schedule.

 - [\[13\]](#) Secretary of State’s S182 Guidance
 - [\[14\]](#) See the Chronology of the Applicants on pages 56 to 58 of the committee papers and Mr Watson’s list of complaints on pages 37 to 41 of the Additional papers.
 - [\[15\]](#) Referred to as condition 8 in the Conditions Schedule attached to this Decision.
 - [\[16\]](#) The Confirmation of Determination wrongly indicated the noise limiter condition was added to the Licence, when the Committee only amended the condition in line with MC11 as agreed by the PLH. This was error which has been rectified in this Reasoned Decision.

The Meeting ended at 3.00 pm

CHAIRMAN: _____

DATE _____