



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (3)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (3)** held on **Thursday 22nd June, 2023**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Robert Eagleton (Chair), Concia Albert and Louise Hyams

1. MEMBERSHIP

1.1 It was noted that there were no changes to the membership.

2. DECLARATIONS OF INTEREST

2.1 It was noted that there were no declarations of interest.

1. BLOCK SOHO, 2 ST ANNE'S COURT, W1F 0AZ

The Sub Committee noted that the Applicant had withdrawn their Application.

2. BURGER AND LOBSTER, 29 CLARGES STREET, W1J 7EF

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

Thursday 22 June 2023

Membership: Councillor Robert Eagleton (Chair) Councillor Concia Albert
Councillor Louise Hyams

Application for a Variation of Premises Licence in respect of Burger & Lobster
29 Clarges Street London W1J 7EF 23/02196/LIPV

Full Decision

Premises

Burger & Lobster
29 Clarges Street
London
W1J 7EF

Premises Licence Holder

Burger & Lobster Restaurant Group Ltd ("PLH")

Cumulative Impact Area

None

Ward

West End

Special Consideration Zone

None

Summary of Application

The Sub-Committee has determined an application for a Variation of a Premises under the Licensing Act 2003 ("The Act") in respect of Burger & Lobster 29 Clarges Street London W1J 7EF ("The Premises"). The Premises operates as a restaurant. Burger & Lobster Restaurant Group Ltd are the Premises Licence Holder ("PLH").

The Premises had the benefit of a premises licence from 2005 until the licence was surrendered in 2007. A new premises licence was granted in 2009. The current premises licence (17/06132/LIPDPS) can be viewed at Appendix 2 of the agenda report along with the history which appears at Appendix 3.

The Premises are located within the West End Ward. Neither the West End Cumulative Impact Zone nor Special Consideration Zone applies. There is no policy

presumption to refuse the application, provided the PLH can demonstrate that the application will not undermine the licensing objectives.

The Variation seeks the following:

- To amend conditions 9, 10 and 11 on the existing premises licence. Full details can be seen at 1-D and Appendix 4 and are detailed below:-

Condition 9 reads:

No drinks shall be consumed outside the premises nor glasses/bottles removed from the premises by patrons when leaving.

Condition 10 reads:

No tables and chairs for public use shall be provided outside the premises.

Condition 11 reads:

All windows and external doors shall be kept closed except for the immediate access and egress of persons.

Representations were received from the Environmental Health Service (EHS) and 5 residents. These objections cite public nuisance and public safety issues.

There is a resident count of 99.

Representations Received

- Environmental Health Service (Anil Drayan)
- Nick Galea, 23 17 Clarges Street London
- Rupert Sword Flat 19 17 Clarges Street London
- Dr S Purna and Dr L S Spedding Flat 15 17 Clarges Street W1J 8AE
- Fiona Chong Clarges Street London
- Gloria Brunner on behalf of Joilta Sacks 17 Clarges Street London

Summary of issues raised by objectors

- *The proposed amendment to condition nine may lead to an increase in Public Nuisance in the area. The proposed amendment to condition 10 may lead to an increase in Public Nuisance in the area. The proposed amendment to condition 11 may lead to an increase in Public Nuisance in the area.*
- *Noise and Nuisance: The operation of a restaurant with tables on the pavement may result in increased noise levels, especially during peak hours. This could disturb the peace and tranquility of the local residential and commercial areas, negatively impacting the quality of life for nearby residents and businesses. Impact on Public Space: Pavements are public spaces that should be preserved for the unobstructed use of pedestrians. Allowing tables on the pavement may set a precedent for other businesses to encroach on public spaces, leading to the loss of valuable public areas and changing the character of the neighbourhood.*

- *I am objecting to the variation application submitted by Burger & Lobster Restaurant Group Limited to put tables on the narrow pavement outside the restaurant at 29 Clarges Street, Westminster, W1J 7EF, and the extension of permission to allow alcoholic drinks to be consumed on the pavement. As a resident in the local area, I am very concerned about the proposed tables on the pavement for the following reasons: 1. Pedestrian Safety: The installation of tables, and drinkers of alcoholic drinks on the pavement would obstruct the flow of pedestrian traffic and create hazards, especially for the elderly, people with disabilities, and parents with strollers. It will also cause congestion, making it difficult for pedestrians to safely navigate the pavement.*
- *Noise and Nuisance: The operation of a restaurant with tables and drinkers on the narrow pavement will result in increased noise levels late into the evening, as it already does as the current licensing restrictions are not kept to, disturbing the peace and tranquility of the local residential areas, negatively impacting the quality of life for nearby residents.*
- *Impact on Public Space: Pavements are public spaces that should be preserved for the unobstructed use of pedestrians. A precedent must not be allowed for others to similarly encroach leading to the loss of public areas and their character.*

Policy Considerations

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

HRS1

A. Applications within the core hours set out below 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.

B. 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 following:

1. The demonstration of compliance in the requirements of policies CD1, PS1, PN1 and CH1 associated with the likelihood of the effect of the grant of a licence for later or earlier hours on crime and disorder, public safety, public nuisance and the protection of children from harm.
2. If the application is located within a Special Consideration Zone they have demonstrated that they have taken account of the issues identified in that area and provided adequate mitigation.
3. Whether there is residential accommodation in the proximity of the premises that would likely be adversely affected by premises being open or carrying out operations at the hours proposed.
4. The proposed hours of the licensable activities and when customers will be permitted to remain on the premises.
5. The proposed hours when any music, including incidental music, will be played.
6. The hours when customers will be allowed to take food or drink outside the premises or be within open areas which form part of the premises.
7. The existing hours of licensable activities and the past operation of the premises (if any) and hours of licensable premises in the vicinity.

8. Whether customers and staff have adequate access to public transport when arriving at and leaving the premises, especially at night.
9. The capacity of the premises.
10. The type of use, recognising that some venues are more likely to impact the licensing objectives than others; for example, pubs and bars are higher risk than theatres, cinemas and other cultural and sporting venues due to the nature of the operation.
11. The Licensing Authority will take into account the active measures proposed for a 'winding down' period including arrangements for people to be collected from the premises to travel home safely.
12. Conditions on hours may be attached that require that the supply of alcohol for consumption on the premises ceases a suitable period of time before customers are required to leave the premises.
13. The council, acting as the Licensing Authority, may reduce hours if, after review, it is necessary to impose conditions specifying shorter hours in order to promote the licensing objectives.
14. Specific days for non-standard hours should be identified and justified as part of the application to allow responsible authorities and interested parties to evaluate the impact that these licensable activities may have, and to plan accordingly. The consideration of applications for later hours for Bank Holiday Mondays will take into account that later hours are generally granted for preceding Sundays and that the next day is a working day. Non-specific days are expected to be covered by Temporary Event Notices or variation applications.

RNT1

A. Applications 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 being within the council's Core Hours Policy HRS1.
3. The operation of any delivery services for alcohol and/or latenight refreshment meeting the council's Ancillary Delivery of Alcohol and/or Late-Night Refreshment Policy DEL1.
4. The applicant has taken account of the Special Consideration Zones Policy SCZ1 if the premises are located within a designated zone.
5. The application and operation of the venue meeting the definition of a restaurant as per Clause C.

B. Applications inside 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 operation of any delivery services for alcohol and/or latenight refreshment meeting the council's Ancillary Delivery of Alcohol and/or Late-Night Refreshment Policy DEL1.
4. The applicant has demonstrated that they will not add to cumulative impact within the Cumulative Impact Zone.
5. The application and operation of the venue meeting the definition of a restaurant as per Clause C.

C. For the purposes of this policy a restaurant is defined as:

1. A premises in which customers are shown to their table or the customer will select a table themselves to which food is either served to them or they have collected themselves.
2. Which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at a table.
3. Which do not provide any takeaway service of food and/or drink for immediate consumption, except if provided via an ancillary delivery service to customers at their residential or workplace address.
4. Where alcohol shall not be sold, supplied, or consumed on the premises otherwise than to persons who are bona fide taking substantial table meals and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.
5. The sale and consumption of alcohol prior to such meals may be in a bar area but must also be ancillary to the taking of such meal

SUBMISSIONS AND REASONS

The Presenting Officer, Ms Jessica Donovan outlined the application to the Sub-Committee. She advised that this is an application for a Variation of a Premises Licence in respect of Burger & Lobster 29 Clarges Street London W1J 7EF.

The application has been brought by Burger & Lobster Restaurant Group Ltd the PLH. (represented today by Thomas O'Maoileoin of Thomas & Thomas Solicitors). The PLH seeks to amend conditions 9, 10 and 11 on the existing premises licence. Full details can be found at pages 84-86 of the agenda report. Representations were received from the Environmental Health Service (Mr Anil Drayan) and 5 residents who are not in attendance today. Additional submissions have been received by the PLH and these have been circulated to all parties. The Premises are located within the West End Ward. Neither the West End Cumulative Impact Zone nor Special Consideration Zone applies.

Mr Thomas O'Maoileoin, Solicitor appearing on behalf of the PLH addressed the Sub-Committee. Mr O'Maoileoin advised that a pavement licence under the provisions of the Business and Planning Act 2020 is required to allow a certain number of tables and chairs to be outside of the Premises. There would in total be two tables and total of four chairs. He advised that there are railings already on the street to stop pedestrian access.

Mr O'Maoileoin stated that the EHS officer had visited the Premises and that conditions had been agreed following pre-application advice. In terms of the existing conditions 9,10 and 11 these would be amended and tightened up. Effectively this would allow customers to eat and drink at those tables which would act as extension of the Premises restaurant.

For the benefit of the Sub-Committee Mr O'Maoileoin confirmed the following:-

- There would be seated customers and by waiter/waitress service, ancillary element
- The area at the front of the Premises is public highway so the PLH would need to consult with the Councils highways Department to determine whether

this is a suitable licence and whether it will cause an obstruction to the highway.

- There is no objection to Condition 11.
- An additional condition is proposed meaning that alcohol consumed outside the premises shall only be consumed by patrons seated and ancillary to those having a table meal.
- The Conditions offered and amended addresses the risk of public nuisance, thereby promoting the public nuisance licensing objective.
- There have been no recorded complaints against the Premises in the last 3 years.
- These conditions were originally imposed on the licence when it used to operate as a Public House 12 years ago.
- The Premises is a family, friendly restaurant which attracts tourists and is not a drink led establishment.

In answer to questions from the Sub-Committee Mr O'Maoileoin said there will be two tables positioned outside of the front of the Premises with two people. He advised that Clarges Street was not particularly busy. There are residents above the Premises but no complaints have been received to date. The only potential for noise is on dispersal when customers are leaving the Premises but in any event the Premises operates as a restaurant and is not drink led so the PLH does not envisage disturbance issues.

Mr O'Maoileoin then went onto state that the rationale for placing tables and chairs was all about the Premises having a presence and getting noticed on the street which would be a positive impact and encourage business. In terms of the service of alcohol this would be in the usual Premises glassware with the vast majority being beer or wine sales.

Mr Drayan appearing on behalf of the EHS addressed the Sub-Committee. He stated that the EHS had maintained its representation in order to help assist the Sub-Committee with the application but apart from that did not have major concerns.

Mr Drayan said that in terms of potential nuisance the limited number of tables and chairs would minimise any noise. Regarding the hours of operation, he said we would normally permit up to 23.00 as an acceptable terminal hour but also look to see how close the nearest residents are and whether a complaints history exists. 23.00 would be a starting cut off point and this would then be reduced depending on these factors.

Mr Drayan advised that regarding the narrowness of the pavement the Council's Highways Department usually requires a 2m space so that the public can walk past freely and unobstructed. He advised that with the tables and chairs, there would be less than a 2m gap. He acknowledged the existing railings.

In answer to questions from the Sub-Committee Mr Drayan stated that the layout of the tables and chairs would not be permitted to be changed. The area would require supervision at all times so as not to cause a nuisance to residents. He also added that the City Inspectors when inspecting the Premises would also notice if the lay out of the tables and chairs had changed or if they were blocking the highway.

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Conclusion

The Sub-Committee realises that it has duty to consider each application on its individual merits and did so when determining the variation application.

The Sub-Committee noted that there is no policy presumption to refuse the application for a restaurant Premises noting that the proposed outside seating for tables and chairs will act as an extension of the Premises itself with waiter and waitress service when serving alcohol and the requirement for customers to have a substantial table meal.

The Sub-Committee concluded that the PLH had provided valid reasons why the Variation application should be granted. There are a number of comprehensive conditions on the licence that exist and deal with the issue of nuisance so the right balance had been struck when considering the needs of local residents and the ability of the PLH to run his Premises in a way that will promote the licensing objectives rather than hinder.

The Sub-Committee concluded based on the evidence that the PLH would promote the licensing objectives with the offered amended conditions as these would mitigate the concerns raised by those who had objected to the application.

In terms of the conditions these are all the conditions as stated on page 113 of the agenda report namely conditions 9, 10 and 11 to be varied accordingly together with an additional condition on the basis that alcohol sold outside will be to seated patrons ancillary to a table meal where after 22:00 hours those tables and chairs shall be removed.

The condition will read as follows: -

“Alcohol consumed outside the premises building shall only be consumed by patrons seated at tables and ancillary to a substantial table meal”

The Sub-Committee noted the concerns of local residents when it came to the issue of potential nuisance but there was no evidence before the Sub-Committee to suggest that the PLH’s running of the Premises would lead to the matters complained of for a refusal of the variation application.

The Sub-Committee noted that the PLH would need to obtain a separate pavement licence under the provisions of the Business and Planning Act 2020 where the highway considerations would be examined and considered under that regime as this particular aspect fell outside of the Sub-Committee powers.

The Sub-Committee concluded based on the evidence that the PLH would promote the licensing objectives with the offered amended conditions now imposed on the Premises Licence.

Local residents are advised that if problems occur regarding the outside area, then they should report their concerns in the first instance to the Councils EHS for investigation and the necessary action can be taken.

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

1. That Conditions 9, 10 and 11 on the Premises Licence are varied accordingly as specified below in renumbered conditions 5, 6 and 7.

2. That an additional condition is imposed on the licence to the effect that ***“Alcohol consumed outside the premises building shall only be consumed by patrons seated at tables and ancillary to a substantial table meal”*** as specified below in Condition 27.
3. That the varied licence is subject to any relevant mandatory conditions.
4. That the existing conditions on the licence shall remain in full force and effect save as otherwise varied as specified below and numbered 5-27.

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

5. No drinks shall be consumed outside the premises nor glasses/bottles removed from the premises by patrons save when consumed by persons who are seated in an area appropriately authorised for the use of tables and chairs on the highway.
6. No tables and chairs for public use shall be provided outside the premises after 22:00 hours.
7. All windows and external doors shall be kept closed except for the immediate access and egress of persons after 22:00 hours
8. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
9. Regulated Entertainment will be inaudible outside the premises.
10. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
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. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
13. No rubbish, including bottles, shall be moved, removed or placed in outside areas between 2300 hours and 0800 hours.
14. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents in the vicinity.
15. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
16. The pavement from the building line to the kerb edge immediately outside the premises, including gutter/channel at its junction with the kerb edge, shall be

swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.

17. A proof of age scheme, such as Challenge 21, shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence or passport.
18. 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.
19. 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.
20. All exit doors shall be available at all material times without the use of a key, code, card or similar means.
21. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of a Metropolitan Police Crime Prevention Officer. 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. Recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.
22. 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 data or footage with the absolute minimum of delay when requested.
23. No billboards or similar advertising is allowed on the pavement outside the pub.
24. A member of staff should be accountable for managing the behaviour and location of the patrons smoking outside the premises.
25. Pub staff should be in place to make sure that customers leaving the premises do not cause disturbance to neighbouring residents.
26. Customers of the pub must not obstruct traffic or parking in Clarges Street.
27. Alcohol consumed outside the premises building shall only be consumed by patrons seated at tables and ancillary to a substantial table meal.

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

**The Licensing Sub-Committee
22 June 2022**

3. CARLOTTA, 77 MARYLEBONE HIGH STREET, W1U 5JX

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

Thursday 22 June 2023

Membership: Councillor Robert Eagleton (Chair) Councillor Concia Albert
Councillor Louise Hyams

Application for a Variation of Premises Licence in respect of Carlotta 77
Marylebone High Street London W1U 5JX 23/02328/LIPV

Full Decision

Premises

Carlotta
77 Marylebone High Street
London
W1U 5JX

Premises Licence Holder

Big Mamma Holdings Limited ("PLH")

Cumulative Impact Area

None

Ward

Marylebone

Special Consideration Zone

None

Summary of Application

The Sub-Committee has determined an application for a Variation of a Premises under the Licensing Act 2003 ("The Act") in respect of Carlotta 77 Marylebone High Street London W1U 5JX ("The Premises"). The Premises operates as a high-end Italian restaurant and was granted a Premises Licence in September 2022 under licensing reference 23/0287/LIPRW. Big Mamma Holdings Limited are the Premises Licence Holder ("PLH"). The PLH is returning to the Sub-Committee as their initial application did not grant Westminster's core hours. The PLH is therefore seeking to extend opening hours and the terminal hour for the Supply of Alcohol both 'On' and 'Off' the Premises Monday to Thursday from 23:00 hours to 23:30 hours, Friday and Saturday from 23:00 to 00:00 and Sundays from 22:00 to 22:30 hour. The activities

and hours are as per the Premises Licence.

The Premises are located within the Marylebone Ward but not located within the West End Cumulative Impact Zone or any Special Consideration Zone. There is no policy presumption to refuse the application. The matter was assessed on its individual merits having regard to the evidence before the Licensing Sub-Committee and the promotion of the licensing objectives

Representations were received from the Environmental Health Service (EHS) (**withdrawn**) and the Local Ward Councillors. These objections cite public nuisance issues.

There is a resident count of 249.

Representations received

- Environmental Health Service (Kudzaishe Mondhlani) (**Withdrawn**)
- Councillor Karen Scarborough

Summary of issues raised by objectors

- *An increase of hours for the supply of alcohol will have the likely effect of causing an increase in Public Nuisance. The application will be assessed upon a site visit and additional EH conditions may be proposed to uphold the licensing objectives. After being satisfied with the application Environmental Health withdrew their objection on 11th May 2023.*
- *On behalf of the Marylebone Ward Councillors, I am writing to object to the proposed variation, as it will not support the Licensing Objectives, namely Prevention of Public Nuisance & Safety, Crime and Disorder and Protection of Children from Harm. This is a new business to Marylebone and now a softly softly "creep" in hours as they have only recently applied for and been granted a new premises licence and therefore have no track record of operating in this area which is highly residential. In fact, it is very disappointing that in spite of them liaising with Marylebone Councillors on their initial application and that they accepted the conditions and hours that were proposed to protect our resident, they are now seeking a variation. Therefore, we object to the sale of alcohol from 08:00 to 23:30 Monday to Thursday, 08:00 to 00:00 Friday & Saturday and 08:00 to 22.30 on Sundays both indoors and outdoors. Patrons leaving the premises at the hours sought will cause a disturbance, with car doors banging and loud voices in a hugely residential area. They will be parking in adjacent streets which have residents living in flats. Whilst it is appreciated that every application is considered on its merits, not only has this premises not operated in this location previously, as it is a new business in Marylebone, it is my understanding because it is in a residential area that there are few if any other premises selling alcohol in the vicinity with these hours. It is likely to become a destination venue. If the Committee is minded to grant this application then we would request that the hours applied for are reduced and for off sales, the hours as were agreed remain as granted on their present new licence.*

Policy Considerations

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

HRS1

A. Applications within the core hours set out below 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.

B. 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 following:

1. The demonstration of compliance in the requirements of policies CD1, PS1, PN1 and CH1 associated with the likelihood of the effect of the grant of a licence for later or earlier hours on crime and disorder, public safety, public nuisance and the protection of children from harm.

2. If the application is located within a Special Consideration Zone they have demonstrated that they have taken account of the issues identified in that area and provided adequate mitigation.

3. Whether there is residential accommodation in the proximity of the premises that would likely be adversely affected by premises being open or carrying out operations at the hours proposed.

4. The proposed hours of the licensable activities and when customers will be permitted to remain on the premises.

5. The proposed hours when any music, including incidental music, will be played.

6. The hours when customers will be allowed to take food or drink outside the premises or be within open areas which form part of the premises.

7. The existing hours of licensable activities and the past operation of the premises (if any) and hours of licensable premises in the vicinity.

8. Whether customers and staff have adequate access to public transport when arriving at and leaving the premises, especially at night.

9. The capacity of the premises.

10. The type of use, recognising that some venues are more likely to impact the licensing objectives than others; for example, pubs and bars are higher risk than theatres, cinemas and other cultural and sporting venues due to the nature of the operation.

11. The Licensing Authority will take into account the active measures proposed for a 'winding down' period including arrangements for people to be collected from the premises to travel home safely.

12. Conditions on hours may be attached that require that the supply of alcohol for consumption on the premises ceases a suitable period of time before customers are required to leave the premises.

13. The council, acting as the Licensing Authority, may reduce hours if, after review, it is necessary to impose conditions specifying shorter hours in order to promote the licensing objectives.

14. Specific days for non-standard hours should be identified and justified as part of the application to allow responsible authorities and interested parties to evaluate the impact that these licensable activities may have, and to plan accordingly. The consideration of applications for later hours for Bank Holiday Mondays will take into account that later hours are generally granted for preceding Sundays and that the

next day is a working day. Non-specific days are expected to be covered by Temporary Event Notices or variation applications.

RNT1

A. Applications 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 being within the council's Core Hours Policy HRS1.
3. The operation of any delivery services for alcohol and/or latenight refreshment meeting the council's Ancillary Delivery of Alcohol and/or Late-Night Refreshment Policy DEL1.
4. The applicant has taken account of the Special Consideration Zones Policy SCZ1 if the premises are located within a designated zone.
5. The application and operation of the venue meeting the definition of a restaurant as per Clause C.

B. Applications inside 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 operation of any delivery services for alcohol and/or latenight refreshment meeting the council's Ancillary Delivery of Alcohol and/or Late-Night Refreshment Policy DEL1.
4. The applicant has demonstrated that they will not add to cumulative impact within the Cumulative Impact Zone.
5. The application and operation of the venue meeting the definition of a restaurant as per Clause C.

C. For the purposes of this policy a restaurant is defined as:

1. A premises in which customers are shown to their table or the customer will select a table themselves to which food is either served to them or they have collected themselves.
2. Which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at a table.
3. Which do not provide any takeaway service of food and/or drink for immediate consumption, except if provided via an ancillary delivery service to customers at their residential or workplace address.
4. Where alcohol shall not be sold, supplied, or consumed on the premises otherwise than to persons who are bona fide taking substantial table meals and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.
5. The sale and consumption of alcohol prior to such meals may be in a bar area but must also be ancillary to the taking of such meal

SUBMISSIONS AND REASONS

The Presenting Officer, Ms Jessica Donovan outlined the application to the Sub-Committee. She advised that this is an application for a Variation of a Premises Licence in respect of Carlotta 77 Marylebone High Street London W1U 5JX. The application has been brought by the PLH, Big Mamma Holdings Ltd (represented

today by James Anderson of Poppleston Allen). The PLH seeks to vary the opening and terminal hour of the Supply of Alcohol both 'On' and 'Off' the Premises Monday to Thursday from 23:00 hours to 23:30 hours, Friday and Saturday from 23:00 to 00:00 and Sundays from 22:00 to 22:30 hour. Full details can be found at pages 120-121 of the agenda report. Representations were received from the Environmental Health Service and a Local Ward Councillor (made on behalf of all Ward Councillors) who is not in attendance today. The representation by the EHS was withdrawn on 11 May 2023. The Premises are located within the Marylebone Ward. Neither the West End Cumulative Impact Zone nor Special Consideration Zone applies.

Mr James Anderson appearing on behalf of the PLH addressed the Sub-Committee. Mr Anderson advised that the PLH had applied for core hours and that was the basis for the variation application. He explained that the hours granted on the Premises Licence mirrored the hours when planning permission was obtained. The variation was to extend the sale of alcohol to core hours and this was in accordance with policy. Mr Anderson advised that the application should have included an extension of the hours for late night refreshment and that a minor variation would be made in the near future to remedy this omission and this was noted by the Sub-Committee.

Mr Anderson stated that the Premises was an Italian international business and that the Big Mama brand has individual premises in London. Mr Anderson said that the brand will bring good authentic Italian cuisine to the local area and has already been well received by residents during the short period of time it has been open.

For the benefit of the Sub-Committee Mr Anderson confirmed the following:-

- The Premises has been trading since 8 May when the restaurant opened.
- 70% of the custom is from locals in the area.
- There has only been one issue with a resident living above the Premises regarding glass collection but that has now been satisfactorily dealt with and resolved.
- The Kitchen area currently closes at 20.30 which is quite restrictive and local customers have wanted to come in later to the Premises to dine.
- The standard model Restaurant condition applies to the whole of the Premises. Bar access was removed due to the local ward Councillor's views
- In terms of Off-sales this is limited by conditions.
- There will be no deliveries.
- There is a condition limiting the number of customers to the external area to 10/11.

In answer to questions from the Sub-Committee Mr Anderson advised that the PLH had cultivated good relations with residents living above the Premises as well as the immediate Landlord. Mr Anderson said that the PLH could have applied for core hours originally but just followed the planning permission hours. He said that the PLH is confident that they can operate to core hours without any risk.

In terms of tables and chairs outside of the Premises he said there are 9 tables and 18 seats under a pavement licence pursuant to the provisions of the Business and Planning Act 2020.

Conclusion

The Sub-Committee realises that it has duty to consider each application on its individual merits and did so when determining the variation application.

The Sub-Committee noted that the Premises Licence already permits the sale of alcohol On and Off the Premises and the purpose behind this variation was to extend the hours to Westminster's core hours.

There is no policy presumption to refuse the application for a restaurant Premises noting that the opening hours and the terminal hour for the sale of alcohol are now extended to core hours accordingly. These hours now accord with the hours for the planning permission.

The Sub-Committee noted that the PLH will be making a minor variation application at a later date to extend the hours for late night refreshment as this was omitted inadvertently from the application.

The Sub-Committee concluded that the PLH had provided valid reasons why the Variation application should be granted. There are a number of comprehensive conditions on the licence that exist and deal with the issue of nuisance so the right balance had been struck when considering the needs of local residents and the ability of the PLH to run his Premises in a way that will promote the licensing objectives rather than hinder.

The Sub-Committee concluded based on the evidence that the PLH would promote the licensing objectives with the conditions that are already imposed on the Premises Licence. These conditions will mitigate the concerns raised by those who had objected to the application namely the EHS on public nuisance grounds and who subsequently withdrew their objection which gave comfort to the Sub-Committee because they were now satisfied with the application and the remaining objection from the Local Ward Councillors.

The Sub-Committee noted the concerns of the Local Ward Councillors when it came to the issue of potential nuisance but there was no evidence before the Sub-Committee to suggest that the PLH's running of the Premises would lead to the matters complained of for a refusal of the variation application. The fact that the Premises had not been operating for long was not a bar for refusal of the application as the key test before the Sub-Committee is whether the licensing objectives are to be promoted.

However, the Sub-Committee took the view that if problems do occur then residents are advised to report their concerns in the first instance to the Councils EHS for investigation and the necessary action can be taken.

The Sub-Committee did not consider it appropriate to add further conditions to the Premises Licence as the existing conditions have the desired effect of promoting the licensing objectives.

Having carefully considered the committee papers and the submissions made by all parties, both orally and in writing, **the Committee had 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 **Sale by Retail of Alcohol (On and Off)** Monday to Thursday 08:00 to 23:30 Friday and Saturday 08:00 to 00:00 Sunday 08:00 to 22:30.
2. To grant permission for the **Opening Hours of the Premises** Monday to Thursday 08:00 to 23:30 Friday and Saturday 08:00 to 00:00 Sunday 08:00 to 22:30.
3. That the varied licence is subject to any relevant mandatory conditions.
4. That the existing conditions on the licence shall apply in all respects as specified below numbered 5-28.

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

5.
 - (a) The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team.
 - (b) All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.
 - (c) The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises and will include the external area immediately outside the premises entrance.
 - (d) All recordings shall be stored for a minimum period of 31 days with date and 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.
6. 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.
7. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
8. 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.

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.

9. 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.
10. 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.
11. 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.
12. 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.
13. Save for alcohol consumed by persons who are seated in an area appropriately authorized for the use of tables and chairs on the highway, all sales of alcohol for consumption off the premises shall be in sealed containers only.
14. Alcohol consumed by persons who are seated in an area appropriately authorized for the use of tables and chairs on the highway shall only be consumed by patrons seated at tables who are taking a substantial meal and where the supply of alcohol is by waiter or waitress only.
15. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
16. 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.
17. No collections of waste or recycling materials (including bottles) from the premises shall take place between 23.00 and 08.00 hours on the following day.
18. The supply of alcohol shall be by waiter or waitress service only.

19. 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.
20. 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.
21. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke or make a phone call, shall not be permitted to take glass containers with them.
22. With the exception of non-intrusive deliveries (e.g. post, milk, pastries, newspapers etc) there shall be no deliveries to the premises between the hours of 23.00 and 08.00 hours the following morning.
23. 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.
24. 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.
25. All emergency exit doors shall be available at all material times without the use of a key, code, card or similar means.
26. All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.
27. All tables and chairs shall be removed from the outside area by 23.00 hours on Monday to Saturday and 22.00 hours on Sunday.
28. The number of persons permitted in the premises at any one-time (excluding staff) shall not exceed:
 - Ground Floor 130 persons
 - Basement 60 persons

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

**The Licensing Sub-Committee
22 June 2022**

The Meeting ended at 11.22 am