



CITY OF WESTMINSTER

# MINUTES

## Licensing Sub-Committee (4)

### MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (4)** held on **Thursday 11th May, 2023**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

**Members Present:** Councillors Angela Piddock (Chair), Md Shamsed Chowdhury and Jim Glen

#### 1. MEMBERSHIP

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

#### 2. DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

#### 1. THE UNIVERSITY OF WESTMINSTER, 16 RIDING HOUSE, W1W 7EB

#### WCC LICENSING SUB-COMMITTEE NO. 4 ("The Committee")

Thursday 11 May 2023

Membership: Councillor Angela Piddock (Chair) Councillor Md Shamsed Chowdhury and Councillor Jim Glen

Other Parties: Horatio Chance (Legal Advisor)  
Committee Clerk (Jack Robinson-Young)  
Policy Advisor (Aaron Hardy)  
Environmental Health Services (Anil Drayan)  
Catherine Noble, Solicitor (Mills & Reeves LLP) for the Applicant  
Westminster University, Mr Matthew Morrison (Director).

**Application for a New Premises Licence in respect of The Soho Poly Theatre  
16 Riding House Street London W1W 7EB 23/00972/LIPN**

**Full Decision**

**Case Summary**

The Sub-Committee has determined an application for a New Premises Licence under the Licensing Act 2003 (“The Act”) in respect of The Soho Poly Theatre 16 Riding House Street London W1W 7EB (“The Premises”).

The Premises intends to operate as a theatre under the name of The Soho Poly Theatre and intends to provide contemporary performance space and a hub for community engagement with a proposed capacity of 60.

The Applicant sought pre-application advice and has provided further submissions featured in the additional agenda pack. The Premises are within the West End Ward but not located in either the West End Cumulative Impact Zone nor any Special Consideration Zone. There is no policy presumption to refuse the application so 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 and 15 local residents.

There is a resident count of 127.

**Premises**

The Soho Poly Theatre  
16 Riding House Street  
London  
W1W 7EB

**Applicant**

The University of Westminster

**Cumulative Impact Area**

N/A

**Activities and Hours**

**Late Night Refreshment (Indoors)**

Monday to Sunday: 23:00 to 00:00

Seasonal Variation: New Year's Eve: 23:00 to 05:00 on New Year's Day

**Performance for the Exhibition of Films and Plays (Indoors)**

Monday to Sunday: 09:00 to 00:00

**Seasonal Variation** New Year's Eve - licenced hours extended from the end of the authorised hours on New Year's Eve to the start of authorised hours on New Year's Day.

### **Live Music, Recorded Music, Performance of Dance (Indoors)**

Monday to Sunday: 09:00 to 00:00

Sundays immediately before a bank holiday: 09:00: -00:24:00. New Year's Eve - licenced hours extended from the end of the authorised hours on New Year's Eve to the start of authorised hours on New Year's Day

### **Anything of a similar nature**

Monday to Sunday: 09:00 to 00:00

**Seasonal Variation:** None

### **Sale by Retail of Alcohol (On) the Premises**

Monday to Sunday: 09:00 to 00:00

**Seasonal Variation** None

### **Opening Hours to Public**

Monday to Sunday 09:00 to 00:00

**Seasonal Variation** New Year's Eve extended to closing of New Year's Day

### **Representations Received**

- Environmental Health Service (Anil Drayan) (EHS)
- Jennifer Kavanagh 44 Langham Street W1W 7AU
- 15 local residents.

### **Summary of Representations**

- *The Regulated Entertainments sought and for the times requested may lead to an increase in Public Nuisance in the area and impact on Public Safety*
- *The provision of Late-Night Refreshment for the times requested may lead to an increase in Public Nuisance in the area.*
- *The Supply of Alcohol and for the times requested may lead to an increase in Public Nuisance in the area and impact on Public Safety Environmental Health also makes the following further comments:*
- *Westminster's Statement of Licensing Policy – see on the Council's website – requires licensed premises demonstrating compliance with policy CH1, Protection of Children from Harm. Free advice on complying with this can be found in the Policy (see page 36 of policy).*
- *Some conditions have been offered and these are being considered as to if they are sufficient for the proposed use.*
- *The provision of sanitary accommodation is recommended to be at least in line with page 4 BS6465 for any proposed capacity.*

- *It is unclear if the premises have already been refurbished for the proposed use it should be constructed at least in line with the Technical Standards for Places of entertainment.*
- *I am concerned at alcohol and music being available until midnight 7 days a week. This is a lot later than other venues in the neighbourhood. There are already too many licensed venues, causing noise and disruptions to neighbours.*
- *I would ask that the sale of alcohol not be permitted until midnight, but be permitted instead only until 11pm. This theatre is located in a primarily residential neighbourhood and serving alcohol until midnight likely will cause more noise and late night disturbances for the local residents.*
- *I am a resident and small business owner at 42 Langham Street, W1W 7AT. We would ask that the licencing committee consider the following items: There is no reason for this licence to be granted outside of Westminster's core hour policy. The use of this space does not warrant a licence to sell alcohol until midnight. It brings into question the use of the space by the university. An 11pm cut-off would be more reasonable. The sale of alcohol until midnight would set a dangerous precedent for other local food and beverage venues which residents are trying to resist.*
- *This part of Fitzrovia is and should remain distinct from other parts of the West End. Other parts of the West End such as Soho are more aligned with the night-time economy. Fitzrovia however, is characterised by quieter residential streets with lower density of mixed retail and leisure uses. There is, however, a worrying trend of the character of the busier streets such as Great Portland Street and Soho moving into quieter side streets such as Langham Street, Riding House Street and Great Titchfield Street.*
- *We would request the door on Riding House Street is to be used as an emergency exit only and not as a secondary exit point. This will protect the residential amenity of surrounding residents and is consistent with conversations had with the University. The capacity of the space is also restricted to 60 persons. This should also be reflected in the conditions. Any musical or performance equipment should also have the appropriate noise mitigation so that noise is not audible outside of the premises.*
- *Having lived in Middleton Place for 12 years and having the pub as a neighbour we have experienced many late night disturbances and this is with a 10.30 last orders. When the pub closes at 11, people spill on to the surrounding streets and after a night of drinking they tend not to rush home. To extend a license to midnight at the Soho Poly Theatre would mean even later disturbances, it is really just unfair on local residents. What is also unfair is that the Riding House exit was to be an emergency exit only!*
- *Middleton Place is a unique walk-through residential street whose amenity is shelter from traffic and street noise. The sale of liquor until midnight from Riding House Street premises opening directly on to Middleton Place will inevitably lead to noisy late-night gatherings and street refuse affecting the quality of life for its residents.*
- *My husband and I object to this proposal believing that probable late night disturbances would have a negative effect on our lifestyle as we are both retired and enjoy the tranquility of our home in Middleton Place.*

- *I am objecting subject to a revised 11pm cut-off for the sale of alcohol and I would like to remind the Council that we were told the door on Riding House Street is to be used as an emergency exit only.*

## **Policy Considerations**

Policies HRS1 and CCSOS1 apply under the City Council's Statement of Licensing Policy ("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.

C. For the purpose of Clauses A and B above, the Core Hours for applications for each premises use type as defined within this policy are:

10a. Shops (all licensable activities that are provided as ancillary to the primary use of the premises as a shop except the off sale of alcohol)

Monday to Thursday: 9am to 11.30pm.

Friday and Saturday: 9am to Midnight. Sunday: 9am to 10.30pm. Sundays

immediately prior to a bank holiday: 9am to Midnight.

10b. Shops (off-sales of alcohol where it forms either the ancillary or primary use of the premises)

Monday to Saturday: 8am to 11pm. Sunday: 9am to 10.30pm.

D. Core hours are when customers are permitted to be on the premises and therefore the maximum opening hours permitted will be to the same start and terminal hours for each of the days where licensable activity is permitted.

## **CCSOS1**

A. Applications outside the West End Cumulative Zones 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 has clearly demonstrated that the sale by retail of alcohol and late-night refreshment will be ancillary to the venue's primary function as a cinemas, cultural and live sporting venues and outdoor space.

4. The applicant has taken account of the Special Consideration Zone Policy SCZ1 if the premises are located within a designated area.

5. The application and operation of the venue meeting the definition for a cinema, cultural venue, live sporting premises or outdoor space 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 applicant has demonstrated that they will not add to cumulative impact within the Cumulative Impact Zone.

4. The applicant has clearly demonstrated that the sale by retail of alcohol and late-night refreshment will be ancillary to the venue's primary function as a cinema, cultural venue, live sporting premises or outdoor space.

5. The sale by retail of alcohol and/or late-night refreshment after 11pm is limited to customer, patrons or members of the audience who will or have made use of the primary function of the venue as a cinema, cultural venue or live sporting premises.

6. The applicant has demonstrated that they will not add to cumulative impact within the Cumulative Impact Zone.

7. The application and operation of the venue meeting the definition for a cinema, cultural venue, live sporting premises or outdoor space as per Clause C.

C. For the purposes of this policy the primary function of a cinema, cultural venue and live sporting premises is defined as:

1. Cinema For the exhibition of feature or shorts films to an audience.

2. Cultural Venues a. Theatres: for the performance of plays, dramatic or other entertainment performances to an audience. b. Performance Venues: for a live performance in front of an audience which may include concert halls, comedy clubs or similar performances venues. c. Cultural Uses: for the exhibition of art (e.g. galleries), a museum, or historical building/site that is open for visitors to visit on payment.

3. Live sporting premises: the premises or the use to which the licence is intended for

a. Live sporting events in the form of boxing and wrestling which takes place either inside or outside in the presence of an audience.

b. Live sporting events that are licensable as they are being held within a building where the sport and audience are accommodated wholly or partly inside that building.

c. Live sporting events that will take place outside a building, where the live sporting event is not a licensable activity but other licensable activities, are provided ancillary to that live sporting event.

## **SUBMISSIONS AND REASONS**

The Presenting Officer Roxsana Haq outlined the application to the Sub-Committee. She advised that this was an application for a New Premises Licence in respect of The Soho Poly Theatre, 16 Riding House Street, London W1W 7EB. The application has been made by The University of Westminster (represented today by Catherine Noble of Mills & Reeve LLP). The Applicant has applied for on sales of alcohol, late night refreshment on the Premises as well as regulated entertainment in doors Monday to Sunday. Full details can be found at pages 2-3 of the report bundle. Representations were received from the EHS (Mr Anil Drayan) and 15 local residents, none of whom are in attendance today. The Premises are located within the West End Ward but not within the West End CIZ or Special Consideration Zone.

Ms Catherine Noble, Solicitor appearing on behalf of the Applicant addressed the Sub-Committee. Ms Noble advised that after representations were received in respect of the application the Applicant met with the EHS where conditions were discussed and finally agreed.

Ms Noble confirmed that Core hours had been applied for and that "Soho Poly" is technically part of the University. However, the Premises itself will have a very distinct identity. She confirmed that the space will not be exclusively for the student body and that it will not operate as a bar or nightclub nor will it be used for a commercial theatre.

Mr Matthew Morrison Director on behalf of the Applicant addressed the Sub-Committee and confirmed the following:-

- The history of the Poly Theatre was discovered when undertaking research some 15 years ago.
- The original aim was to pioneer “lunchtime theatre” as it meant people who were not able to get involved in theatre in the evenings could do so at lunchtime.
- In 2012 we came across a locked door and realised the now abandoned space (since 1990) must have in fact been behind that door.
- The vision was to restore the space to bring heritage and history back to life.
- Historically there was no disabled access – we felt there would be no value if it wouldn’t be an accessible space.
- We successfully fundraised for a lift.
- Over the past few years, we have used the space for creative workshops to test out the space. We have kept the focus as community focussed spirit.
- In 2021 we obtained national lottery heritage funding.
- The long-term aim and objective is to support young performers.
- The space was previously known as the ‘Friendly theatre’, and we wanted to bring arts & cultural aspect back into local community.

Ms Noble confirmed that the Applicant undertook pre-application advice which was noted and welcomed by the Sub-Committee. She confirmed that a number of Model conditions had been agreed. The Soho Poly Theatre would require a separate premises licence as distinct from the rest of the university. Ms Noble said that there had been some confusion about the use of a door however this related to the other licence.

The Chair to the Sub-Committee declared that she had been to the theatre previously and commented that concern had been expressed by the objectors in their representations concerning people leaving the Premises at the same time and requested that the Applicant manage this along with people sure that there isn’t groups of people leaving, hanging around, having loud conversations?

In answer to questions from the Sub-Committee Mr Morrison advised that as part of the management of the space, staff will be allocated to working in there as well as staff training how to run the theatre given its capacity of 60 people. He said that they will ensure that once production has finished, there will be a member of staff on the door to help aid dispersal into the wider area.

Mr Morrison confirmed also that they would try to limit smokers outside to two at any one time and again this will be managed by staff. He envisaged this would only be an issue at the interval when people will leave the Premises temporarily to smoke.

Mr Drayan on behalf of the EHS addressed the Sub-Committee. He said referring to the additional conditions he would suggest at least one member of staff should be at the access. In terms of smokers this should be limited to two persons at any one time on the proviso that no glass containers are to be taken outside with them.

Mr Drayan said that he had visited the Premises, discussed conditions and helped to address the concerns of the residents.



The Sub-Committee clarified whether the timings for Sunday was 22.30?

Ms Noble confirmed that this was originally 23.00 but it will not cause an issue to bring this back to 22.30. Anybody arriving by wheelchair can use the lift.

Mr Horatio Chance the Legal Advisor to the Sub-Committee went through the proposed additional conditions. The Applicant agreed to Model Condition 24 (MC24) meaning that a direct telephone number of staff is to be made available and Model Condition 99 (MC99) requiring the Premises dispersal policy to be made available for inspection.

Mr Drayan commented that there was already a proposed condition for the direct telephone but it is not the usual model condition wording. He said regarding the hours this has been brought back to core hours so there is no longer any need for late night refreshment.

### **Conclusion**

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

In reaching its decision, the Sub-Committee noted that there was no presumption to refuse the application as the Premises primary use was to operate as a cultural entertainment venue and therefore the application was considered under the Council's CCSOS1 and HRS1 policies.

The Sub Committee noted that the Applicant had agreed to restrict the use of the Premises in that it shall be ancillary to the main function of the premises as a Cultural Venue.

The Sub-Committee took into consideration that conditions had been agreed with the EHS who were generally satisfied with the application. The Sub Committee further noted that the Metropolitan Police Service and the Licensing Authority had not made representations against the application and that the Premises were not located in the West End CIZ or Special Consideration Zone. The Sub-Committee noted that the application had been made within the Council's Core Hours Policy with the reduction on a Sunday to 22:30 hours which was welcomed by the Sub-Committee as this would help reduce nuisance as alluded to by local residents in their objections.

In reaching its decision, the Sub-Committee concluded that the conditions attached to the licence would alleviate the residents' concerns and were appropriate and would help promote the licencing objectives.

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

1. To grant permission for **Performance for the Exhibition of Films and Plays (Indoors)** Monday to Saturday: 09:00 to 00:00 Sunday 09:00 to 22:30` **Seasonal Variation** New Year's Eve - licenced hours extended from

- the end of the authorised hours on New Year's Eve to the start of authorised hours on New Year's Day.
2. To grant permission for **Live Music, Recorded Music, Performance of Dance (Indoors)** Monday to Saturday: 09:00 to 00:00 09:00 to 22:30 **Seasonal Variation** Sundays immediately before a bank holiday: 09:00: - 00:24:00. New Year's Eve - licenced hours extended from the end of the authorised hours on New Year's Eve to the start of authorised hours on New Year's Day
  3. To grant permission for **Anything of a similar nature** Monday to Saturday 09:00 to 00:00 Sunday 09:00 to 22:30 **Seasonal Variation:** None
  4. To grant permission for the **Sale by Retail of Alcohol (On) the Premises** Monday to Saturday: 09:00 to 00:00 Sunday 09:00 to 22:30 **Seasonal Variation** None.
  5. To grant permission for the **Opening Hours to Public** Monday to Saturday 09:00 to 00:00 Sunday 09:00 to 22:30 **Seasonal Variation** New Year's Eve extended to closing of New Year's Day
  6. That the Licence is subject to any relevant mandatory conditions.
  7. That the Licence is subject to the following conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

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

8. The licensable activities authorised by this licence and provided at the premises shall be ancillary to the main function of the premises as a Cultural Venue.
9. The supply of alcohol at the premises shall only be to:
  - a. persons there taking part in rehearsals and/or educational purposes
  - b. customers, patrons or members there to view a performance or exhibition or cultural event (including permanent or temporary collections)
 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
10. The premises will have a CCTV system as per the minimum requirements of the Westminster Police Licensing Team.
  - a) All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.
  - b) 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.
  - c) All recordings shall be stored for a minimum period of 31 days with date and time stamping.
  - d) Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.

- e) 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 authorized council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
11. 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.
  12. 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
    - g. any refusal of the sale of alcohol
    - h. any visit by a relevant authority or emergency service.
  13. The number of persons accommodated at the premises as a whole at any one-time (excluding staff) shall not exceed 60 persons.
  14. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
  15. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
  16. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between (23.00) hours and (08.00) hours on the following day unless collections are arranged during the times for the Council's own commercial waste collection service for the street.
  17. A Challenge 21 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognized photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
  18. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number and/or is to be made available to residents and businesses in the vicinity.
  19. 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 office of Westminster City Council.

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

**The Licensing Sub-Committee  
11 May 2023**

2. THE COURT, 9 KINGLY STREET, LONDON, W1B 5PH

**WCC LICENSING SUB-COMMITTEE NO. 4**  
**("The Committee")**

Thursday 11 May 2023

Membership: Councillor Angela Piddock (Chair) Councillor Md Shamsed Chowdhury and Councillor Jim Glen

Other Parties: Horatio Chance (Legal Advisor)  
Committee Clerk (Jack Robinson-Young)  
Policy Advisor (Aaron Hardy)  
The Environmental Health Service (Maxwell Koduah)  
The Licensing Authority (Karyn Abbott)  
Metropolitan Police Service (PC Tom Stewart)  
The Soho Society (Marina Tempia) (Wendy Hardcastle)

**Application for a Variation of Premises Licence in respect of The Court 9 Kingly Street London W1B 5PH 23/01201/LIPV**

**Full Decision**

**Case Summary**

This is an application for a Variation of a Premises Licence under the Licensing Act 2003 ("The Act"). The Premises operates as a Private Members Bar and Club.

The Applicant seeks the following:

***Part A:***

- ***To remove conditions 10 - 12 (Rules of Management), 20 & 21 (membership), and 13 -17 and 22 (various), and replace them with a suite of modern and appropriate model conditions.***
- ***To increase the capacity to 220 (From 150).***
- ***To increase the permitted hours on Saturdays to 01:00 and add licensable activities on Sundays until 23:00; and***
- ***To update the layout of the premises in accordance with the enclosed plans, including changes to fixed seating, increase in WC provision and addition of secondary means of escape.***

***Part B:***

- ***Should the application as above be granted in accordance with this Operating Schedule and Part A, the hours of licensable activities on a Monday to Friday would be reduced to 01:00.***

The Premises has had the benefit of a premises licence since at least 2005. The current premises licence (22/09921/LIPT) can be viewed at **Appendix 3** of the Agenda Report along with the premises licence history. The Applicant has provided further submissions featured in the additional agenda pack.

The Premises are located both within the West End Ward and West End CIZ. There is a policy presumption to refuse the application unless the PLH can demonstrate an exception to policy. 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.

There is a resident count of 7.

Representations were received from the Metropolitan Police Service, Environmental Health Service, The Licensing Authority and the Soho Society.

### **Premises**

The Court  
9 Kingly Street  
London  
W1B 5PH

### **Premises Licence Holder**

Shaftesbury AV Limited (“PLH”)

### **Cumulative Impact Area**

West End Cumulative Impact Zone (“West End CIZ”)

### **Activities and Hours**

As per the Premises Licence save for the variations applied for.

### **Representations Received**

- Metropolitan Police Service (PC Tom Stewart)
- Environmental Health Service (Dave Nevitt)
- The Licensing Authority (Jessica Donovan)
- The Soho Society 55 Dean Street

### **Summary of Representations**

- *The Police submit that, if granted, the following variations to the premises licence would likely undermine the licensing objective ‘the prevention of crime and disorder’, as well as adversely effecting cumulative impact within the West End Cumulative Impact Zone:*
  - a. *The removal of condition 22 “After 23:00 hours, the supply of alcohol at the premises shall only be to a person seated at a table”.*
  - b. *The increase in capacity from 150 to 220. The Police accept that the impact of the increase in licensable activities on a Saturday to 01:00 and the addition*

*of licensable activities on Sundays until 23:00 will likely be mitigated by the offered reduction in licensable activities on a Monday to Friday*

- *Representation is made in relation to the application, as the proposals are likely to increase the risk of Public Nuisance and may impact upon Public Safety.*
- *The Licensing Authority has concerns in relation to this application and how the premises would promote the four Licensing Objectives:*
  - *Public Nuisance*
  - *Prevention of Crime & Disorder*
  - *Public Safety*
  - *Protection of children from harm*
- *This application as presented will fail to promote the licensing objectives and increase cumulative impact in the West End Cumulative Impact Zone. However, we will withdraw this objection if the applicant agrees to reduce the hours in line with the core hours policy for Pubs and Bars PB1 and reduce the capacity to the existing figure of 150.*

### **Policy Considerations**

Policies HRS1 and MD1 apply under the City Council's Statement of Licensing Policy ("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.

C. For the purpose of Clauses A and B above, the Core Hours for applications for each premises use type as defined within this policy are:

10a. Shops (all licensable activities that are provided as ancillary to the primary use of the premises as a shop except the off sale of alcohol)

Monday to Thursday: 9am to 11.30pm.

Friday and Saturday: 9am to Midnight. Sunday: 9am to 10.30pm. Sundays immediately prior to a bank holiday: 9am to Midnight.

10b. Shops (off-sales of alcohol where it forms either the ancillary or primary use of the premises)

Monday to Saturday: 8am to 11pm. Sunday: 9am to 10.30pm.

D. Core hours are when customers are permitted to be on the premises and therefore the maximum opening hours permitted will be to the same start and terminal hours for each of the days where licensable activity is permitted.

## **MD1**

A. Applications outside the West End Cumulative 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 Zone Policy SCZ1 if the premises are located within a designated zone.

5. The application and operation of the venue meet the definition of a music and dance premises or similar entertainment in Clause D.

B. It is the Licensing Authority's policy to refuse applications within the West End Cumulative Impact Zone other than:

1. Applications to vary the existing licence hours within the council's Core Hours Policy HRS1, and/or,
  2. Applications that seek to vary the existing licence so as to reduce the overall capacity of the premises.
- C. The applications referred to in Clause B1 and B2 will generally be granted subject to:
1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1.
  2. The operation of any delivery services for alcohol and/or late-night refreshment meeting the Council's Ancillary Delivery of Alcohol and/or Late-Night Refreshment Policy DEL1.
  3. The application and operation of the venue continuing to meet the definition of a music and dance premises in Clause D.
- D. For the purposes of this policy a music and dance premises is defined as a premises whereby the primary purpose of the venue is to:
1. Provide regulated entertainment in the form of music, either in the form of live performances or recorded, to customers.
  2. Provide regulated entertainment in the form of music, either as live performances or recorded, and provide facilities for the provision of dance.
  3. The sale by retail of alcohol may be provided as either a considerable element of the operation of the premises or ancillary to the provision of regulated entertainment.
    - a. Examples of venues that would fall within this policy are night clubs or bars that provide music and dancing.
    - b. De-regulated entertainment (as set out in the glossary will not be subject to this policy).

### **SUBMISSIONS AND REASONS**

1. The Presenting Officer Ms Roxsana Haq addressed the Sub-Committee. She advised that this was an application for a Variation of a Premises Licence in respect of The Court, 9 Kingly Street, London W1B 5PH. The application has been brought by the PLH; Shaftesbury AV Limited (represented today by Mr Alun Thomas). The PLH seeks to remove conditions, increase permitted hours on Saturdays to 01.00 and add licensing activities on Sundays. Further seeks to update layout to reflect the plans submitted. Full details can be found at pages 28-31 of the report bundle. Representations were received from the MPS (PC Tom Stewart), EHS (Mr Maxwell Koduah), The Licensing Authority (Ms Karyn Abbott) and Marina Tempia and Wendy Hardcastle from the Soho Society. The Premises are located within both the West End Ward and West End CIZ.
2. Mr Alun Thomas Solicitor, appearing on behalf of the PLH addressed the Sub-Committee. He advised that Shaftesbury owns the whole estate. The Premises was previously a bar and closed about 6 months ago. The rationale for the variation application is to increase the hours on a Saturday, reduce hours during the week substantially and to increase the capacity.
3. Mr Thomas advised that planning permission was granted for a change of use a few weeks ago. He explained that there was an error in the Planning Permission which referred to the wrong hours which was a typo.



4. Mr Thomas said that there would be a reduction of sales of alcohol both on and off. He said that there would be less cumulative impact and crime and disorder in this area. He went onto explain that the reason for this is that where you have one ownership of an area this results in effective management of the area.
5. Mr Thomas said that Shaftesbury can choose their tenants. He advised that there are ongoing current negotiations with 'Little Door' who own four premises at the moment. The Premises is a Membership club without having a membership.
6. Mr Thomas said that Shaftesbury provide 24-hour security with a proven track record and therefore takes safeguarding of the area seriously. He said that the increase in capacity was noted as an issue and the removal of one condition.
7. Mr Thomas said granting the application would result in reducing both hours for the sale of alcohol Monday to Friday and opening hours. He said the net effect is that there would be a significant overall reduction of alcohol sales beyond core hours. This would amount to a reduction of 680 hours a week meaning a substantially less capacity for late night drinking in the West End CIZ.
8. Mr Thomas advised that pre-application advice had been sought and there had been a fruitful dialogue with the EHS in this respect. He said that before Mr Nevitt left the Council's employ by way of retirement, his opinion was that the increase in hours and reduction was reasonable.
9. Mr Thomas said that if the application were granted this would update the licence by way of more model conditions, more toilets and a reduction in cumulative impact. He said that the peak times for crime in the area were between Midnight to 04:00.
10. Mr Thomas referred to page 12 of the report and that most incidents tended to happen between 02:00 to 03:00 and these are the hours we are giving up. He said in terms of the policy implications an exception is required. He said that the PLH is seeking to reduce the hours, which means a reduction in the capacity.
11. He said that the underlying reason for having the policy means more people on the street becoming possible victims of crime. He said that an exception is not required in policy terms because bars and clubs are treated the same as private members club. Mr Thomas then went onto explain that between 01:00 to 03:00 this was the highest levels of violence in the CIA because this is the window we are closing. Regarding the proposed conditions these are better than the conditions currently imposed on the licence.
12. In answer to questions from the Sub-Committee Mr Thomas confirmed the following:-

- In terms of dispersing 40 people at potentially 01:00 it was argued that there would be 150 less people in the CIA between 01:00 - 03:00 when all the crime happens.
  - Spring keys are used for different doors.
  - Planning allows the operation until 01:30 hours.
13. Mr Thomas in his summing up to the Sub-Committee confirmed the following:-
- Pre-application advice was sought and this deemed the application to be fair.
  - There's a reason there's no clubs on Kingly Street. The PLH did not want this.
  - The crime statistics speak for themselves.
  - There will be a reduction of some 680 hours.
  - Crime peaks between 01:00 to 03:00 and the Premises are giving these said hours.
  - There is less Police on the streets at 03:00 so closing at 01:00 is better than 03:00.
  - The current Planning Permission does not have any restrictions. Should the application be granted then the planning permission will be implemented.
  - The PLH agrees for a condition to say that the dispersal policy is available at the Premises.
  - The PLH agrees for SIA if its risk assessed. We don't want to set a minimum.
  - The PLH agrees to seating and is happy to set a minimum number of seats available.
  - The capacity could probably be set at 200.
  - There could be some leeway in bringing Sunday back to 22.30
  - Model Condition (MC41) is agreed.
14. Ms Abbott appearing on behalf of the Licensing Sub-Committee addressed the Sub-Committee. She advised that the application was in two parts. Part A is to remove and update a number of conditions, update plans, increase capacity and increase terminal hour on a Saturday to 01:00.
15. She said that the application does fall outside of the Councils' core hours policy and therefore the PLH does need to demonstrate exceptional circumstances for the application to be granted.
16. Ms Abbott said that if members are minded granting that part of the application, the PLH will reduce the hours Monday-Friday from 03:00 to 01:00. However, consideration needs to be given to the fact that this will mean an extra 70 people in the CIA at 01:00 and at this time this is already at saturation point in the West End.
17. Ms Abbott said that the Sub-Committee need to determine whether the reduction in hours from 03:00 to 01:00 during the week is an exceptional circumstance to be used and whether the additional 70 people every day will lead to cumulative impact.
18. Ms Abbott in summing up to the Sub-Committee stated that an extra 70 people going out in the CIA every day of the week must be considered particularly with regard to crime issues in the area.

19. Mr Maxwell Koduah appearing on behalf of the EHS addressed the Sub-Committee. Mr Koduah said that he was generally happy with what is being asked for in the variation application. He said that a number of model conditions had been proposed. There was policy in place to mitigate any risks around public safety and nuisance.
20. Mr Koduah said that the district surveyor involved in the application confirmed that the capacity was a safe number. In terms of the works these have yet to be carried out but I will need to undertake a visit in order to sign off the condition. He said that the extra 1.5 hours would result in an extra 70 people in the West End CIZ.
21. Mr Koduah referred to pages 55 - 67 of the report and the policy implications. He said that the commitment to employ SIA staff was welcomed. In terms of Model Condition 99 (MC99) this would be a minimum of two SIA 30 minutes after closing.
22. In answer to questions from the Sub-Committee Mr Koduah confirmed the Premises was not a particular concern to the EHS having checked the history of the Premises.
23. Mr Koduah in summing up to the Sub-Committee said that he had nothing further to add apart from he was happy for Sundays to be reduced to 22.30 hours.
24. PC Stewart appearing on behalf of the MPS addressed the Sub-Committee. PC Stewart advised that representation was made on the grounds of the Cumulative Impact Area. He said that crime figures are the highest they have ever been in the area and with the proposed increase in capacity this would cause problems in the area.
25. PC Stewart said that the reduction of hours may mitigate some risk but with the planning permission reflecting these hours. He said that a reduction in hours on a Friday may well be acceptable mitigation although the crime figures are high.
26. PC Stewart said that removing the sale to those seated could be a problem. He said that people seated at a table are less likely to be confrontational and removing this condition would be a concern.
27. PC Stewart said that granting the application would result in an increase in capacity within the West End CIZ when it came to the prevention of crime and disorder. He said that Kingly Street was not necessarily in a heat spot and no matter how good the Premises management is, you cannot always control gang members on the street that target customers.
28. PC Stewart said that timings dictate the type of crime and are an important factor the Sub-Committee. He said that the majority of thefts happen during the day. However, alcohol related incidents happen late at night. People leaving at 01:00 are vulnerable to crime in the West End.

29. In answer to questions from the Sub-Committee PC Stewart confirmed the following:-
- In terms of crime on a Friday within the area, Friday has more crime than Thursday. Saturday has the highest crime rates.
  - Crime is higher than ever and the rates are higher than pre pandemic. There is a change in the way people are operating and premises are having to deal with large groups.
  - The reduction from 03:00 to 01:00 is a good thing but people know what time the premises are operating until and that's when they will target and people are more likely to become the victims of crime.
  - In terms of Kingly Court and the immediate area this is not a hot spot for crime and does not give the Police issues.
30. Marina Tempia from the Soho Society addressed the Sub-Committee. She advised that the Society's representation is based on a number of concerns regarding the proposed new late-night bar and the removal of the condition required customers to be seated.
31. Ms Tempia said that Monday to Tuesday at 01:00 are quiet nights in the area and the police reports indicate this. She said although the PLH have their own security this does not reduce noise and nuisance of the customers dispersing into Soho because the streets cannot be conditioned.
32. Ms Tempia said that 01:00 will facilitate more people looking for their next bar to go to because they will be going past residents. She advised that there are 65 licences with a terminal hour of 01:00 and a capacity of 10,000 people.
33. Ms Tempia said that adding an additional 70 people to that number would be huge and one other late-night premises on Kingly Street is not heavily focused around numbers. She said that you can see gang members, drug dealers just waiting to target people in the area.
34. Referring to Paragraph D23 of the SLP Ms Tempia said that cumulative impact effects the wider area and not just the immediate vicinity of the Premises because of the overall global effect. She said that hour's equal people. Monday to Wednesday are days when it is generally quieter.
35. Ms Tempia in summing up to the Sub-Committee stated that granting the application would retain people for longer in the West End CIZ. It is the global effect and not just in the immediate vicinity which is the real problem here.
36. In answer to questions from Mr Hardy the Policy Advisor to the Sub-Committee Ms Tempia said in terms of a reduction of hours on Friday the Society would prefer a reduction to core hours as this is the policy. Hours sought are a lot better than 03:00.
37. In answer to questions from Mr Hardy to Mr Thomas regarding whether an extension would be more acceptable than capacity Mr Thomas stated that the PLH was proposing to give up hours during the week. We are only asking for

an extra hour on Saturday. However, we have offered to reduce Sunday to 22:30.

## **Conclusion**

38. The Sub-Committee realises that it has a duty to consider each application on its individual merits and did so when determining the application.
39. In accordance with paragraph D11 on page 47 of the SLP there is an automatic presumption to refuse applications of this nature in the West End CIZ. It is for the Applicant to prove exceptional reasons as required by paragraph D12 of the SLP. The list for exceptional reasons need not be exhaustive, however, in considering whether a particular case is exceptional the Licensing Authority will consider the reasons underlying the West End CIZ special policy and the relevant premises use policies when considering applications.
40. The Sub-Committee had no question to doubt that the Applicant was a good and responsible Applicant as this was apparent from the evidence before it and the Applicant's proven track record when running the Premises as amplified in some detail by Mr Thomas.
41. However, Paragraph D14 of the SLP requires Licence Holders to comply with their licence conditions and promote the licensing objectives and on this basis cannot be considered an exception to policy.
42. The Sub-Committee welcomed the fact that the PLH had obtained pre-application advice beforehand. However, obtaining such advice is not necessarily an indicator that an application is to be granted once the actual specifics have been explored and considered.
43. The Sub-Committee's number one focus was on the additional numbers (in this case an increase to 70 people) entering the West End CIZ if the application were granted with the proposed increase in hours and the effect those numbers would have on the CIA overall. This was the true crux of the matter.
44. The Sub-Committee noted the evidence from the MPS which stated that crime did peak between 01:00 and 03:00 hours. The Sub-Committee was concerned that patrons leaving the Premises could become victims of crimes at the times they were to leave the Premises.
45. This was an important factor for the Sub-Committee to consider because it is not beyond the realms of possibility that patrons leaving the Premises could become victims of crime from 01:00 hours onwards particularly on a Saturday night (where the current terminal hour of Midnight is to be extended) when the West End is at its busiest and saturated with people in any event.
46. In terms of the proposed additional measures and conditions which are effectively the exceptional reasons set out by the PLH in his written submission at paragraphs 1-26 on pages 35-43 of the report to rebut the

policy presumption to refuse the application these various comments were noted by the Sub-Committee in their entirety.

47. The Sub-Committee considered setting the capacity of the Premises at a possible 200 as proposed by the PLH but contended that even with this restriction in place on capacity the West End CIZ would still be negatively impacted and did not consider this bar on numbers exceptional.
48. The Sub-Committee considered the request by the Premises to operate in accordance with an operational management and dispersal policy plan. However, the Sub-Committee expects all licence holders to put appropriate measures in place to promote the licensing objectives. With the volume of footfall at the Premises a dispersal policy is to be expected in any event given the large numbers expected in the West End CIZ as this would help mitigate any potential public nuisance issues. This measure is not exceptional.
49. Furthermore, the Sub-Committee expects the PLH to identify what preventative measures are to be in place in an application of this type and what conditions are to be covered in the operating schedule. These measures are not over and above what an operator is expected to do to ensure compliance with its licence conditions and the promotion of the licensing objectives.
50. The Sub-Committee considered the request to have SIA at the Premises with the total number to be on a risk assessment basis. However, the Sub-Committee did not consider this proposal exceptional. It expects licence holders to put such measures in place when it comes to the promotion of the crime and disorder licensing objective particularly when crime in the West End CIZ peaks after 01:00 hours so it would be appropriate and proportionate for the Premises to have sufficient security measures in place.
51. Additional security at the Premises goes to the core management practices of the Premises to promote the licensing objectives and again these measures are not over and above what a good operator is expected to carry out in any event.
52. The Sub-Committee did not come to the Decision lightly to refuse the application because it realises that the operator runs his Premises well and it will no doubt be a popular venue within the West End CIZ. However, the Sub-Committee has a duty to safeguard the reasons that protect the very foundations of the CIP1 policy and the global impact granting such an application would have within the cumulative impact area.
53. Without doubt the PLH is a good operator, but this alone is not sufficient to demonstrate an exception. Similarly, the Sub-Committee considered the mitigation measures advanced by the Applicant when considering the global and cumulative effects of licences on the area as a whole but these proposed measures did not go far enough in addressing these specific issues as more detailed in paragraphs 46-52 above.

54. The key consideration which the Sub-Committee had to grapple with was whether granting the application would have a negative impact on the West End Cumulative CIZ and this ultimately was the overriding factor and test for the Sub-Committee to decide. It concluded that granting the application would have such negative impact based on the additional numbers in the West End CIZ.
55. In arriving at this Decision, the Sub-Committee considered the evidence of the Applicant and of the Responsible Authorities who had objected to the application both orally and in writing.

The Sub Committee noted D12 of the SLP, which states that –

*“D12. Applicants for premises uses that have a presumption to refuse will be expected to demonstrate an exception as to why their licence application should be permitted. It is not possible to give a full list of examples of when the council may treat an application as an exception. However, in considering whether a particular case is exceptional, the Licensing Authority will consider the reasons underlying the West End Cumulative Impact Zone special policy when considering applications”*

And D16 which states that –

*“D16. The Licensing Authority’s policy, in relation to the West End Cumulative Impact Zone, is directed at the global and cumulative effects of licences on the area as a whole. Therefore, a case is most unlikely to be considered exceptional unless it is directed at the underlying reason for having the policy. Exceptions to the West End Cumulative Impact Zone policy to refuse certain types of applications must be for genuinely exceptional reasons.”*

56. In terms of exceptional circumstances, the Applicant relied on their oral and written submissions. As made clear in the SLP, there is no definitive list of what constitutes an “exceptional circumstance”. However, in considering whether a circumstance is in fact exceptional, regard will be had to the reasons underlying the West End CIZ that are directed at the global and cumulative effects of licences in the area as a whole.

The Sub Committee noted D14 - D15, which state that –

*“D14. The Licensing Authority will not consider a case to be exceptional merely on the grounds that the premises have been or will be operated within the terms of the conditions on the licence, or that are or will be generally well managed because of the reputation or good character of the licence holder or operator. This is expected in the conduct of all licensed premises. Moreover, licences are for premises and can be easily transferred to others who intend to operate within the scope of the licence and its conditions. Neither will the licensing authority consider the case to be exceptional merely because the capacity of the premises, or any proposed increase in capacity is small. The high number of premises within the West End Cumulative Impact Zone means that a small increase in capacity in each premises would lead to a significant increase overall within that area. It has been commonly argued that*

*customers will be drawn from other premises and there will be no increase in people within the area. The experience of the council is that this is not the case. The massive increase in capacities in the past and, the continuing number of further applications and the observable night-time occupancy levels of premises serve to discredit the argument. Each incremental increase in capacity contributes in part to increasing the attraction of the area as a “honey pot” destination for night-life and to the cumulative problems created by such a high concentration of activity in the area.*

*D15. Any list of circumstances where exceptions may be granted is not definitive. One example might be a proposal to transfer an existing operation from one premises to another, where the size and location of the second premises is likely to cause less detrimental impact and will promote the licensing objectives, and where the existing operation would otherwise continue as before in the first premises. In order for this to be treated as a consideration justifying an exception to policy, the council will need to be satisfied that the necessary legal mechanisms are in place to ensure that the original premises licence will cease to be operable and cannot be transferred once surrendered. In considering whether there is likely to be less detrimental impact, the Licensing Authority will consider the actual operation of the premises which it is proposed should close, and it will take into account any future proposals which would affect the continued operation of those premises.”*

57. Taking everything into account, it was the Sub Committee’s considered view that the exceptional circumstances advanced by the Applicant did not amount to exceptional circumstances as, in the Sub Committee’s view, they did not go to the reasons underlying the West End CIZ when having regard to the fact that even a small change in the West End CIZ contribute to cumulative problems created by such a high concentration of activity in the area even would still be negatively impacted because of the increased number of 70 patrons.
58. The Sub Committee did not doubt the quality of the management of the Premises and its management of the Carnaby Estate. However, as made clear by D14 *“The Licensing Authority will not consider a case to be exceptional merely on the grounds that the premises have been or will be operated within the terms of the conditions on the licence, or that are or will be generally well managed because of the reputation or good character of the licence holder or operator. This is expected in the conduct of all licensed premises”*.
59. The PLH’s proposed conditions were considered by the Sub-Committee but it was felt that these would not address the immediate concerns of the parties, the various policy considerations when looking at the West End CIZ and the promotion of the licensing objectives.
60. The Sub-Committee realises that it has a duty to strike the right balance when considering the needs of the PLH and those parties that had objected to the application and took the view that the right balance has been struck when considering the global impact granting such an application would have on the



overall effect for the area. It therefore concluded that an increase to the permitted hours on Saturdays to 01:00 (from 00:00 for all licensable activities) together with the addition of licensable licensable activities on Sundays until 23.00 (from an existing 22.30 cut-off for alcohol) that an increase of 70 people even with the proposed reduction Monday to Friday to 01:00 (from 03:00, or 03:30 in the case of late night refreshment) during the week would still have a negative impact on the West End CIZ leading to the licensing objectives being undermined which is not what the Act is designed to do.

61. The Sub-Committee will of course appreciate that the Applicant will be disappointed with this Decision but after very careful consideration of the application and the proposed conditions that were offered to mitigate the concerns of all parties that objected exceptionality was not proven.

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

In all the circumstances of the case the approach taken by the Sub-Committee is considered appropriate and proportionate. The application is ***Refused***.

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

**The Licensing Sub-Committee  
11 May 2023**

**3. NAMAIKI, BASEMENT AND GROUND FLOOR, 14 BROADWICK STREET, W1F 8HP**

**WCC LICENSING SUB-COMMITTEE NO. 4**  
**("The Committee")**

Thursday 11 May 2023

Membership: Councillor Angela Piddock (Chair) Councillor Md Shamsed Chowdhury and Councillor Jim Glen

Other Parties: Horatio Chance (Legal Advisor)  
Committee Clerk (Jack Robinson-Young)  
Policy Advisor (Aaron Hardy)  
The Licensing Authority (Kevin Jackaman)  
The Soho Society (Marina Tempia) (Wendy Hardcastle)

**Application for a New Premises Licence in respect of Namaiki Basement and Ground Floor 14 Broadwick Street London W1F 8HP 23/01192/LIPN**

**Full Decision**

**Case Summary**

The Sub-Committee has determined an application for a New Premises Licence under the Licensing Act 2003 ("The Act") in respect of Namaiki Basement And Ground Floor 14 Broadwick Street London W1F 8HP ("The Premises"). The Premises proposes to operate as a restaurant.

The Premises has had the benefit of Temporary Event Notices, and the history can be found at **Appendix 3** of the Agenda Report.

The Applicant has proposed twenty conditions to form part of their operating Schedule featured at **Appendix 4** of the Report together with a written submission which can be found in the additional agenda report.

The Premises are located within the West End Ward and within the West End Cumulative Impact Zone. There is no policy presumption to refuse the application provided the Applicant can demonstrate that granting the application would not lead to negative cumulative impact. 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 Licensing Authority and the Soho Society.

There is a resident count of 78.

## **Premises**

Namaiki Basement and Ground Floor  
14 Broadwick Street  
London  
W1F 8HP

## **Applicant**

Namaiki Limited

## **Cumulative Impact Area**

West End Cumulative Impact Zone ("West End CIZ")

## **Activities and Hours**

### **Late Night Refreshment (Indoors)**

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

**Seasonal Variations:** From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day. Sundays immediately prior to bank holidays 23:00-00:00

### **Sale by Retail of Alcohol (On and Off the Premises)**

Monday to Thursday : 09:00 to 23:30  
Friday to Saturday: 09:00 to 00:00  
Sunday 09:00 to 22:30

**Seasonal Variations:** From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day. Sundays immediately prior to bank holidays 09:00-00:00

### **Opening Hours to the Public**

Monday to Thursday : 09:00 to 23:30  
Friday to Saturday: 09:00 to 00:00  
Sunday 09:00 to 22:30

**Seasonal Variations:** From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day. Sundays immediately prior to bank holidays 09:00-00:00

## **Representations Received**

- The Licensing Authority (Angela Seward)
- The Soho Society 55 Dean Street (Marina Tempia)

## **Summary of Representations**

- *The Licensing Authority require the applicant to provide submissions as to how the operation of the premises will not add to cumulative impact in the West End cumulative impact zone, in accordance with policy CIP1.*
- *As a new restaurant in the cumulative impact zone the applicant has to demonstrate they will not to add to cumulative impact, it appears to us that the proposal of MC66 is taken as almost a de facto demonstration that there will be no addition to cumulative impact. We do not believe that this is consistent with the cumulative impact policy, which acknowledges that RNT1 uses*
- *are a lower risk than some other types, but not that they are of no risk and especially considering the year on year increase in numbers, 21 new licensed restaurants/cafés having opened between 2020 to 2022. In summary This*
- *is an application for a new licensed premises in the West End Cumulative Impact Zone, any increase in the number of licences and people in the area will fail to promote the licensing objectives and increase cumulative impact.*
- *We will withdraw this objection if the applicant agrees to the personal use condition as proposed above.*

## **Policy Considerations**

Policies CIP1, HRS1 and RNT1 apply under the City Council's Statement of Licensing Policy ("SLP").

### **CIP1**

A. 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:

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

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

D. For the purposes of this policy the premises types referred to in Clause A are defined within the relevant premises use policies within this statement

### **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.

C. For the purpose of Clauses A and B above, the Core Hours for applications for each premises use type as defined within this policy are:

10a. Shops (all licensable activities that are provided as ancillary to the primary use of the premises as a shop except the off sale of alcohol)

Monday to Thursday: 9am to 11.30pm.

Friday and Saturday: 9am to Midnight. Sunday: 9am to 10.30pm. Sundays immediately prior to a bank holiday: 9am to Midnight.

10b. Shops (off-sales of alcohol where it forms either the ancillary or primary use of the premises)

Monday to Saturday: 8am to 11pm. Sunday: 9am to 10.30pm.

D. Core hours are when customers are permitted to be on the premises and therefore the maximum opening hours permitted will be to the same start and terminal hours for each of the days where licensable activity is permitted.

## **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 Roxsana Haq outlined the nature of the application to the Sub-Committee. She advised that this was an application for a New Premises Licence in respect Namaiki Basement and Ground Floor 14 Broadwick Street London W1F 8HP. The application has been brought by the Applicant; Namaiki Limited (represented today by Mr Alun Thomas). The Applicant seeks late night

refreshment indoors and the retail sale of alcohol for both on and off sales. Full details can be found on pages 108-109 of the report bundle. Representations were received from The Licensing Authority (Mr Kevin Jackaman in attendance) and the Soho Society (Marina Tempia in attendance) along with Wendy Hardcastle of the Soho Society. The Premises are located both within the West End Ward and the West End CIZ.

Mr Alun Thomas Solicitor, appearing on behalf of the Applicant addressed the Sub-Committee. He advised that the Premises was a new Japanese restaurant which had been open a couple of months with no sales of alcohol. He advised that this was a restaurant premises which will operate at Westminster's core hours with full model restaurant condition 66 (MC66) with a capacity of just 28 with dinner costing around £180 so the menu price was high.

Mr Thomas said that the Premises will not add to cumulative impact in the wider West End because the Premises are small with less than 30 covers and alcohol is sold ancillary to a table meal in accordance with model restaurant condition MC66 and the conditions offered will mitigate the issues raised by the objectors.

Mr Thomas stated that in relation to the Soho's request to make the premises licence personal to the use would be unlawful in both case law and the section 182 Home Office Guidance makes it untransferable.

Mr Thomas confirmed that there is no external seating at the Premises. Customers walk in off Broadwick Street and upon arrival will wait in a small waiting room waited to be seated at their table. There is a private dining room for 4-5 people and a kitchen area where you sit at the bar. The basement area is used for back of house and toilets.

In answer to questions from the Sub-Committee Mr Thomas confirmed the following:-

- That there would be around 6-8 members of staff on duty at the Premises.
- The works condition can be removed as the Premises has been inspected.
- Cumulative impact does not arise on the number of people, it depends on uses, hours and location. We say within this specific location and the type of premises, will not add to cumulative impact.
- The Premises will actively control the numbers arriving at the same time and those leaving at the same time.
- Dealing with large groups attending the Premises the pavement is narrow so people would not be loitering. Staff will be on hand to organise taxis so dispersal would be orderly and in any event Tottenham Court Road Station is only 3 minutes away and we will be operating to core hours.

Mr Jackaman appearing on behalf of the Licensing Authority addressed the Sub-Committee. He advised that the Licensing Authority maintained its representation due to the location of the Premises within the West End CIZ. Mr Jackaman said that the application falls within RNT1 restaurant policy. He advised that any new premises within the cumulative impact area will have some degree of impact and it is for the Applicant to demonstrate how they will mitigate that impact.

Mr Jackaman said that the RNT1 policy does not provide a presumption to refuse the application. He said that the Applicant must demonstrate they will not add to negative cumulative impact and it was noted that core hours had been applied for and that the maximum capacity would be 28 albeit this low number of customers would still be entering the West End CIZ.

Mr Jackaman said that there had been no representations from either the Environmental Health Service or the Metropolitan Police Service. He said that the Licensing Authority accepts that this is a modest application that represents a low risk to cumulative impact in view of the hours applied for, conditions proposed and relatively small capacity but it was still for the Licensing Sub-Committee to decide whether the application should be granted.

Ms Marina Tempia appearing on behalf of the Soho Society addressed the Sub-Committee. She advised that according to the licensing register there were some 479 licensed premises in the area, the majority of which were restaurants. There have been 38 new licenced premises within the area, five of which were granted outside core hours with a capacity of 781.

Ms Tempia said that it was accepted that restaurant premises were low risk compared to a pub or bar. She said that the proposed personal condition was required to future proof the area.

Ms Tempia said that in principle the Society does not object to the Premises being a restaurant but expressed the view that the Society would like it to go back into a different type of use rather than alcohol use because we are losing lots of different types of shops.

Mr Horatio Chance the Legal Advisor to the Sub-Committee advised that it would not be appropriate to put a personal-use type of condition on the licence as proposed by the Soho Society.

Mr Aaron Hardy the Policy Advisor to the Sub-Committee asked Mr Thomas whether any concerns had been raised in terms of the TENs? Mr Thomas replied and said that he did not believe so.

Mr Hardy then asked Mr Jackaman whether the Licensing Authority would accept a condition that restricts the restaurant to a Japanese restaurant? In answer thereto

Mr Jackaman said that this was a condition that has been granted previously on a case-by-case basis by previous Sub-Committees.

Mr Thomas concluded by saying that this was the wrong forum to be discussing personal conditions and reiterated again that such a condition should not be imposed on the premises licence.

### **Conclusion**

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



The Sub-Committee noted that there was no presumption to refuse an application for a restaurant Premises under Policy RNT1 of the Council's SLP. The Sub Committee noted that the Premises was to be a small niche sushi restaurant with a maximum capacity of 28 with the Council's Model Restaurant Condition MC66 imposed on the licence with core hours in the West End CIZ.

There were no justified reasons for a refusal of the application given the small operation and low numbers coming to the Premises and the fact that it was catering to the higher end of the restaurant market. It was the Sub-Committee's view overall that there would be very little impact if at all in the West End CIZ.

The Sub-Committee concluded based on the evidence that the Applicant would promote the licensing objectives with the offered conditions as these would help mitigate the concerns raised by those who had objected to the application and therefore decided to grant the application which would lead to the promotion of the licensing objectives.

In terms of the conditions these are all the conditions as stated at pages 124-129 report together with the inclusion of one additional condition agreed with the Applicant regarding limiting the capacity of the Premises to just 28 including staff which are considered appropriate and proportionate.

The Sub-Committee after careful consideration of the evidence did not consider it appropriate to impose a personal condition on the Premises Licence as proposed by the Soho Society.

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

1. **To grant permission for Late Night Refreshment (Indoors)** Monday to Thursday: 23:00 to 23:30 Friday to Saturday: 23:00 to 00:00 Sunday N/A  
**Seasonal Variations:** From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day. Sundays immediately prior to bank holidays 23:00-00:00
2. To grant permission for the **Sale by Retail of Alcohol (On and Off the Premises)** Monday to Thursday : 09:00 to 23:30 Friday to Saturday: 09:00 to 00:00 Sunday 09:00 to 22:30. **Seasonal Variations:** From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day. Sundays immediately prior to bank holidays 09:00-00:00.
3. To grant permission for the **Opening Hours for the Premises to the Public** Monday to Thursday : 09:00 to 23:30 Friday to Saturday: 09:00 to 00:00 Sunday 09:00 to 22:30. **Seasonal Variations:** From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day. Sundays immediately prior to bank holidays 09:00-00:00.
4. That the Licence is subject to any relevant mandatory conditions.
5. That the Licence is subject to the following conditions imposed by the Committee 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. The premises shall only operate as a restaurant,
  - (i) in which customers are shown to their table or the customer will select a table themselves,
  - (ii) where the supply of alcohol is by waiter or waitress service only,
  - (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table,
  - (iv) which do not provide any takeaway service of food or drink for immediate consumption off the premises,
  - (v) where alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

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

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

7.
  - (a) The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team.
  - (b) All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.
  - (c) The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises and will include the external area immediately outside the premises entrance.
  - (d) All recordings shall be stored for a minimum period of 31 days with date and 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.
8. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
9. 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,
  - g) any refusal of the sale of alcohol
  - h) any visit by a relevant authority or emergency service.
10. 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.
  11. 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.
  12. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
  13. No noise generated on the premises shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
  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 and/or is to be made available to residents and businesses in the vicinity.
  15. All sales of alcohol for consumption off the premises shall be in sealed containers only and shall not be consumed on the premises.
  16. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
  17. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between (23.00) hours and (08.00) hours on the following day unless collections are arranged during the times for the Council's own commercial waste collection service for the street.
  18. No collections of waste or recycling materials (including bottles) from the premises shall take place between (23.00) and (08.00) hours on the following day unless collections are arranged during the times for the Council's own commercial waste collection service for the street.
  19. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.

20. 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.
21. There shall be no sales of alcohol for consumption off the premises after 23.00 hours.
22. The licence holder shall ensure that any queue to enter the premises which forms outside the premises is orderly and supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.
23. No deliveries from or to the premises either by licensee or third party or collections to the premises shall take place between 23:00 and 08:00 hours on the following day.
24. 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.
25. No licensable activities shall take at the premises until the capacity of the premises has been determined by the Environmental Health Consultation Team and the licensing authority has replaced this condition on the licence with a condition detailing the capacity so determined.
26. The number of persons permitted in the premises at any one-time (excluding staff) shall not exceed 28 persons.

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

**The Licensing Sub-Committee**

**11 May 2023**

**4. MICKY'S FISH BAR KEBAB RESTAURANT, 332 EDGWARE ROAD, W2 1EA**

This application was Granted under Delegated Authority.

The Meeting ended at 3.00 pm