



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (6)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (6)** held on **Thursday 20th April, 2023**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Maggie Carman (Chair), Concia Albert and Jacqui Wilkinson

1. MEMBERSHIP

1.1 There were no changes to the Membership.

2. DECLARATIONS OF INTEREST

1.2 THERE WERE NO DECLARATIONS OF INTEREST.

1. 20-24 SHAFTESBURY AVENUE W1D 7EU

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 6 **("The Committee")**

Thursday 20 April 2023

Membership: Councillor Maggie Carman (Chair),
Councillor Concia Albert and Councillor Jacqui Wilkinson.

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| Officer Support: | Legal Adviser: | Steve Burnett |
| | Policy Officer: | Aaron Hardy |
| | Committee Officer: | Sarah Craddock |
| | Presenting Officer: | Emanuela Meloyan |

Other Parties: Ms Lisa Sharkey - Poppleston Allen Solicitors (Solicitor for the Applicant), Mr Omar Aziz (Head of Asset Manager at Criterion Capital on behalf of the Applicant Trocadero (London) Hotel Limited), Mr Kevin Jackaman (Licensing Authority), Mr Richard Brown (Solicitor, Westminster's Citizens Advice representing The Soho Society) and Ms Marina Tempia (The Soho Society).

**Application for a New Premises Licence (Shadow Licence) for 20-24
Shaftesbury Avenue, London W1D 7EU- 23/00396/LIPSL – Agenda Item 1**

Premises

Shadow Licence
20-24 Shaftesbury Avenue,
London
W1D 7EU

Applicant

Trocadero (London) Hotel Limited

Ward

St James's

Cumulative Impact Zone

West End

Special Consideration Zone:

None

Proposed Licensable Activities and Hours

Sale of alcohol (both)

Monday to Saturday: from 10.00 until 03.00

Sunday: from 12.00 to 22.30

Live music, performance of dance, anything similar (indoors)

Monday to Sunday: from 09.00 until 03.00

Recorded music, (indoors)

Monday to Sunday: from 00.00 until 00.00

LNR (indoors)

Monday to Saturday: from 23.00 until 03.30

Sunday: from 23.00 to 03:00

Hours Premises are open to the Public

Monday to Saturday: from 09.00 until 03.30

Sundays: from 09.00 until 03.00

New Year's Eve / New Year's Day and commencement of British Summer Time as set out in the conditions.

Summary of Application

This is an application for a new premises licence under the Licensing Act 2003 ("The Act"). The Applicant is seeking a 'Shadow Licence' on the same terms as an existing primary Premises Licence 22/04957/LIPDPS.

The Premises has the benefit of a secondary Premises Licence granted in June 2022. This permits the Premises to trade as a restaurant. The licence sought will be a third premises licence for the same Premises.

There is a resident count of 24 and there are no representations from the Metropolitan Police Force.

The primary Premises Licence is the subject of conditions on a Premises Licence for the Sky Bar and Lounge, Coventry Street (Conditions 65 and 66). The Sky Bar and Lounge is not yet trading but have a Premises Licence to allow trade subject to the primary Premises Licence for 20-24 Shaftesbury Avenue, being surrendered.

Representations Received

- (Licensing Authority)
- (Soho Society Residents Association)

Issues raised by Objectors

Licensing Authority

The premises is located within the West End Cumulative Impact Area and as such various policy points must be considered, namely CIP1, HRS1 and RNT2.

The application is made by the freeholder of the premises for a 'shadow' licence of 22/04957/LIPDPS.

The Licensing Authority has reviewed the application against licence number 22/04957/LIPDPS and has noted that the application has not been made on the exact terms and conditions as the current issued licence.

The Soho Society

This licence was offered as one of the licences for surrender when Sky Bar and Lounge, Trocadero Hotel, applied for a 3am licence (21/06624/LIPN). On 11th November 2021 the Licensing Committee granted the 3am. This applicant Trocadero (London) Hotel Ltd stated an application for a midnight restaurant licence would be made to replace the current 3am licence, to date this application has not be submitted.

The Sky Bar decision document makes reference to this agreement with Conditions 65 and 66 stating the following;

65: *The applicants contend that this application can be treated as an exception to policy upon the basis of the following:*

(a) Premises Licence 15/02410/LIPT relating to 1-4 Leicester Square (which the first applicant previously offered to surrender when Licence 18/00656/LIPN was granted), together with Licence 18/00656/LIPN, will be surrendered subject to the grant of this application.

(b) Premises Licence 20/03425/LIPDPS relating to the Rainforest Cafe at 20-24 Shaftesbury Avenue will be surrendered by the first applicant, subject to the grant of the linked application described below (66a) and the satisfaction of works conditions relating to this application and the application described at 66(a);

(c) The capacity for the Piccadilly Institute stated within Premises Licences 19/09064/LIPN and 21/04481/LIPDPS shall be reduced by 380 as a result of the linked application described below 66b.

66: *To support the exception to policy argument, the below linked applications will be submitted following the grant of this licence application:*

(a) New Premises Licence application for the Rainforest Café at 20-24 Shaftesbury Avenue authorising the use of the premises as a restaurant (with a holding bar) until midnight.

(b) Two minor variation applications to reduce the capacity of the Piccadilly Institute by 380 persons. Conditions 65 and 66 above to be removed upon satisfaction of the works conditions at 62 and 63 above, and to a works condition which will be incorporated in the application referred to at Condition 65 (b).

The applicant agreed to submit a new premises licence application following the grant of licence 21/06624/LIPN and on this basis the application for an additional shadow licence should be refused.

The Soho Society also object on the grounds this licence will fail to promote the licensing objectives and the increase in cumulative impact in the West End Cumulative Impact Zone.

Policy Considerations

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 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.
2. Whether there is residential accommodation in the proximity of the premises.
3. The proposed hours of the licensable activities and when customers will be permitted to remain on the premises.
4. The existing hours of licensable premises in the vicinity.
5. Whether customers and staff have adequate access to public transport when arriving at and leaving the premises, especially at night.
6. The capacity of the premises.
7. The type of use, recognising that some venues are more likely to impact the licensing objectives than others.
8. 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.

C. For the purpose of Clause B, the Core Hours for this premises use type as defined within this policy are:

Pubs and bars, Fast Food and Music and Dance venues Monday to Thursday: 10am to 11.30pm. Friday and Saturday: 10am to Midnight. Sunday: Midday to 10.30pm. Sundays immediately prior to a bank holiday: Midday to Midnight

Policy PB1

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.
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, and/or,
2. The application and operation of the venue continuing to meet the definition of a Public House or Bar in Clause D.

D. For the purposes of this policy a Public House or Bar is defined as a premises, or part of a premises that's primary use is the sale or supply of alcohol for consumption on those premises and/or for consumption off the premises for consumption outside the venue.

SUBMISSIONS AND REASONS

Ms Emanuela Meloyan outlined the application to the Committee. She advised that representations had been received from the Licensing Authority and The Soho Society and that the Premises is located within the St James's Ward and the West End Cumulative Impact Area but was not in a Special Consideration Zone. She confirmed that the additional submissions from the Applicant and the Interested Parties had been circulated.

Ms Lisa Sharkey on behalf of the Applicant outlined the application before the Committee. She explained that the Applicant (the property owner) was applying for a Shadow Licence for the Rainforest Café as that was the name the Premises had been trading under for the past two years. She advised that the property owner had been operating the Premises Licence for the past two years and that the licensable areas within the building were currently the Basement and Sub-Basement. She confirmed that the application was made on exactly the same terms as the existing Premises Licence and there would be no additional use or impact on granting this application.

Ms Sharkey briefly outlined that the variation to this Premises Licence (Agenda item 2) that was scheduled to be determined by the Committee was requesting a change to the licensable areas of the Premises to Ground floor and Basement. She added, however, that the application to vary the Premises Licence was completely separate to this application for a Shadow Licence. She explained that the property owner wished to obtain a Shadow Licence to ensure that they could operate the Premises if Albert Schloss did not fulfil its agreement of taking over and operating the Premises.

Ms Sharkey referred to an application that the Committee's considered and granted in November 2021. She outlined that the Rainforest Café Premises Licence had never been surrendered because the works for the Sky Bar and Lounge had never been completed and therefore the Sky Bar and Lounge had never existed and/or traded. She added the property owner, had continued to operate the Rainforest Café under the existing 3am Premises Licence and not the 'new' restaurant Premises Licence granted up to 00:30 hours.

Ms Sharkey explained that the property owner had now been approached by Albert Schloss, as a unique entertainment led operator, who wished to operate the Premises on the Ground floor and Basement. She advised that she had sought pre-

application advice from the Environmental Health Service who had suggested that Albert Schloss make an application to vary the layout of the existing Rainforest Café 3am existing Premises Licence and that the property owner, in order to protect their interests, apply for a Shadow Licence for licensable activities on the existing licence. The Committee was advised that the Shadow Licence would protect the property owner if, for instance, Albert Schloss did not fulfil their agreement to invest in and operate the Premises. The property owner would then continue to operate the existing Premises Licence which allowed licensable activities in the Basement and Sub-basement of the Premises.

Ms Sharkey confirmed that the Shadow Licence application had been made on exactly the same terms as the existing Premises Licence. She advised that the property owner was just asking the Committee to protect his legitimate commercial rights if the proposed tenant did not move forward and invest in the Premises. She outlined that if the tenant did complete the works and operate the Premises the property owner would apply for a new Shadow Licence as the licensable activities would be for different locations within the Premises.

Ms Sharkey referred to the Sky Bar and Lounge which was a completely different licensed Premises within the Trocadero. She advised that the property owner was fully aware that they would need to offer up something of equal value if the Rainforest Café Premises Licence were no longer available to surrender to the Council. She confirmed that a full variation application to the Council to amend the current conditions 65 and 66 that says that the Rainforest Café Premises Licence needs to be surrendered would be made. She further confirmed that until the conditions were amended the Sky Bar and Lounge would remain empty and dormant.

Ms Sharkey referred the Committee to paragraphs 46, 47, 51 and 57 of the Oyster Case Judgment contained at pages 31-49 of the Agenda Pack which advised that the property owner was entitled to apply for a Shadow Licence because they had a legitimate commercial interest in the Premises; especially as they had been operating the Premises for the past two years. She advised that the Applicant was prepared to offer a condition that the Shadow Licence would not be used to activate the Sky Bar and Lounge Premises Licence.

In response to questions from the Committee, Ms Sharkey advised that the Premises had three floors: Sub-Basement, Basement and Ground Floor and that currently only the Sub-Basement and Basement were licensed. She explained that the Piccadilly Institute Premises was only relevant to the application made for the Sky Bar and Lounge and how she had made two minor variations after the grant of the application in November 2021 which had been refused. She advised that if the variation to the Rainforest Café was granted licensable activities would take place on the Basement and Ground floors only. She outlined that the property owner had been very keen to find an operator who had not wanted to operate the Premises as a nightclub but who wished to offer a variety of entertainment to customers. She added that Albert Schloss was a unique operator who offered a wide variety of entertainment, seven days a week. She advised that the Metropolitan Police Force had looked into Albert Schloss and had been content with the operation of their other Premises which was why they had not made a representation against this application.

Ms Sharkey emphasised that the Sky Bar and Lounge Premises Licence was currently dormant and that if the property owner did ever want to use it, they would have to come back to the Licensing Committee to offer something of equal value to the Rainforest Café. She confirmed that there was a ridiculous amount of building works to be completed first and that the operator who was going to take on the lease was no longer interested because of COVID. She advised that she was unable to discuss the Sky Bar and Lounge Premises any further as any future application would need to be determined on its individual merits under a separate application. She outlined that if the property owner at that time was unable to surrender the Rainforest Café Premises Licence a full variation application would be made and the Responsible Authorities and the Interested Parties would be consulted on it. She advised that today the Committee was dealing with the Rainforest Café as a current operating unit.

Ms Sharkey confirmed that the property owner was not trying to add to cumulative impact in the West End but that he was actually trying to reduce it and had surrendered Premises Licences previously which had reduced capacity of different Premises by 1780 persons. Ms Sharkey confirmed that the property owner had been operating these Premises for the past two years without complaint and that the Shadow Licence allowed the property owner to maintain a Premises Licence for the Basement and Sub-basement if the variation application was granted.

Mr Kevin Jackaman (representing the Licensing Authority) advised that the Premises is located within the West End Cumulative Impact area and therefore it was for Members to be satisfied that there was an exception to the Council's Licensing Policy. He explained that the Licensing Authority were concerned that this Premises Licence had been agreed to be surrendered in the decision notice for the Sky Bar and Lounge and that if this Shadow Licence and the variation to the existing Premises Licence (next application) was granted the Premises would have numerous Premises Licences namely: the existing 3am Premises Licence, the Shadow Licence, the variation to the existing Premises Licence and the restaurant Premises Licence up to 00:30 hours.

Mr Jackaman confirmed that the Licensing Authority would like to see Model Condition 97 be attached to the Premises Licence which states:

'The shadow licence will not take effect when the current licence is in operation, or it lapses, is surrendered or revoked'

This would mean that the following Premises Licences (the existing Premises Licence and the Shadow Licence) would be subject to surrender once the Sky Bar and Lounge comes into effect/operation. He advised that as it stands at the moment only the primary Premises Licence needs to be surrendered under the Sky Bar and Lounge decision notice. There was nothing requiring the property owner to surrender the Shadow Licence and therefore that could effectively come into play. He added the property owner could effectively surrender the primary licence and then use the Shadow Licence. He emphasised that the Licensing Authority appreciated that the property owner was protecting his commercial interests, however if this condition were placed on the Shadow Licence it would fulfil what was agreed at the Licensing Committee in November 2021.

Mr Richard Brown, (Solicitor, Westminster's Citizens Advice representing the Soho Society), advised that if this were just an application for a Shadow Licence and/or if there had been just one application for a variation to the existing Premises Licence then it was highly likely that agreement could have been reached outside of this Committee. He advised, however, that as the two applications had been made together the situation was very confusing especially as it had previously been agreed that the existing Premises Licence for the Rainforest Cafe would be surrendered on the completion of works at the Sky Bar and Lounge Premises.

Mr Brown advised that if this were purely a Shadow Licence then the Soho Society would have no problem with the grant of this application. However, if the variation to the existing Premises Licence was then subsequently granted an extra floor in the Premises would be allowed to operate licensable activities. Mr Brown further advised that if the variation to the Premises Licence was the only application being considered the Soho Society may well have withdrawn their representation as the Operating Schedule was an improvement on the existing Premises Licence.

Mr Brown advised the Committee that the Premises had been operating during the last 2 years as a family restaurant with a closing time of 9.30pm so it was not surprising that it had been operating without incident. He echoed the Licensing Authorities concerns regarding the numerous Premises Licences that the Premises would hold and confirmed that this Premises Licence should be surrendered if and when the Sky Bar and Lounge comes into effect. He agreed with the Licensing Authority that a condition to this effect should be included on the Premises Licence.

Ms Sharkey advised there were no restrictions on the number of Premises Licences a Premises could hold in law. She referred to paragraph 40 of the Oyster Case Judgement and further advised that the Licensing Act was intended to provide a more effective, more responsive and flexible system of licensing which did not interfere unnecessarily with businesses. She emphasised that the property owner was entitled to apply for the Shadow Licence on exactly the same terms as the existing Premises Licence as he had a legitimate business interest to protect. She confirmed to the Members that the property owner would not use the Shadow Licence to activate the Sky Bar Licence. She further outlined that condition 65 contained in the Sky Bar and Lounge Decision Notice stated that the property owner would surrender the Rainforest Café on the satisfaction of the works completed and as the property owner could not satisfy that works condition the property owner was not going to surrender the Rainforest Premises Licence.

Mr Jackaman advised that a compromise be sought because there was no protection that the Shadow Licence would be surrendered unless there was a condition attached to the Shadow Licence. He outlined that currently only the main existing Premises Licence needed to be surrendered which left the Shadow Licence operational.

The Committee discussed with all parties how the Shadow Licence would be surrendered at the same time as the existing Premises Licence. The Committee then adjourned for the parties to agree a suitable condition to be attached to the Shadow Licence.

Mr Steve Burnett, Legal Advisor to the Licensing Committee, discussed the wording of the proposed condition(s) with all parties and made amendments, as necessary. All parties eventually agreed on the wording of the following conditions and that they be attached to the Shadow Premises Licence.

This shadow premises licence (PL No: XXXXXX or any subsequent Premises Licence for 20-24 Shaftesbury Avenue, London W1D 7EU) shall not take effect when the current premises licence (PL No: XXXXXX) or any subsequent Premises Licence for 20-24 Shaftesbury Avenue, London W1D 7EU is in operation, or in circumstances where the current premises licence is surrendered to satisfy condition 65 of PL21/06624/LIPN, or in any subsequent Premises Licence relating to Sky Bar and Lounge, Trocadero, 13 Coventry Street, London W1D 7DH. If the current Premises Licence is surrendered in such circumstances, then this Shadow licence shall not take effect and shall also be surrendered.

This shadow licence shall not take effect where the current Premises Licence (No: XXXXX) or any subsequent premises licence for 20-24 Shaftesbury Avenue, London W1D 7EU is revoked.

Conclusion

The Committee realises that it has a duty to consider each application on its individual merits and did so for the purposes of this application. It was noted by the Committee that the Metropolitan Police Service and Environmental Health Service had not made representations against the application. The only remaining representations were from The Licensing Authority and the Soho Society.

The Committee considering the evidence before it and the arguments advanced by Ms Sharkey in her submissions to the Committee considered Paragraph D20 of the Statement of Licensing Policy (SLP) and all other relevant parts of the SLP. Having carefully considered the matter and the need to promote the licensing objectives, the Committee decided to grant the application for a shadow premises licence. The Committee was persuaded that the application met the policy requirements under the SLP. The Committee has imposed all the conditions and considered it to be appropriate and proportionate to impose two conditions, (condition numbers 24 and 25) proposed by Ms Sharkey and agreed by all parties on the licence accordingly.

The Committee using its discretionary powers concluded that Paragraph D20 of the Policy had been met by the Applicant on the basis that this was an application for a shadow licence identical to the existing Premises Licence in terms of hours and conditions.

Having taken into account all the evidence and the individual circumstances of this case the Committee decided to grant the application. The Committee considered the conditions were proportionate and appropriate to ensure that the licence promoted the licensing objectives.

The Committee arrived at this decision based upon the merits of the application and the Applicant was the Landlord of the property who had been operating the Premises

without complaint for the past two years. The Committee considered that the Applicant will uphold the promotion of the licensing objectives.

In reaching its decision, the Committee concluded that the conditions attached to the licence would alleviate the Licensing Authority and residents' concerns and were appropriate and would promote the licensing objectives.

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

1. **To grant permission for:**

- **Live music, performance of dance, anything similar (indoors)**

Monday to Sunday: from 09.00 until 03.00

Recorded music, (indoors)

Monday to Sunday: from 00.00 until 00.00

LNR (indoors)

- Monday to Saturday: from 23.00 until 03.30
Sunday: from 23.00 to 03:00

Sale of alcohol (both)

- Monday to Saturday: from 10.00 until 03.00
Sunday: from 12.00 to 22.30

Hours Premises are open to the Public

Monday to Saturday: from 09.00 until 03.30
Sundays: from 09.00 until 03.00

New Year's Eve / New Year's Day and commencement of British Summer Time as set out in the conditions.

2. **Relevant Mandatory Conditions to apply**

3. **Conditions consistent with the operating schedule:**

Conditions reproducing the effect of conditions subject to which the existing licences have effect:

Conditions related to Regulated Entertainment:

9. This licence is subject to all the former Rules of Management for Places of Public

Entertainment licensed by Westminster City Council, in force from 4 September 1998 and incorporating amendments agreed by the Council on 25 October 1999, 30 June 2000, 16 January 2001 and 1 October 2001.

10. On New Year's Eve the premises can remain open for the purpose of providing regulated entertainment from the time when the provision of regulated entertainment must otherwise cease on New Year's Eve to the time when regulated entertainment can commence on New Year's Day (or until midnight on New Year's Eve where no regulated entertainment takes place on New Year's Day).

11. Notwithstanding the provisions of Rule of Management No. 6 the premises may remain open for the purposes of this licence from 23:00 on each of the days Sunday to Saturday to 03:00 on the day following.

12. An attendant shall be stationed in the shop the whole time that the premises are open to the public.

13. The number of persons accommodated at any one time (excluding staff) shall not exceed:

Basement - 470; Sub-Basement - 150.

Conditions Relating to the Sale of Alcohol

14. Substantial food and suitable beverages other than intoxicating liquor (including drinking water) shall be available during the whole of the permitted hours in all parts of the premises where intoxicating liquor is sold or supplied.

15. No gaming otherwise than by machines authorised under part III, Gaming Act, 1968.

16. No striptease, no nudity and all persons on the premises to be decently attired.

17. There shall be no payment made by or on behalf of the licensees to any person for bringing customers to the premises.

Conditions which reproduce the effect of any restriction imposed on the use of the premises by specified attachments

Monday to Saturday

18. (a) Subject to the following paragraphs, the permitted hours on weekdays shall commence at 10:00 (12.00 on Christmas Day and Good Friday) and extend until 03:00 on the morning following, except that –

(i) the permitted hours shall end at 00:00 midnight on any day on which music and dancing is not provided after midnight; and

(ii) on any day that music and dancing end between 00:00 midnight and 03:00, the permitted hours shall end when the music and dancing end;

(b) In relation to the morning on which summer time begins, paragraph (a) of this condition shall have effect with the substitution of references to 04:00 for references to 03:00.

(c) The sale of alcohol must be ancillary to the use of the premises for music and dancing and substantial refreshment.

(d) The permitted hours on New Year's Eve will extend to the start of permitted hours on the following day, or if there are no permitted hours on 1 January, to 00.00 on New Year's Eve.

NOTE - The above restrictions do not prohibit:

(a) during the first thirty minutes after the above hours the consumption of the alcohol on the premises;

(b) during the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;

(c) the sale or supply of alcohol to or the consumption of alcohol by any person residing in the licensed premises;

(d) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;

(e) the sale of alcohol to a trader or registered club for the purposes of the trade or club;

(f) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of her Majesty's naval, military or air forces;

(g) the taking of alcohol from the premises by a person residing there;

(h) the supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied;

(i) the supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

In this condition, any reference to a person residing in the premises shall be construed as including a person not residing there but carrying on or in charge of the business on the premises.

Sunday

19. Alcohol shall not be sold, supplied, consumed in or taken from the premises except during permitted hours.

In this condition, permitted hours means:

(a) On Sundays, other than Christmas Day or New Year's Eve, 12.00 noon to 22.30.

(b) On Christmas Day, 12.00 to 15.00 and 19.00 to 22.30.

(c) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, 00.00 midnight on 31st December).

NOTE – The above restrictions do not prohibit:

(a) during the first twenty minutes after the above hours the consumption of the alcohol on the premises;

- (b) during the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
- (c) during the first thirty minutes after the above hours the consumption of the alcohol on the premises by persons taking table meals there if the alcohol was supplied for consumption as ancillary to the meals;
- (d) the sale or supply of alcohol to or the consumption of alcohol by any person residing in the licensed premises;
- (e) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
- (f) the sale of alcohol to a trader or registered club for the purposes of the trade or club;
- (g) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;
- (h) the taking of alcohol from the premises by a person residing there;
- (i) the supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied;
- (j) the supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

In this condition, any reference to a person residing in the premises shall be construed as including a person not residing there but carrying on or in charge of the business on the premises.

20. No person under fourteen shall be in the bar of the licensed premises during the permitted hours unless one of the following applies:

- (a) He is the child of the holder of the premises licence.
- (b) He resides in the premises, but is not employed there.
- (c) He is in the bar solely for the purpose of passing to or from some part of the premises which is not a bar and to or from which there is no other convenient means of access or egress.
- (d) The bar is in railway refreshment rooms or other premises constructed, fitted and intended to be used bona fide for any purpose to which the holding of the licence is ancillary.

In this condition "bar" includes any place exclusively or mainly used for the consumption of intoxicating liquor. But an area is not a bar when it is usual for it to be, and it is, set apart for the service of table meals and alcohol is only sold or supplied to persons as an ancillary to their table meals.

21. If any entertainment is provided for children or if an entertainment is provided at which the majority of persons attending are children, then, if the number of children attending the entertainment exceeds 100, it shall be the duty of the holder of the premises licence (or the holder of the club premises certificate):

- (a) to station and keep stationed wherever necessary a sufficient number of adult

attendants, properly instructed as to their duties, to prevent more children or other persons being admitted to the building, or to any part thereof, than the building or part can properly accommodate,

(b) to control the movement of the children and other persons admitted while entering and leaving the building or any part thereof, and

(c) to take all other reasonable precautions for the safety of children.

22. The terminal hour for late night refreshment on New Year's Eve is extended to 05.00 on New Year's Day.

Annex 2 Conditions consistent with the operating schedule

None

Conditions imposed by the Committee and agreed by the Parties

24. This shadow premises licence (PL No: XXXXXX or any subsequent Premises Licence for 20-24 Shaftesbury Avenue, London W1D 7EU) shall not take effect when the current premises licence (PL No: XXXXXX) or any subsequent Premises Licence for 20-24 Shaftesbury Avenue, London W1D 7EU is in operation, or in circumstances where the current premises licence is surrendered to satisfy condition 65 of PL21/06624/LIPN, or in any subsequent Premises Licence relating to Sky Bar and Lounge, Trocadero, 13 Coventry Street, London W1D 7DH. If the current Premises Licence is surrendered in such circumstances, then this Shadow licence shall not take effect and shall also be surrendered.

25. This shadow licence shall not take effect where the current Premises Licence (No: XXXXXX) or any subsequent premises licence for 20-24 Shaftesbury Avenue, London W1D 7EU is revoked.

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

**Licensing Sub-Committee
20 April 2023**

2. ALBERTS SCHLOSS, 20-24 SHAFTESBURY AVENUE W1D 7EU

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 6
("The Committee")

Thursday 20 April 2023

Membership: Councillor Maggie Carman (Chair),
Councillor Concia Albert and Councillor Jacqui Wilkinson.

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| Officer Support: | Legal Adviser: | Steve Burnett |
| | Policy Officer: | Aaron Hardy |
| | Committee Officer: | Sarah Craddock |
| | Presenting Officer: | Emanuela Meloyan |

Other Parties: Ms Lisa Sharkey - Poppleston Allen Solicitors (Solicitor for the Applicant), Mr Godfrey Russell (Director of Property at Mission Mars on behalf of Zecol Thomas Limited), Mr Kevin Jackaman (Licensing Authority), Mr Richard Brown (Solicitor, Westminster's Citizens Advice representing The Soho Society) and Ms Marina Tempia (The Soho Society), Councillor Tim Mitchell.

Application for a variation of a Premises Licence for Alberts Schloss, 20-24 Shaftesbury Avenue, London W1D 7EU- 23/00414/LIPV – Agenda Item 2

Premises:

Albert Schloss
20-24 Shaftesbury Avenue,
London
W1D 7EU

Applicant

Zecol Thomas Limited

Ward

St James's

Cumulative Impact Zone

West End

Special Consideration Zone:

None

Proposed Variation and Licensable Activities and Hours

1. To vary the licensed areas from the sub-basement and basement to the ground floor and basement.
2. To remove all conditions contained in annex 1 and 3
3. To add new conditions with a new maximum capacity
4. To add plays Mondays to Sunday 09.00 to 03.00
5. To vary the current permitted hours for the sale of alcohol on Sundays to 10.00 to 00.00.

Summary of Application.

This is an application for a variation of a premises licence under the Licensing Act 2003 ("The Act"). The Applicant is seeking a variation of the existing Premises Licence.

The Premises already has the benefit of a café licence and subject to the outcome of Agenda item 1, the premises could also have a Shadow Licence which mirrors this primary Premises Licence in its current form.

The premises also has the benefit of a secondary Premises Licence granted June 2022. This permits the premises to trade as a restaurant.

The Applicant has withdrawn any changes to the existing capacity of the Premises and the request for a later terminal hour on Sundays. The Application relates to the ground floor and basement area of the Premises.

It should be noted that this current primary Premises Licence is subject of conditions on a Premises Licence for the Sky Bar and Lounge, Coventry Street (Conditions 65 and 66). The Sky Bar and Lounge is not yet trading but have a Premises Licence to allow trade until 03.30, subject to this Premises Licence 20-24 Shaftesbury Avenue, being surrendered.

However, the Shadow Licence will remain in place at Albert Schloss as this is not subject of the Premises Licence at The Sky Bar and Lounge.

There are no representations from the Metropolitan Police.

Cumulative Impact Zone

West End

Special Consideration Zone:

None

There is a resident count of 24

Representations Received

- Ms Karyn Abbott (Licensing Authority)
- Mr Ian Watson (Environmental Health Services)
- PC Tom Stewart (Met Police – **Withdrawn** 7 March)
- Ms Sarah O (Resident)
- Councillor Tim Mitchell (St James's Ward)
- Ms Marina Tempia (Soho Society Residents Association)

Issues raised by Objectors

Licensing Authority

The premises is located within the West End Cumulative Impact Area and as such various policy points must be considered, namely CIP1, HRS1 and RNT2.

It is noted that the applicant has proposed the below condition within the operating schedule.

1. The licensable activities authorised and provided at the premises shall be ancillary to the main function of the premises operating as an Albert's Schloss themed entertainment led venue operated by Zecol Thomas Limited.

The Licensing Authority has reviewed the application against Licence number 22/04957/LIPDPS and has noted that the application has not been made on the exact terms and conditions as the current issued licence.

Environmental Health

Wish to make the following representation:

1. The variation of the layout of the premises will impact on Public Safety and have the likely effect of causing an increase in Public Nuisance within the West End CIZ.
2. The removal, variation and addition of conditions will have the likely effect of causing an increase in Public Nuisance and impact on Public Safety within the West End CIZ.
3. The proposed increase in capacity will have the likely effect of causing an increase in Public Nuisance and impact on Public Safety within the West End CIZ.
4. The variation of hours on a Sunday will have the likely effect of causing an increase in Public Nuisance within the West End CIZ.
5. The addition of plays as regulated entertainment will impact on Public Safety within the West End CIZ.

Residents, Councillor Mitchell and the Soho Society

Noise nuisance is caused during the early hours of the morning.

Concerns about the impact of a larger capacity at the premises and the negative effect on the CIZ area

This licence was offered as one of the licences for surrender when Sky Bar and Lounge, Trocadero Hotel, applied for a 3am licence (21/06624/LIPN). On 11th November 2021 the Licensing Sub-Committee granted the 3am. This applicant Trocadero (London) Hotel Ltd stated an application for a midnight restaurant licence would be made to replace the current 3am licence, to date this application has not been submitted.

The Sky Bar decision document makes reference to this agreement with Conditions 65 and 66 stating the following;

65: The applicants contend that this application can be treated as an exception to policy upon the basis of the following:

- (a) Premises Licence 15/02410/LIPT relating to 1-4 Leicester Square (which the first applicant previously offered to surrender when Licence 18/00656/LIPN was granted), together with Licence 18/00656/LIPN, will be surrendered subject to the grant of this application.
- (b) Premises Licence 20/03425/LIPDPS relating to the Rainforest Cafe at 20-24 Shaftesbury Avenue will be surrendered by the first applicant, subject to the grant of the linked application described below (66a) and the satisfaction of works conditions relating to this application and the application described at 66(a);
- (c) The capacity for the Piccadilly Institute stated within Premises Licences 19/09064/LIPN and 21/04481/LIPDPS shall be reduced by 380 as a result of the linked application described below 66b.

66: To support the exception to policy argument, the below linked applications will be submitted following the grant of this licence application:

- (a) New Premises Licence application for the Rainforest Café at 20-24 Shaftesbury Avenue authorising the use of the premises as a restaurant (with a holding bar) until midnight.
- (b) Two minor variation applications to reduce the capacity of the Piccadilly Institute by 380 persons. Conditions 65 and 66 above to be removed upon satisfaction of the works conditions at 62 and 63 above, and to a works condition which will be incorporated in the application referred to at Condition 65 (b).

The residents state that the proposal that the licensable activities provided at the premises shall be ancillary to the main function of the premises operating as a themed entertainment led venue is wrong and the primary function is the sale of alcohol where 'substantial food' will be available and where there will be some entertainment, but it will not be the main focus.

They assert that the application does not fall within the Cinema, Cultural Venues, Live Sporting Premises and Outdoor Spaces Policy but within the Pubs and Bars Policy PB1 and this is an attempt to circumvent this policy.

They are concerned with the proposed condition to allow queuing outside the premises and along Shaftesbury Avenue which is a major thoroughfare and where any obstruction will have a significant and negative impact. A queue will impede the free flow of pedestrians on the highway and will result in people walking in the road placing them risk. They also object to the proposal to allow 35 people to stand outside the premises and smoke on the same grounds.

The Soho Society also object on the grounds this licence will fail to promote the licensing objectives and the increase in cumulative impact in the West End Cumulative Impact Zone.

Policy Considerations

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 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.
2. Whether there is residential accommodation in the proximity of the premises.
3. The proposed hours of the licensable activities and when customers will be permitted to remain on the premises.
4. The existing hours of licensable premises in the vicinity.
5. Whether customers and staff have adequate access to public transport when arriving at and leaving the premises, especially at night.
6. The capacity of the premises.
7. The type of use, recognising that some venues are more likely to impact the licensing objectives than others.
8. 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.

C. For the purpose of Clause B, the Core Hours for this premises use type as defined within this policy are:

Pubs and bars, Fast Food and Music and Dance venues Monday to Thursday: 10am to 11.30pm. Friday and Saturday: 10am to Midnight. Sunday: Midday to 10.30pm. Sundays immediately prior to a bank holiday: Midday to Midnight

Policy PB1

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.
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, and/or,
2. The application and operation of the venue continuing to meet the definition of a Public House or Bar in Clause D.

D. For the purposes of this policy a Public House or Bar is defined as a premises, or part of a premises that's primary use is the sale or supply of alcohol for consumption on those premises and/or for consumption off the premises for consumption outside the venue.

SUBMISSIONS AND REASONS

Ms Emanuela Meloyan outlined the application to the Committee. She advised that representations had been received from the Licensing Authority, residents, Cllr Tim Mitchell and The Soho Society, represented by Mr Brown.

The Committee was informed that the Premises is located within the St James's Ward and the West End Cumulative Impact Area but was not in a Special Consideration Zone. She confirmed that the additional submissions from the Applicant and the Interested Parties had been circulated.

Ms Lisa Sharkey on behalf of the Applicant outlined the application before the Committee. The Application is to relocate the licensed areas from the sub-basement and basement to the ground floor and basement.

Ms Sharkey informed the Committee that the operation is an entertainment led venue as shown in the agenda papers from 135 onwards. It is not just a restaurant and bar but £25K per week is spent on entertainment. The age profile is 25 to 75 and the commitment to this project is shown by way of a 25 year lease and £6 million refurbishment. A surrender condition on the licence, if granted, is inappropriate. The

Applicant would not want to commit to a premises if there was any risk of having that licence surrendered.

In response to questions from the Committee, Ms Sharkey confirmed that the premises would be open for breakfast, lunch and dinner. There is no payment to enter, nor will the Premises operate a ticket only venue.

The Applicant confirmed that there would be merchandise and a bakery on the ground floor and this area will not look like a bar from the street view. Approximately 54 customers will all be seated in that area.

Mr Jackaman for the Licensing Authority confirmed that the premises falls under Westminster's CIZ policy and the application is to be refused unless the Applicant can show exceptional circumstances. Mr Jackman explained that he was concerned that the Premises will have a number of Premises Licences, and this would cause an enforcement issue. The Authority has to be sure which Premises Licence is being operated at the Premises.

The Committee were informed that Mr Jackaman had no concerns about the application as the Premises Licence would be a better licence but he will like a similar 'surrender' condition as requested in the Authority's representations.

Mr Watson of the EH services advised the Committee that a pre-application advice has been conducted and the main concern was noise breakout. A lobby has been proposed and a number of conditions agreed preventing the premises from operating as a nightclub.

Mr Brown, confirmed to the Committee that the new varied licence is a better authority than the existing licence. However, condition 24 fails to reference substantial refreshment which was a requirement in the existing licence. He would like to see that added to condition 24. He also expressed concerns that the Premises Licence for the Sky Lounge references the surrender of this varied licence of granted. The Licensing Sub-Committee's rationale for granting the licence for Sky Bar as an exception to the policy to refuse such applications included the proposal to surrender the licence for basement and sub-basement of 20-24 Shaftesbury Avenue. Any Application to vary the surrender condition on the Sky Bar licence, relies on his clients, the Soho Society being aware of that application. Mr Brown agreed with the Licensing Authority that a suitable surrender condition should be added to his variation if granted.

Mr Brown also identified to the Committee that queuing outside the Premises can cause an issue and therefore he would like to hear how this would be managed.

Councillor Mitchell then addressed the Committee and reminded them that the Premises is located in a CIZ where there is a number of licensed premises and the policy is to refuse unless exceptional circumstances are shown, Since the application has been amended and he is pleased but he maintains his representations because of the volume of licensed premises in the area.

In response to questions from the Committee, Mr Brown requires the varied Premises Licence to be available for surrender when the Sky Bar commences

operation or a condition which references the Shadow Premises Licence previously granted. A condition should be attached to ensure this and Mr Jackaman's proposed condition was suitable for this purpose.

Ms Sharkey for the Applicant informed the Committee that door staff would be on duty and barriers would be used to control smokers. The current Premises Licence does not have a capacity for smokers, but there is a proposed condition restricting smokers to 35. She also stated that a surrender condition on this Premises Licence would not work. The Applicant has no control over the shadow licence as the shadow licence is in the name of the landlord and a condition compelling this operator to surrender the shadow licence would not be enforceable. The landlord will have to return to a Licensing Sub-Committee to offer something with similar hours and capacity when they intend to operate the Sky Bar. This varied licence will not be surrendered. Ms Sharkey agreed with the amended condition 24 as proposed by Mr Burnett, Legal Advisor to the Committee. She rejected the need for substantial food being added to condition 24. This condition is restrictive enough and is specific to Albert Schloss. Ms Sharkey, with the agreement of all parties, agreed to the deletion of condition 23.

Ms Shakey added that the Premises would not be able to trade under previous Premises Licenses or the shadow licence, as the approved plans covered the basement and sub-basement areas. This varied licence seeks to licence the ground floor and basement. Enforcement will therefore not be an issue.

The Committee noted that this variation provided a Premises Licence with terms that promoted the licensing objectives. The proposal is to make the licence specific to a certain type of operation and specific to an operator, detailed in condition 24.

The Committee note that there are no changes to the hours of operation or capacity of the Premises. The application is to add plays, amend the layout and amend the start time for the sale of alcohol to 10.00 am. It is noted that the Applicant has taken a long lease on the Premises and intend to operate an entertainment led venue. The Premises previously traded as a nightclub.

Albert Schloss has no control over the surrender of a shadow licence which is held by the Landlord. It will be the Landlords responsibility to ensure they satisfy the Licensing Authority that appropriate Premises Licenses are surrendered to satisfy the relevant conditions on the Sky Bar licence before the Sky Bar operates.

DECISION

Application GRANTED subject to the following conditions in addition to the Mandatory Conditions applicable to this application

The Committee has determined an application for a grant of a variation of a Premises Licence under the Licensing Act 2003.

Having carefully considered the committee papers, the additional papers and the submissions made by all of the parties orally, **the Committee has determined**, after

taking into account all of the individual circumstances of this particular case and the promotion of the four licensing objectives: -

1. To grant permission for:

a) **Plays (indoors)**

Monday to Sunday: from 09.00 until 03.00

The premises may remain open for licensable activities from the end of permitted hours on New Year's Eve to the start of permitted activities on New Year's Day.

In relation to the morning on which British Summertime begins the terminal hour for licensable activities and opening will be extended by 1 hour.

b) **Alcohol (On and off sales)**

Sundays from 10.00 to 22.30

c) The variation of the approved plans to relocate the licensed areas from the sub-basement and basement to the ground floor and basement.

d) The removal of conditions contained in Annex 1 and 3 of the existing Premises Licence

e) Addition of condition:

2. Relevant Mandatory Conditions to apply

3. Conditions consistent with the operating schedule and agreed with the Applicant:

24. The sale of alcohol shall be ancillary to the premises primary function as an Albert Schloss themed and entertainment led venue operated by Zecol Thomas Limited.

For the purpose of this condition, entertainment led venue means a venue providing performance of plays, other live performances (including DJ) or similar entertainment to an audience.

25. 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.

26. A Challenge 21 scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as driving licence, passport or proof of age card with the PASS Hologram.

27. No open containers of drink shall be allowed outside the premises and there shall be no consumption of drink directly outside the premises.

28. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points shall be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises and shall include the external area immediately outside the premises entrance. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.

29. 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.

30. 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, which shall record the following:

- (a) all crimes reported to the venue
- (b) all ejections of patrons
- (c) any complaints received regarding crime disorder
- (d) any incidents of disorder
- (e) any faults in the CCTV system
- (f) any refusal of the sale of alcohol
- (g) any visit by a relevant authority or emergency service.

31. The premises licence holder shall ensure that the management team register and successfully complete the nationally recognised counter terrorism training product referred to as ACT eLearning package or can demonstrate that the ACT eLearning product has been successfully completed within the preceding 12 months and that all staff employed by or at the premises complete the ACT eLearning within a reasonable period not exceeding 3 months from the day they start their employment.

32. From 21.00 hours on Thursday, Friday and Saturday, a minimum of six SIA licensed door supervisors shall be on duty at the entrance of the premises at all times whilst it is open for business, and they must correctly display their SIA licence(s) when on duty so as to be visible. At all other times, the requirement for SIA licensed door supervisors shall be risk- assessed.

33. The premises may remain open for licensable activities from the end of permitted hours on New Year's Eve to the start of permitted activities on New Year's Day.

34. In relation to the morning on which British Summertime begins the terminal hour for licensable activities and opening shall be extended by 1 hour.

35. 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.

36. Loudspeakers shall not be located in the entrance lobby or outside the premise building.

37. A noise limiter must be fitted to the musical amplification system set at a level determined by and to the satisfaction of an authorised officer of the Environmental health Service, so as to ensure that no noise nuisance is caused to local residents or businesses. The operational panel of the noise limiter shall then be secured by key or password to the satisfaction of officers from the Environmental health Services and access shall only be by persons authorised by the Premises Licence Holder. The limiter shall not be altered without prior agreement with the Environmental Health Service. No alteration or modification to any existing sound system(s) should be effected without prior knowledge of an authorised officer of the Environmental health Service. No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.

38. No fumes, steam or odours shall be emitted from the licensed premises so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated.

39. There shall be no sales of alcohol for consumption 'Off' the premises after 23:00 hours each day.

40. There shall be no sales of hot food or hot drink for consumption off the premises after 23:00 hours each day.

41. There shall be no striptease or nudity, and all persons shall be decently attired at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue licence.

42. Patrons permitted to temporarily leave and then re-enter the premises, e.g., to smoke, shall not be permitted to take drinks or glass containers with them and shall be limited to a maximum of 35 persons at any one time.

43. The premises licence holder shall ensure that any patrons smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.

44. All windows and external doors shall be kept closed after 23:00 hours each day, except for the immediate access and egress of persons.

45. The licence holder shall ensure that any queue to enter the premises which forms outside the premises is orderly and supervised by door staff so as to ensure that there is no public nuisance or obstruction to the public highway.

46. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of the local residents and businesses and leave the area quietly.

47. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the need of local residents and use the area quietly.

48. 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.

49. No collection of waste or recycling materials (including bottle) from the premises shall take place between 23:00 and 07:00 hours on the following day.

50. No deliveries to the premises shall take place between 23:00 and 07:00 hours on the following day.

51. All waste if to be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.

52. The approved arrangements at the premises, including means of escape provisions, emergency warning equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.

53. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.

54. All emergency exit doors shall be available at all material times without the use of a key, code, card, or similar means.

55. All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.

56. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.

57. Curtains and hangings shall be arranged so as not to obstruct emergency safety signs or emergency equipment.

58. The premises shall implement a comprehensive dispersal policy and all relevant staff shall be trained in its implementation. The Policy shall be reviewed regularly and whenever the Licensee becomes aware of issues associated with dispersal.

59. No person on behalf of the premises or on behalf of a person carrying or attempting to carry on a licensable activity shall cause, permit, employ or allow, directly or indirectly, whether on payment or otherwise, any person(s) to importune, solicit or tout members of the public on any public highway within the specified area outlined below for the purpose of bringing customers to the premises. The distribution of leaflets or similar promotional material is also prohibited within the specified area.

[For the purpose of this condition:

'Directly' means - employ, have control of or instruct.

'Indirectly' means - allowing / permitting the service of or through a third party.

'Specified' Area' means - the area encompassed within (insert name of boundary roads].

60. 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.

61. As soon as possible, and in any event within 1 month from the grant of this licence, the premises shall join the local Pubwatch or other local crime reduction scheme approved by the police, and local radio scheme, if available.

62. There shall be no admittance or re-admittance to the premises one hour before the terminal hour for licensable activities, except for patrons permitted to temporarily leave the premises (e.g., to smoke, make a phone call).

63. 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. Door staff and Body worn video shall be in use.

64. (a) An attendant shall be on duty in the male and female toilets areas (within the licensed area) from 21:00 hours daily until the premises are closed to the public.
(b) Attendants shall be equipped with a means of alerting security without delay, e.g, radio, BWV, or personal alarm which shall be kept on their person.

65. Searching of customers shall be based on risk assessment by designated security. Such searching to be supplemented using two functional metal detecting wands and to be covered by premises CCTV.

66. In the event that an assault involving an injury of a sexual nature is committed on the premises (or appears to have been committed), the management shall immediately ensure that:

(a) the Police (and, where appropriate, the London Ambulance Service) are called without delay;

(b) all measures that are reasonably practicable are taken to apprehend any suspects pending the arrival of the Police;

(c) the crime scene is preserved so as to ensure a full forensic investigation to be carried out by the Police; such other measures are taken (as appropriate) to fully protect the safety of all persons on the premises.

67. Where the premises are open for the sale of alcohol for consumption on the premises then from 22:00 hours a personal licence holder shall be on duty.

68. After 22:00, all security engaged outside the entrance to the premises, or supervising or controlling queues outside the premises, shall wear high visibility arm bands and shall display their SIA a licence at all times went on duty. At the commencement of duty, all security personnel must have their names and licence number logged with date and time. Names must be legible and appropriate for a

legal document. The log shall be made available for inspection of the Responsible Authorities upon request and be retained for a minimum of 31 days.

69. SIA door staff shall from midnight until close, monitor Shaftesbury Avenue to encourage the quiet dispersal of customers.

70. Customer facing front of house staff shall receive at least basic training in Conflict Management provided by a qualified source. Training records for such staff shall be kept on the premises and provided to the Responsible Authorities for viewing upon request.

71. No licensable activities shall take place 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.

72. 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. Such capacity shall not exceed 620 persons (excluding staff).

73. Before the premises open to the public, the plans as deposited shall be checked by the Environmental Health Consultation Team to ensure they are an accurate reflection of the premises constructed.

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

**Licensing Sub-Committee
20 April 2023**

3. SOHO ORIGINAL ADULT STORE, 12 BREWER STREET. W1F 0SF

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 6
("The Committee")

Thursday 20 April 2023

Membership: Councillor Maggie Carman (Chair),
Councillor Concia Albert and Councillor Jacqui Wilkinson.

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| Officer Support: | Legal Adviser: | Steve Burnett |
| | Policy Officer: | Daisy Gadd |
| | Committee Officer: | Sarah Craddock |
| | Presenting Officer: | Emanuela Meloyan |

Other Parties: Mr Tom Clark – National Retail Manager on behalf of the Applicant, Timothy Hemming
Tony Miah - City Inspector
Richard Brown (Citizens Advice Westminster) – on behalf of Soho Society

Application for a variation of a Sex Establishment Licence (Sex Shop) Licence for Soho Original Adult Store, 12 Brewer Street, London W1F 0SF - 23/00824/LISEXV

Decision

Premises:

Soho Original Adult Store,
12 Brewer Street,
London
W1F 0SF

Applicant

Timothy Hemmings (ABS Holdings)

Ward

West End, Core CAZ North

Summary of Application

This is an application for the variation of the Sex Establishment Licence (Sex Shop) under para 18 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, (as amended by the Policing and Crime Act 2009) for Soho Original Adult Store, 12 Brewer Street, London, W1F 0SF.

The Applicant is seeking a variation of the General Rules relating to management, conduct etc, in particular to vary the hours of closing from 00.00 to 01.00 am Mon-Sat.

POLICY

Central Activity Zone - CAZ North

Proposed Variation

The application is to vary the opening hours from 10:00 to 00:00 Monday to Saturday to 10:00 to 01:00 Monday to Saturday.

No changes to the Sunday hours have been proposed.

Representations Received

- Tony Miah (Westminster City Inspector)
- Alice Ferguson
- Nick Clemmow
- Marina Tempia (Soho Society)
- Margaret Bloomer (St James's Residences)

Issues raised by Objectors

The premises is likely to attract ASB and shoplifters therefore door supervisors are required from 21.00.

Late licences will increase crime, disorder and nuisance. There is a large number of licensed premises in the area already.

There is no justification to extend the hours past 00.00 as this already exceeds General Rules relating to Management and Conduct which restricts the hours to 23.00.

Policy and Legal Considerations

1. Westminster City Council sex shop licence policy.
2. Regulations made by the Westminster City Council under paragraph 13(1) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Greater London Council (General Powers) Act 1986 prescribing standard conditions for annual licences for sex establishments effective from 27 June 1997 (as amended on 25 October 1999) (The Regulations)
3. Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, (as amended by the Policing and Crime Act 2009)

SUBMISSIONS AND REASONS

The presenting officer, Emanuela Meloyan introduced the application and the parties involved.

Mr Clark on behalf of the Applicant, Mr Hemming explained the Applicant was abroad and that he has been authorised in writing to represent the Applicant and present the application.

Mr Clark advised the Committee that the application is to extend the length of trade on Mondays to Saturdays from 00.00 to 01.00. He explained that across their other 3 stores in London, staff wages have increased 10% but customers are 'down' 30%, since COVID.

The Committee was informed that the Applicant has 21 stores across the UK and all have been regularly inspected during their 50 years of trade. They have never had a renewal refused, nor have any of their licences been revoked.

Mr Clark explained that there is no loud music emanating from the Premises and no noise, anti-social behaviour or crime directly linked to the operation of the Premises. Staff at the Premises are trained to currently remove customers from the Premises at 00.00, but they would like the option to remain open until 01.00, so that customers can remain on the Premises without being rushed.

They use SIA registered door staff but only at certain times when there is an elevated risk such as on match days, Pride Festival etc.

In response to the Members' questions, Mr Clark advised that there was a large mix of passing trade and the Premises gets busy during 23.00 to 00.00. The Premises has to close at 00.00 which means legitimate customers have to leave. There may be 2-3 people in the shop at closing times.

The Premises has been operating since 2019 and they have the closing times on the doors. Staff currently informs customers when it gets close to closing time. Mr Clark stated there is a benefit for customers attending the Premises to shop and get professional advice.

The City Inspector, Mr Miah informed the Committee that he has been a City Inspector of 8 years and is familiar with the area. He has concerns about what happens in Soho after 23.00. The area changes and there is an increase in anti-social behaviour (ASB), the number of drunks, loitering, Padi-cabs and the risk of thefts if the shop remains open for longer.

Mr Miah confirmed that this Premises had not been associated directly with crime and disorder, nuisance or ASB.

Mr Brown on behalf of the Soho Society confirmed there was no issue with the operation of the Premises, the concerns revolve around the request for an additional hour. The standard condition applies and can be varied. The Committee were advised that the process for variation affords them a wide discretion.

Mr Brown on behalf of his client stated that the licence already exceeds the standard closing time of 23.00 by being permitted to close at 00.00. A 01.00 licence is a “step too far”. Mr Brown stated that what works for the business, undermines the control of people in the immediate vicinity and consequently affects residents who will be disturbed by ‘revellers’.

The Soho Society stated the increase by 1 hr will attract people into the area who, at that time will be intoxicated, causing noise and havoc. The area is feeling like a redlight district and women do not feel safe. The Society do not feel that the Applicant has justified the extension of hours.

In response to the legal advisers’ question, Mr Clark stated as a compromise, he would accept the extended hours on Fridays and Saturdays.

In summing up Mr Brown reminded the Committee that they have a wide discretion, and the Regulations can be dispensed off only in special cases. Mr Miah had worked in retail previously and stated that when customers are to leave at closing times, a store should have a process in place to notify customers.

Mr Clark concluded that he does not know what the increase in sales would be, but he is asking for the extension because staff have to ask customers to leave at 00.00 and they would like the option of trading until 01.00.

DECISION

Application GRANTED/REFUSED subject to the following conditions in addition to the Mandatory Conditions applicable to this application

The Committee has determined an application for a grant of a variation of a Sex Establishment Licence (Sex Shop) under para 18 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, (as amended by the Policing and Crime Act 2009).

The Committee noted the applicant sought to trade an extra hour Mondays to Saturday as currently, staff has to exclude customers from the Premises at 00.00 and they would like the option of an additional hour trading. There was no offer of security for the extra time and this may not be practical for the extra hour.

The Committee determined that there were no submissions from Mr Clark which placed the Premises in the category of any special case as required under Part 1, paragraph 2(a) of the Regulations.

Therefore, having carefully considered the committee papers, the additional papers and the submissions made by all of the parties orally, **the Committee has decided**, after taking into account all of the individual circumstances of this particular case to **REFUSE** the application.

The Committee do not find that this is a special case as required under the Regulations made under para 13(1) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.

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

**The Licensing Sub-Committee
20 April 2023**

4. BASEMENT AND GROUND FLOOR, 10 GOLDEN SQUARE W1F 9JA

This application was adjourned by the Applicant.

The Meeting ended at 3.22 pm