



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (6)

MINUTES OF PROCEEDINGS

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

Members Present: Councillors Iman Less and Melvyn Caplan

Apologies for Absence: Councillor Aziz Toki

1. MEMBERSHIP

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

2. DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1. STREET TRADING - ISOLATED PITCH, 938 WELLS STREET

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 6

Thursday 6 July 2023 – ITEM 1

Membership: Councillor Iman Less (Chair) and Councillor Melvyn Caplan

Officer Support	Legal Adviser:	Michael Carson
	Policy Officer:	Aaron Hardy
	Committee Officer:	Jack Robinson-Young
	Presenting Officer:	Sana Butt

Application to De-Designate an Isolated Pitch (938 Wells Street)

Other parties present: Wally Watson (The West End Street Trading Association), Nichola Kerr (The West End Street Trading Association), Robert Munro (Licence holder).

Full Decision

Premises

Isolated Pitch 938 Wells Street

Applicant

Westminster City Council

Cumulative Impact Area

N/A

Ward

N/A

Special Consideration Zone

N/A

Summary of Application

The Sub-Committee has determined a request from Westminster City Council to rescind isolated pitch 938. The licence holder was present at the Sub-Committee.

SUBMISSIONS AND REASONS

Sana Butt presented the Council's application explaining how the requisite notice of the application had been sent to the relevant parties and two responses had been received, one from the Licence holder and one from the West End Street Trading Service, both confirming their support for the application.

The licence holder Mr Robert Munro addressed the Sub-Committee explaining he had no objection to giving up the licence and was happy to take any questions. Mr Wally Watson and Ms Nichola Kerr were also present before Members, from the West End Street Trading Association and confirmed they had no objections. Members of the Sub-Committee had no questions and there was no summing up from any person present before Members.

The Committee Meeting was then paused whilst the Members retired to make their decision.

The Committee Meeting resumed after a few minutes when the Members returned to confirm the Licensing Sub-Committee's decision.

2. NEW EVARISTO CLUB, BASEMENT, 57 GREEK STREET, W1D 3DX

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

Full Review Decision **Thursday 6 July 2022**

Membership: Councillor Iman Less (Chair) and Councillor Melvyn Caplan

Officer Support: Legal Advisor - Horatio Chance
Committee Officer Jack Robinson-Young
Presenting Officer Roxsana Haq

Application for a Review of Premises Licence in respect of Application for a Review of Premise Licence – New Evaristo Club Basement 57 Greek Street London W1D 3DA 23/03232LIREVP

Persons attending the hearing:

Premises Licence Holder

The Premises Licence Holder (PLH) is Ms Patricia Bergonzi and the Designated Premises Supervisor (DPS).

Counsel: Mr Ryan Dowding (Chambers)
Solicitor: Thomas O'Maoileoin (Thomas & Thomas)
Mr Dani Bergonzi: (Assistant Manager)

Mr Adrian Studd: (Independent Licensing Consultant)

Metropolitan Police Service (“MPS”)

PC Reaz Guerra
PC Steve Muldoon
Counsel: Mr Gary Grant (Francis Taylor Buildings)

Environmental Health Service (“EHS”)

Mrs Sally Fabbriatore

Objectors

[894 representations in support of the Premises](#)

The Licensing Authority (“The Applicant”)

James Joyce (City Inspector)

Cumulative Impact Area

West End Cumulative Impact Zone

Ward

West End

Summary of Application

The Sub-Committee has determined an application for a Review of a Premise Licence known as New Evaristo Club Basement 57 Greek Street London W1D 3DA (“The Premises”) under the Licensing Act 2003 (“The Act”). The Premises trades as a jazz themed members club and bar and has held a premises licence since at least 2005.

The New Evaristo Club, formerly known as Tricia’s, is a basement club with only one entrance and exit using the same stairway. The club is located at the north end of Greek Street, W1, near the junction with Soho Square.

The licence holder and **Designated Premises Supervisor** is Ms Patricia Bergonzi under licence number **18/16088/LIPN**. The Premises are within the West End Ward and *West End Cumulative Impact Zone*. **There is a resident count of 69.**

The Premises have had several recent visits from both Westminster Police Licensing and Westminster City Inspectors in relation to residents’ complaints and customer complaints regarding the management and running of the Premises that has led to the undermining of both the Crime and Disorder Licensing Objective and Public Safety Licensing Objective.

Since February 2023 Police Licensing and City Inspectors have tried on several occasions to work with the management of the Premises to ensure compliance with the conditions of their premises licence. Some temporary improvements have been made, however there has been no consistency in following licence conditions.

The management of the club have repeatedly demonstrated a disregard for the importance of compliance with their licence conditions and the promotion of the licensing objectives. As a result, the Licensing Authority have no confidence that this is likely to change in the future. A copy of the application for Review and the supporting documents appears at **Appendix 1**.

A copy of the existing Premises Licence (18/16088/LIPN) is attached to the applicant's supporting documents at **Appendix B**.

These Review proceedings are brought under the licensing objectives on the grounds of Prevention of Crime and Disorder and Public Safety.

Representations

The application received a representation in support of the review from the **Metropolitan Police Service** on 9 June 2023 on the grounds that the Premises are failing to promote the licensing objectives and can be found at **Appendix D.1**.

The application received a representation in support of the Review from the **Environmental Health Service** on 23 May 2023 on the grounds that the Premises are failing to promote the licensing objectives. The representation can be found at **Appendix D.2**.

Environmental Health have also provided a history of noise complaints received in respect of the Premises, a copy of which appears at **Appendix E**.

The Licensing Service have received **894 representations** supporting the Premises, copies of which appear at **Appendix D.3**. It was noted that a number of the representations mistakenly placed themselves in the "support" column of supporting the Review however it is clear from the comments received that they are in support of the Premises and so for the sake of confusion were considered as representations supporting the Premises. It was also noted that a number of the representations had been received from parties not living in the immediate vicinity of the Premises. However, geographical area does not preclude a person from submitting a valid representation under the Act. The Sub-Committee noted the large representations received and gave due consideration to them all.

Further additional papers have been produced by the PLH which contains a written submission, a witness statement from the **PLH and Assistant Manager**.

The Responsible Authorities are seeking to invite the Committee to revoke the Premises Licence despite the PLH's contention that revocation/suspension would be disproportionate having regard to the recent changes that have been implemented by the Premises.

Activities and Hours

The Premises operates as a private members club and currently benefits from the following: -

Sale by Retail of Alcohol

Monday to Saturday: 11:00 to 01:00

Sunday: 12:00 to 01:00

Opening Hours

Monday to Sunday: 11:00 to 01:30

Hearing:

1. Mr Horatio Chance the Legal Advisor to the Sub-Committee introduced the Members of the Sub-Committee and dealt with the nomination of Chair as Councillor Aziz Toki who was scheduled to sit was unavailable. Councillor Caplan agreed to nominate Councillor Less as a Chair, and this was accepted by her. Councillor Less was appointed as Chair and the hearing was quorate with two Licensing Sub-Committee Members. The Sub-Committee then had to consider a request that had been made prior to the hearing by a supporter of the Premises to adjourn the hearing as they were unable to attend. The Sub-Committee obtained the views from all of the parties in attendance who were unanimous in agreeing that the hearing should proceed. The Sub-Committee retired briefly to consider the request. It reconvened shortly thereafter and decided that it was in the public interest to proceed with the hearing due to the fact that all of the parties were present and there was no real justification for a delay of the review proceedings. The Sub-Committee noted that there were many hundreds of representations in support of the Premises so delaying the matter would not be in the public interest under the hearing regulations.
2. The Chair advised that the submissions from all Parties had been thoroughly read by the Sub-Committee and that the time limits would not be strictly observed so each party had sufficient time to present their case.
3. The Chair commented that the Review was considered as a serious matter and that the Sub-Committee would be required to balance the commercial needs of the PLH against the Licensing Authority having regard to the requirements of the City Council's Statement of Licensing Policy, Home Office Guidance issued under section 182 of the Act and the promotion of the licensing objectives.
4. Ms Roxsana Haq, Presenting Officer, outlined the application to the Sub-Committee. She advised that this was an application for a review of an existing Premises Licence which had been submitted by the Licensing Authority on the grounds of the Prevention of Crime and Disorder and Public Safety against the PLH Ms Patricia Bergonzi who was also the registered DPS. She advised that both the EHS and MPS supported the Review and that some 894 representations in support of the Premises had been received.

5. The Premises are situated in the West End Ward and located in the West End Cumulative Impact Zone. There were additional representations submitted by the PLH (various witness statements and a detailed written Submission) and these were circulated to all parties and considered by the Sub-Committee together with a set of additional conditions.

Submissions by the Licensing Authority

6. Mr Joyce appearing on behalf of the Licensing Authority addressed the Sub-Committee. Mr Joyce stated that there were two areas of concern regarding the Premises which led to the review proceedings and that was the breaches of both the Prevention of Crime and Disorder and Public Safety licensing objectives. Mr Joyce stated that he visited the Premises on 11 February 2023 following a complaint by a local resident. He raised concerns with the PLH about the management of the Premises, but only minor progress was made, and the issues remained present due to the lack of management.
7. Mr Joyce said that it was the visit to the Premises by City Inspectors and the MPS on the 22 April 2023 which gave him no choice but to start the review process. He advised that the attitude of the DPS towards the licensing service was poor along with the overall management of the Premises.
8. Mr Joyce advised that on his visit to the Premises on the 11 February 2023 he was shocked at how busy the basement was. He was of the opinion that there was a serious breach of public safety. He said that he counted the number of patrons which was 76 despite Condition 11 on the licence stating the capacity to be 60. He said the Premises was fully aware they were overcrowded.
9. Mr Joyce said that the breaches included no CCTV footage available when requested to provide the same, no visitor entry book, and no live music authorisation after 23:00 as the Premises was not licensed to provide Live amplified Music after this time. He said that the PLH and management seemed completely unaware of the licensing conditions and what they meant.
10. Mr Joyce said that an urgent meeting was agreed with the Premises scheduled to take place on the 23 February at 14.00. He said that the PLH was advised to bring her legal representative and her Son Dani Bergonzi the Assistant Manager of the Premises. He said that CCTV from the last 31 days was requested together with authorisation for live music after 23.00 along with the visitor and membership book. The meeting was cancelled and a new one arranged for 9 March.
11. Mr Joyce said that after 26 days he was expecting some improvements. There was full lighting in the basement but a failure to display the current licence on the Premises and the CCTV showed incorrect timings.

12. Mr Joyce said that the visit to the Premises on the 14 March was equally disappointing. He said that he walked into the basement unchallenged. The current PLH was on the Premises but there was no CCTV available to download.
13. The meeting scheduled for the 16 March was cancelled due to the rail strike.
14. In relation to the meeting at City Hall on the 21 March he advised that the PLH was not present. He said that assurances were given by the Premises that licensing matters will be taken seriously. A new meeting was therefore planned.
15. Mr Joyce said that a visit to the Premises was undertaken on the 26 March. He said that he walked into the basement unchallenged and that the membership and visitor books only had basic entries which did not meet even the proper requirements for the recording of such information.
16. He said that it was agreed that a new CCTV system would be put in place by 6 April at the latest. He said that in respect of the March visit Live music was playing after 23.00 and the PLH was drinking at the bar.
17. Mr Joyce confirmed the following: -
 - The section 19 Notice was breached, and the Police Licensing Team were informed accordingly.
 - On the 14 April when the Premises was visited the CCTV footage was requested, however this was not given immediately. The USB was checked but it does not work.
 - On the 22 April 2023 the Police and City Inspectors visited the Premises to investigate a drink spiking incident. This incident was not recorded in the incident logbook neither were the refusal of sales of alcohol. In relation to the CCTV footage this area was blocked.
 - It was felt that additional licensing conditions will not be satisfactory as the current conditions are not being complied with.
 - This review is about crime and disorder and public safety concerns, and my conclusion is that the Premises Licence should be revoked.
18. In answer to questions from the Sub-Committee Mr Joyce advised that the Premises had not had a follow up inspection since the last visit on the 22 April 2023. He advised that that the Premises and current management are unable to follow their licensing conditions as well as membership conditions. He expressed the view that a change of DPS may help the situation, but it will not solve the immediate problems.

In summing up for the Licensing Authority

19. Mr Joyce stated that he was surprised the new DPS was not present to appraise the Sub-Committee of the new arrangements going forward as well as answer questions regarding the future management of the Premises. He said that 175 days on and the PLH are still not following licensing conditions, so I propose revocation today by the Sub-Committee.

Submissions by the Environmental Health Service

20. Mrs Sally Fabbricatore appearing on behalf of EHS addressed the Sub-Committee. She advised that the EHS supported the review on public safety grounds. Mrs Fabbricatore advised that there had been a breach of the capacity condition on the Premises Licence namely, Condition 11.
21. Mrs Fabbricatore said that EHS welcomed the improved steps that have been outlined in the additional papers by the PLH and these steps should be considered by the Sub-Committee when deciding what action to take.

In summing up for the Environmental Health Service

22. Mrs Fabbricatore had no further comments to make.

Submissions by the Metropolitan Police Service

23. Mr Grant appearing on behalf of the MPS addressed the Sub-Committee. Mr Grant advised that the MPS shared the same concerns of the Licensing Authority. He said that the Premises had adopted very poor management practices which has led to the failure to comply with the licence conditions.
24. Mr Grant said that the MPS agree that robust action is required to protect the patrons of the Premises and the local community. He said that more promises and conditions will not suffice due to the extent of breaches which show a complete disregard of compliance with conditions. There needs to be some sanction to deter the PLH and other operators that hold licences within the West End Cumulative Impact Zone that they have a duty to comply with their licence conditions. The MPS is asking to revoke or if the Sub-Committee are not minded doing this then to suspend the licence at the very least.
25. Mr Grant said that popularity and the history of the Premises is not a reason to not follow conditions. Mr Grant advised that the GBH incident which took place just outside the door of the Premises on the 23 December 2021. He said that a man was hit on the head with a glass bottle as he left the Premises. The MPS tried to get hold of the CCTV footage.
26. Mr Grant explained that getting the CCTV footage within the first few hours tends to be essential to a successful investigation. He said that the Premises were requested to provide the CCTV, but a member of staff said it was only kept for 7 days which in fact turned out to be incorrect.
27. Mr Grant went onto state that the chasing of the CCTV, showed an inability on the part of the Premises to download and hand over the footage in a timely manner which eventually took the 21 days to provide the footage. Mr Grant said that this was a concrete example for a blatant disregard of public safety thereby undermining the Public Safety Licensing Objective.
28. Mr Grant advised that in relation to the alleged police investigation of drink spiking on the 22 April 2023 the MPS attempted to get CCTV and again there

was an inability on the Premises to download it without delay. This is a requirement of conditions 21 and 22 on the Premises Licence and as a result this obstructed Police to investigate crime and disorder.

29. He said save for the GBH incident this is not a Premises that has a high volume of crime against it. This is the only recent incident and the reason why the MPS did not instigate the review.
30. Mr Grant said that the Premises is a basement premises so therefore the means of escape is limited and the MPS are concerned about over capacity. In relation to public safety the fire extinguishers are out of date which is noted in the evidence. On a serious note, he said that compliance in this regard is a matter of life and death.
31. Mr Grant stated that the Premises has been given every opportunity to put things right. He explained that the Responsible Authorities have tried to get voluntary co-operation, but this approach has failed. Concrete evidence is required rather than promises and words to change the culture of the running of the Premises.
32. Mr Grant referred to the various assurances and undertakings given by Mr O'Maoileoin at the MPS meetings on 9 March and 21 March on the basis that the Premises understood the licensing objectives when it came to the running of the Premises. On 9 March it was accepted errors and undertook on behalf of the Premises to put things right, however, further breaches were found to exist at the next visit.
33. Mr Grant said that on the 21 March further assurances were given and said they were taking things seriously, however again on the 26 March further breaches were found. Mr Grant said that these instances were indicative of the Premises not taking the management responsibilities seriously and that a pattern was emerging.
34. Mr Grant said that a change in management was drastically needed and that meant the removal of the DPS Patricia Bergonzi from the day-to-day management/control of the Premises. Also, a stern deterrent measure should be taken by the Sub-Committee to prevent this sort of behaviour.
35. Mr Grant said that the Premises has not volunteered to close for a few weeks/months to put the issues right. Submissions have been made that there will be a new DPS who is not present today. Mr Grant said the MPS have concerns that the new DPS will not be involved and will simply leave the running of the Premises to the family.
36. In terms of the new proposed additional conditions that have been circulated he confirmed the following:
 - Condition 1 dealing with a personal licence holder being present on the Premises is agreed.

- Condition 2 dealing with SIA - we suggest that the words “at all times Licensing activities are being carried out to be inserted after the words “at the premises” on the first line.
- Condition 4 dealing with the Premises ability to admit guests. The Premises has only ever been a private members club and condition says it includes ‘guests of the management’. The Premises are exploiting that caveat to let anyone in. The MPS would suggest a maximum of 6 guests per day are let in’ or delete the words “and guests of the management “altogether to prevent the free for all.
- Condition 5 dealing with an ID scanning this is agreed.

37. In answer to questions from the Sub-Committee regarding conditions to be considered PC Muldoon said that potentially both the DPS and Assistant Manager should be excluded as part of the management staff as they have been involved since the start.

38. Mr Grant said that we recognise revocation should be properly considered. We can envisage that this is the first review of the licence. The MPS would suggest a suspension of the licence for a few weeks together with the removal of the DPS, and the imposition of additional conditions. Mr Grant said that the MPS fear that a new DPS will be employed but will be rarely at the Premises in practice.

39. The Sub-Committee queried why 6 guests and Mr Grant responded by saying this was 10% of the capacity. In terms of the suspension the MPS contends that the suspension should be weeks rather than months. This should act as a deterrent giving a breathing space to get a new DPS in. This time will also allow the Premises to continue with staff training. Mr Grant said that 2-3 weeks would be appropriate.

In summing up for the Metropolitan Police Service

40. Mr Grant said the following matters should be considered: -

- We ask The Sub-Committee to give proper consideration to revocation as a remedy.
- If not revocation, then a suspension of sufficient time and the addition of further conditions.
- Guests of management condition. Model Condition 88 does not include an exception of guests of management. This case highlights why it can be easily exploited. The wording in Condition 9 should either be deleted, or a restriction put on numbers.
- The Licence holder says 20 guest which equate to 1/3 of the capacity.
- The Sub-Committee’s attention is drawn to page 36 of the additional pack which shows how easy it is for people to be members of the management.
- We don’t say that the involvement of Patricia Begonzi and Dani Bergonzi should cease but that they are not to be involved in the day to day running of the Premises.

- The Premises is a family run business so any new DPS will naturally defer to the family that run it. Mr Bergonzi has been involved throughout when there have been problems.
- The Application for review is a direct consequence of Mr Bergonzi's ability to have been present in meetings from January - April 23. It is the MPS contention that Mr Bergonzi is at the heart of the problems the Premises has been facing.

Submissions by the Premises Licence Holder

41. Mr Dowding Counsel appearing on behalf of the PLH addressed the Sub-Committee. He advised that the DPS Patricia Bergonzi was present at today's hearing, however, Dani Bergonzi takes a more active role with the Premises. He said that the recommendation is for Ms Bergonzi to be removed as DPS. She has been involved in the Premises for decades and before today, noting that the Premises has not been reviewed.
42. Mr Dowding confirmed that Dani Bergonzi had provided a witness statement (page 3-17) and in that witness statement addresses the Premises position by outlining the measures that have been taken and proposals to take place.
43. Mr Dowding stated that Adrian Studd (Expert) carried out a secret shopper covert visit to the Premises (pages 33-38 of the agenda report).
44. In terms of the new proposed DPS, Gavin he had personal issues and is unable to attend today. A variation application has yet to be submitted to the licensing authority by the Premises.
45. Mr Dowding stated that the Premises is one of the most beloved venues reflected in the hundreds of representations in support of the Premises. Referring to the anonymous letter regarding drug use at the Premises he said the MPS have not suggested this. Mr Dowding stated that factually it has been confirmed in those representations of support that people have been coming to the Premises for years and that they feel safe and there is no evidence of drug use.
46. Mr Dowding explained what measures are appropriate to uphold the licensing objectives. He said one of our primary submissions is that there have been 75 days since the last visit and what has been done since? He expanded on this statement and said that the Premises wishes to apologise for the issues during those 75 days. The breaches were unacceptable and the application for review is not disputed in any of the circumstances.
47. Mr Dowding advised that there the Premises does not have a history which is 'associated with crime and disorder' and from recent memory there has only been one incident. The PLH accepts that the CCTV footage was handed over late as has been mentioned at length in the evidence.

48. Mr Dowding said that there have been no previous reviews in the same connection. The capacity had been raised as an issue following one of the visits and not all the visits to the Premises. There have been no subsequent visits.
49. Mr Dowding said that it is wrong to state that the Premise is not incapable of complying with conditions, it was just too slow to take steps. The new measures that have been introduced sooner would have been deemed suitable to comply with conditions.
50. In terms of the new measures the Premises has undertaken these are as follows:
- - A new ID scanner has been introduced at the cost of £4,000 to the Premises. If an incident occurred, then the MPS can identify the patrons. This was not mentioned or suggested at any stage, this is commitment by the Premises.
 - The CCTV has had a full upgrade which can be downloaded on to a mobile phone.
 - The correct copies of the Premise Licence are now displayed at the Premises.
 - Training of staff has been undertaken relating to the Guest Membership book and incident log and how to use them.
 - SIA trained security staff – this is not currently a condition on the licence. 18.30 onwards every day of the week
 - All front of house staff has been given refresher training.
 - Electrical and fire extinguishers have now been tested.
 - All staff reminded are reminded of the no smoking policy inside the Premises.
 - Covert visits by an expert.
51. Mr Dowding said that in terms of the conditions the Premises has always had the ability to have guests of the management in accordance with Condition 9 on the Premises Licence, so no breaches have occurred.
52. Mr Dowding said that revocation is inappropriate and disproportionate. Regarding a possible suspension of 3 months this would cause financial hardship and effectively end the Premises ability to trade. Mr Dowding said that he notes Mr Grants suggestion of a few weeks' suspension. He said that he felt suspension is disproportionate and the role of the Sub-Committee is not to punish the Premises.
53. Mr Dowding said that when looking at deterrence the s.182 Home Office Guidance urges the Sub-Committee to look at the financial implications the Premises could face as a result of a suspension.
54. Mr Dowding said that the Premise is fully aware and has been deterred by this review process. If there are any further issues, the Premises are aware they will be brought back to another Sub-Committee which may not be as lenient.
55. The Sub-Committee welcomed the upgraded CCTV system however considered this should have been in place, anyway, noting that 75 days where nothing had

been done and that 146 days had elapsed for all these new measures to be put into place by the PLH.

56. Mr Dowding said that the Premises fully accepts responsibility. It could have closed however there were financial impacts for it not doing so. Mr Dowding said that he only raised the 75 days to say within this time the Premises has tried to put measures in place.
57. Mr Studd addressed the Sub-Committee. He confirmed that he had visited the Premises just six days ago and had no previous dealings with the Premises. He said that the Premises was unaware of his presence. Mr Studd said that in terms of public safety he did find on the night that everyone was stopped by the door supervisor. He said that the recording of the numbers of people entering the Premises was being carried out as people were going in. He advised that Door supervisors clicked him out when he left the Premises.
58. He said at the time of his visit there were roughly 45 people inside and the Premises was not overcrowded. Regarding the conditions he said these are good.
59. The Sub-Committee was directed to the floor plan on page 45 of the agenda report. To assist the Sub-Committee in its understanding of the layout of the Premises the following matters were confirmed by Danny Bergonzi:
 - New CCTV cameras are in the courtyard, above the front door and they cover the whole bar.
 - The Member's logbook is kept by the scanners.
 - There are single filing queues on the stairs with no more than 6.
 - Plans are in place to digitalise all members records.
60. The Sub-Committee noted that an application had not yet been made for a new DPS and that the person who is known as "Gavin" was not present at today's hearing to answer questions as to how the Premises was to be managed when it came to the compliance of conditions and the promotion of the licensing objectives.
61. The Sub-Committee was informed by Mr O'Maoileoin that initially someone was selected, and this person was not appropriate. He advised there is a 21-day period when the application will be made. The Premises confirmed that currently it is Mr Gray Venamore who used to be an Inspector, so we say he is a prime person to be a DPS.
62. The Sub-Committee was advised that an application is to be made imminently due to the search of the right person. Mr O'Maoileoin stated that the Premises did not want to submit an application to be seen as "jumping the gun". The thought process would be that the new DPS would be here today to answer any questions however he could not be here for personal reasons.

63. The Sub-Committee queried why these issues happened? Dani Bergonzi advised that we lost someone close in the family and that has hit us hard. He said being here today has made me focus back on the Premises. He said that he had always been very strict on the processes, especially the capacity. We have brought in new doorman with an assistant who counts the patrons and manages the membership books.
64. In answer to questions from the Sub-Committee Mr Bergonzi stated that the DPS is a local person who will be at the Premises every day. In terms of the number of people working at the Premises there will be 11 staff members. The Band can be 3-5, 2x doormen, 2 bar staff, scanners staff, 1x bar back and all personnel are trained. Mr Bergonzi emphasised that the Premises operates as a private members club, and you cannot just walk in.
65. Mr Dowding stated that Guests of the management were not currently limited, and this was permitted by the licence.
66. The Legal Advisor to the Sub-Committee requested Mr Bergonzi to highlight what a typical day meant for the Premises. Mr Bergonzi stated that this included checking smoking areas, sweep ups, stock checks including the checking of the cellar for stock that is needed, cleaning glasses, making sure staff are in, open doors and the signing in of guests when they arrive. He said that he was on hand to help the bar staff. Mr Bergonzi confirmed that there was sufficient staff to run the Premises.
67. In relation to the proposed new DPS person, Mr Bergonzi said that he sought advice from the proposed DPS, and they have knowledge of licensing and experience of running a premises under the Act.
68. At this point Mr Grant interjected and stated that the proposed DPS, Mr Venables was a former employee of Westminster and acts as a licensing consultant of premises. He said that Mr Venables operates currently as a manager of Sunset strip SEV. Mr Grant said that the MPS did not believe he is going to be able devote enough attention to this Premises.
69. Mr Bergonzi stated that training is ongoing and that every Monday a staff briefing will happen. The original training was done by Mr O'Maoileoin who said that he personally sat down with staff and went through all the licence conditions, and we would aim to get more personal licences on the course. He said there have been a further two added. The PLH would accept a condition on the basis that formal re-training is to be given every 6 months.
70. Mr Bergonzi confirmed that all members of staff know how to use and operate the CCTV system. He then went onto explain the membership requirements to the Sub-Committee. A person will turn up, usually by word of mouth and they will enter as a guest of the management, and we see how they behave as a person. We then discuss at the end of the evening and a decision is given 24 hours later.

71. In answers to questions from the Sub-Committee Mr Dowding advised that excluding Patricia Bergonzi from the day-to-day management of the Premises would not be proportionate to exclude her as a whole from the Premises. Mr Dowding queried whether she could assist more generally and not necessarily within the current management structure.

72. The Sub-Committee took a short adjournment and the matter reconvened.

73. Mr Dowding said that he had taken instructions from the Premises and advised that a week suspension would be difficult but manageable. Two weeks would shut down the Premises. However, it was appreciated that a suspension would give the Premises time to identify a new DPS and make the relevant application. For a DPS.

74. Mr Dowding said that in terms of the additional proposed Conditions these were agreed. However, condition 4 should remain at 20 guests. Condition 4 was to dovetail into Condition 9 on the premises Licence. There was to be retraining every 6 months and this was to be conditioned accordingly.

75. The Sub-Committee noted the Police proposed conditions which are set out below: -

- Patricia Bergonzi to be removed as DPS.
- CCTV provision (21 and 22) - shall cover the stage area as there is suspicions that there is entertainment after 23.00.
- There should be sign off the MPS - minimum requirements of the MPS.
- The Membership database should be on a digital system.
- Patricia Bergonzi and Danny Bergonzi are not to be involved in the day-to-day management of the Premises.
- The current DPS must be in day to day running of the Premises.

76. In response to paragraph 75 above Mr Dowding confirmed the following: -

- The DPS does not need to be conditioned, this is what we are going to do.
- We feel Patricia Bergonzi should still be allowed to play a role in the Premises.
- Danny Bergonzi should be allowed to continue with the management as he knows the premises inside and out. He knows the licensing conditions and is appropriate to take any measures forward.
- All other conditions are agreed.

77. At this point Mr Joyce queried Mr Studd's visit to the Premises. He asked how Mr Studd gained entrance to the Premises. He also remained firmly of the opinion that any new conditions are likely to confuse the management and that they do not have any confidence in the management of the Premises by the DPS.

78. Mr Studd advised that he was admitted as a guest of the management. He said that he arrived outside the Premises, spoke to the Door supervisor who told him that it was a members only club. He explained there was a band playing and

there was an entry fee. At this point he was assessing my behaviour. I went in and met the man who was working on the ID scanner. He scanned my ID, I filled out a book with my name and address.

79. The Legal Advisor read out the proposed wording for a condition relating to a digital Member data base and this was accepted by all parties.

In summing up for the Premises Licence Holder

80. Mr Dowding in summing up stated: -

- The changes we are proposing to make are robust and concrete.
- Suspension may be a sensible way forward for the Premises, but sufficient time must be given to implement the new measures.
- Model Condition 88 - 'guests of management' are not a unique or exceptional feature as such. Model Condition 96 mentions this wording so there is flexibility. We have proposed our condition on this wording.
- 6 guests is too lower a figure and 20 is acceptable.
- This is a Premises that runs mostly from word of mouth. There are quieter nights that won't be near the maximum capacity.
- We have said from the outset that she will be removed from role as DPS. We think this is enough, but management is down to the Sub-Committee to decide.
- Mr Bergonzi has a willingness to learn and listen. Mr Joyce did not mention an ID scanner, this was Danny's proposal. He knows the Premises inside and out and will be able to provide assistance to the DPS.

81. The Sub-Committee noted the submissions from the Licensing Authority, the MPS, EHS, the various hundreds of representations in support of the Premises and adjourned the hearing to make its determination and resumed the hearing to announce its Decision and to summarise its reasons which are more fully set out below.

The Sub-Committee's Decision and Reasons

Review Decision

82. Being mindful of the Home Office Guidance, the Act and having carefully considered the review application, the evidence and the representations made by all the parties, both orally and in writing, the Sub-Committee decided that it was, appropriate and proportionate in order to promote the licensing objectives, in particular the prevention of public nuisance and prevention of crime and disorder licensing objectives, to take the following steps: -

- That the PLH be *Warned*.
- That the Premises Licence is hereby suspended for a period of 14 days. ***The Sub-Committee realises that when it announced its decision orally following the hearing to the parties it stated that the suspension was with "immediate effect" however with the***

operation of section 52 (11) under the Act this is not possible because the 14-day suspension will not take effect until the Full Decision has been served and the 21-day appeal period has expired. The Sub-Committee therefore apologises to the parties for the inadvertent error caused.

- That the current Designated Premises Supervisor Ms Patricia Bergonzi is hereby removed from the Premises Licence.
- That the conditions on the Premises Licence are modified to take account of new additional conditions discussed and agreed with the parties during the hearing relating to SIA door staff, arrangements with the Police, Guests of the Management, a Digital Members Data Base, ID Scanning and the training of staff including refresher training every six months and now imposed on the Premises Licence as specified in the conditions below.
- Condition 9 on the Premises Licence is hereby varied so that the words “in accordance with renumbered condition 105 “are inserted after the words “and guests of the management”.
- Condition 21 on the Premises Licence is hereby varied so that the words “as well as the stage” are inserted after the words “all entry and exit points will be covered” on the third and fourth lines.
- The Sub-Committee did not consider it appropriate to add a condition excluding Patricia Bergonzi or Dani Bergonzi from the daily management of the Premises.

Reasons

The Sub-Committee recognised that the proceedings set out in the Act for reviewing Premises Licences represent a key protection for the community when problems associated with crime and disorder, public safety, public nuisance, or the protection of children from harm are occurring. The Act provides the Licensing Authority with a range of powers on determining a review that it may exercise where it considers them appropriate for the promotion of the licensing objectives. In deciding which of these powers to invoke, the Licensing Authority should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response. Each case has to be determined on its own merits, on the balance of probabilities.

83. The Sub-Committee was mindful that the Licensing Authority had reasonable and sufficient grounds for seeking this review.
84. The Sub-Committee in its determination of the matter had regard to Paragraphs 11.1-11.28 on pages 89 to 94 of the Home Office Guidance when considering the review application as well as paragraphs 2.15 to 2.21 on pages 9 and 10 when it came to the issue of the Prevention of Public Nuisance licensing objective and Paragraphs 2.1-2.6 on pages 6 and 7 when it came to the issue of the Prevention of Crime and Disorder licensing objective. Consideration was also given to Appendix 4 on Pages 138 and 139 of the City Council’s Statement of Licensing Policy on Reviews for licensed premises.

85. Due Regard was also given to the Council's Section 149 Public Sector Equality Duty under the Equality Act 2010 when considering the matter along with Article 1 of the First Protocol (Protection of Property) and Article 8 (Right to respect for family and private life) under the Human Rights Act 1998.
86. The Sub-Committee considers that a review of a Premises Licence is a serious matter and expects Premise Licence Holders to comply with their licence conditions and promote the licensing objectives. In this case neither had happened which led to the Review application by the Licensing Authority.
87. The purpose of today's hearing is to establish what appropriate steps should be taken for the promotion of the licensing objectives.
88. It was apparent to the Sub-Committee that the Licence Holder was struggling to run and manage the Premises in a responsible way that would help promote the licensing objectives. It was the Sub-Committee's considered view that the PLH and Assistant Manager had taken their eye off the ball when it came to the daily management of the Premises which led to the Licensing Authority losing trust and confidence in the PLH's ability to manage the Premises effectively and this view was endorsed also by the MPS who gave evidence in relation to the bottling incident which took place outside of the door of the Premises in 2021 but started originally inside the Premises undermining the crime and disorder licensing objective.
89. The Sub-Committee noted and was sympathetic to the fact that the PLH had suffered family loss in recent years, however, the role of a responsible licence holder comes with it a professional duty to ensure that the Premises are managed well and not compromised.
90. The Sub-Committee noted that despite being called in by the Licensing Authority on several occasions to attend meetings and visits to the Premises and promises to turn matters around the PLH had shown a lackadaisical approach when it came to the management of the Premises and the promotion of the licensing objectives.
91. The Sub-Committee took a dim view of the PLH's unwillingness to engage effectively with the Licensing Authority when it came to time that was wasted by officers organising meetings particularly when officers time is valuable and could be better spent focused and dealing with other licensing matters.
92. The Sub-Committee was disappointed that the proposed DPS was not in attendance at the hearing to answer questions as this would have given comfort and reassurance that the Premises would be well managed going forward.

93. The Sub-Committee sees the role of the DPS as an integral part of the Premises being able to function efficiently and effectively that will promote the licensing objectives as well as instilling confidence in the running of the Premises by those who are in charge.
94. The Sub-Committee appreciates that the Premises is a popular venue with its members within Soho and the level of support is to be commended. However, the legal test under section 4 of the Act is that the Premises are to ensure the promotion of the licensing objectives.
95. The Sub-Committee took the view that early intervention was required by the Premises if the PLH was struggling she should have obtained the appropriate professional help rather than bury her head in the sand and neglect her duties which explains the non-compliance of the CCTV, increase in capacity, recording of members and keeping the log incident book fully updated which ultimately led to the review application by the Licensing Authority together with the supporting view of the MPS and EHS before matters got out of control.
96. The Sub-Committee was disappointed with the PLH that there were repeated breaches of the licence and promises by the management despite it having a comprehensive list of conditions. It took the review process for the PLH to act seriously and then introduce new measures which are all welcome but as a responsible operator these should have already been in place.
97. The Sub-Committee would suggest that the PLH seeks guidance from the Licensing Authority when it is in any doubt regarding the running of the Premises and compliance with its licence conditions.
98. The Sub-Committee, therefore, having carefully considered the application for the full review and the evidence presented by the Licensing Authority, the EHS, MPS and the supporting representations both verbally and in writing, the Sub-Committee concluded Licensing Objectives namely Prevention of Crime and Disorder and Public Safety were not promoted and that it would be appropriate and proportionate to take the action as detailed above in paragraph 82 to promote the licensing objectives.
99. The Sub-Committee considered each action available to them under its statutory powers:
 - a) It was not appropriate to take no action as the Sub-Committee notes that it must carry out its duties with a view to promoting the licensing objectives, which includes the prevention of crime and disorder and public safety.
 - b) The Sub-Committee did reserve the right to impose Conditions on the Premises Licence, and imposed the additional conditions as specified below. It is hoped that with the new approach in management of the Premises the appointment of a new DPS the PLH will now comply with the conditions and promote the licensing objectives.

100. In all the circumstances of the case and having carefully considered the application for the full review and the evidence presented by all the parties, both verbally and in writing, the Sub-Committee concluded as a last resort it was appropriate and proportionate to **Suspend for 14 days** the Licence together with the other measures referred to in Paragraph 82 above to promote the licensing objectives.

Conditions imposed by the Committee after a hearing with agreement of the Premises Licence Holder

101. There shall be a personal licence holder on duty on the premises at all times when the premises are authorised to sell alcohol.
102. A minimum of 1 SIA licensed door supervisor shall be on duty at the premises at all times licensable activities are being carried out.
103. All SIA licensable door supervisors must correctly display their SIA licence(s) when on duty so as to be visible.
104. In the event that a serious assault is committed on the premises (or appears to have been committed) the management will 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 enable a full forensic investigation to be carried out by the Police; and
 - (d) Such other measures are taken (as appropriate) to fully protect the safety of all persons present on the premises.
105. The ability of the Premises to admit guests of the management is subject to the following:
- (a) There shall be no more than **10 guests of the management** admitted on any given night whilst the Premises is open and licensable activities are taking place;
 - (b) The DPS shall approve in writing the names of a maximum of three members of staff other than him/herself who are authorised to sign such guests;
 - (c) A legible record (the “signing in sheet” which may be stored in hard copy, or digitally of those guest names shall be retained on the premises for inspection by the licensing authority and Police for a minimum of 31 days. The name of the DPS approved member of staff authorising admission will also be recorded.
 - (d) Guests shall be required to produce some form of ID such as a bank card (or emailed electronic photo ID) and ID scan entry with a live photo shall be created; and

- (e) Where there are appropriate reasons for a guest not to be able to produce ID and be subject to ID scan, the Approved Manager may still permit entry. In such circumstances he or she shall also record the reasons for this in the signing in sheet.
106. All customers entering the premises shall have their ID scanned on entry, save for when a biometric scanning system is in place. The details recorded shall include a live facial image capture of the customer and capture the photographic identification produced. The details recorded by the ID scanner system shall be made available to the Police and the Local Authority upon request.
107. Notwithstanding the general ID scan requirements, patrons who are attending a pre-booked private event at the Premises do not need to have their ID scanned on entry and instead a written guest list shall be held at reception for the event and will be retained for 31 days after the event for inspection by the Police and Licensing Authority on request.
108. The Premises Licence Holder shall ensure that staff are fully trained in all aspects of alcohol management under the Licensing Act 2003 and that refresher training is to be given to all staff at a minimum of six-monthly intervals.
109. The Premises Licence Holder shall ensure that a Digital Data Base recording the total number of members and guests attending the Premises is kept fully updated at all times and is made readily available upon request for immediate inspection by the Responsible Authorities.

The determination of the Decision does not have effect until the end of the period given for appealing against the reasoned decision, or if the decision is appealed against, until the appeal is concluded.

The Applicant for the Review, the Premises Licence Holder and any Party who has made a relevant representation to the review application may appeal against this Decision to Westminster Magistrates Court, 181 Marylebone Road, London, NW1 5BR, within 21 days of receiving this Decision.

The Licensing Sub-Committee
6 July 2023

The Meeting ended at 4.00 pm