



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (2)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (2)** held on **Wednesday 6th December, 2023**, This is a Virtual Teams meeting.

Members Present: Councillors Maggie Carman (Chair) and Caroline Sargent

1. MEMBERSHIP

1.1 It was noted that there were no membership changes.

2. DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1. PACHAMAMA BAR + KITCHEN, 18 THAYER STREET, W1U 3JY: 10.00 TO 11.00AM

WCC LICENSING SUB-COMMITTEE NO. 2 ("The Committee")

Thursday 6 December 2023

Membership: Councillor Maggie Carman (Chair) and Councillor Caroline Sargent

Officer Support Legal Advisor: Michael Feeney
Policy Officer: Kerry Simpkin
Committee Officer: Sarah Craddock
Presenting Officer: Jessica Donovan

Others present: Ms Lunara Bramley-Fenton (CRG London Ltd), Mr Iskandarbek Narzibekov (CRG London Ltd) and Ms Gillian Pickering

Application for a Premises Licence Variation in respect of Pachamama Bar + Kitchen, 18 Thayer Street, London, W1U 3JY

Full Decision

Premises

Pachamama Bar + Kitchen
18 Thayer Street
London W1U 3JY

Applicant

CRG London Ltd

Ward

Marylebone

Cumulative Impact Area

None

Special Consideration Zone

None

Summary of Application

This is an application for a Variation to a Premises Licence under the Licensing Act 2003 ("The Act"). The Premises currently operates as a restaurant. This application seeks to increase the seating space capacity from 100 covers to 120 covers, to add 6 more seats to the bar area, increasing from 6 to 12 seats in total and to change the Storage Room and Staff Room into additional Private Dining Rooms which will accommodate 8 seats and 6 seats retrospectively. There is a residential court of 170.

Representations Received

Environmental Health Service (EHS)- Withdrawn on 27 November 2023
One local resident

Issues raised by Objector

Extreme late night noise pollution on the streetscape directly under residents' bedrooms and living areas; unmanaged entry and exit of guests; staff and guests smoking and littering outside and sitting on entry steps blocking fire exits. The measures offered by the Applicant should be secured on the Premises Licence by condition.

Policy Considerations

Policies HRS1 and RNT1 apply.

SUBMISSIONS AND REASONS

The Presenting Officer, Jessica Donovan, Senior Licensing Officer, introduced the application to the Sub-Committee.

Ms Lunara Bramley-Fenton (CRG London Ltd) outlined the application along with Mr Iskandarbek Narzibekov (CRG London Ltd). She advised that the Applicant seeks to increase the seating space capacity from 100 covers to 120 covers, to add 6 more seats to the bar area, increasing from 6 to 12 seats in total and to change the Storage Room and Staff Room into additional Private Dining Rooms which would accommodate 8 seats and 6 seats retrospectively. She highlighted the stringent conditions already attached to the Premises Licence and that patrons could only obtain alcohol ancillary to a table meal except for in the very limited bar area where patrons could purchase a drink before or after their meal at the restaurant. She emphasised that the bar area was not just a bar; it was in the middle of the establishment and that operationally it did not make sense to have a bar where people were drinking whilst others were sitting down and enjoying their dinner.

Ms Bramley-Fenton advised that Pachamama had a reputation for being one of the best Peruvian restaurants in London and had been operating for nine years. She outlined that each seat at the bar was set up with a food place setting with a plate, a napkin, cutlery and a water glass and no guests were encouraged to exclusively drink in the Premises. She emphasised that the establishment was food-led and that it did not make financial sense to just offer drinks to patrons.

Ms Bramley-Fenton outlined that an application to approve the layout and increase the capacity of the Premises had been submitted in 2022 where a total of 26 objections had been received, mainly regarding the increase in capacity. She advised that the Applicant had therefore withdrawn the request for an increase in capacity and had just continued forward with the new layout. It was always, however, the Applicant's intention to reapply for an increase in capacity after establishing clear lines of communication with local residents to ensure the Premises could contribute to a peaceful living experience for all in the vicinity.

Ms Bramley-Fenton outlined the consultation that the Premises had undertaken with local residents and that a letter with the Applicant's personal details and telephone number had been delivered to the surrounding residential buildings to establish a more harmonious relationship between the restaurant and residents. She set out how the Premises had: changed the burglar alarm system, employed door staff to maintain guest flow in and out of the restaurant on Thursday, Friday and Saturday evenings and had implemented further CCTV cameras with the live stream on an iPad downstairs in the reception area where staff could monitor the activity of the Premises throughout its opening hours. She emphasised that these efforts and the Applicant's professionalism had resulted in only one representation against this application which was a massive decrease from the 26 representations received in 2022.

Ms Bramley-Fenton outlined how the Responsible Authorities had withdrawn their representations against the application after the Applicant had provided them with their dispersal policy and the Environmental Health Services had visited the Premises. She further added that the people living above the Premises were in support of the application. She emphasised that the stringent conditions already attached to the Premises Licence regarding the dispersal of patrons should satisfy the Licensing Objectives.

Ms Bramley-Fenton advised that the Pachamama Group successfully operated four restaurants in London and had received no complaints from their neighbours at any of the other establishments. She added that the Applicant was confident in its ability to operate the restaurant lawfully and mindfully with the team of professional staff who had all been trained in guest and operational management.

In response to questions from the Sub-Committee, Mr Iskandarbek Narzibekov advised that the peak hours were Monday to Saturday between 13:00 and 14:00 hours and 18:30 and 21:00 hours. He further advised that last orders were half an hour before closing time and the number of customers on the Premises when it closed depended on the season; for instance there would be more customers during the festive season. He outlined that 42 people in total were employed by the Premises and that on each shift there were around 20 staff on duty at any one time. He highlighted that staff went to smoke either on the bench located across the road or to Manchester Square. He advised that all new staff members received training and that the management team constantly checked the outside area with the newly installed CCTV cameras to monitor smoking and outside activity. He confirmed that he was in contact with three local residents who contacted them directly if they had an issue with the operation of the Premises.

Mr Narzibekov further advised that he considered that there was no need to add any additional conditions such as the need for SIA door staff to the Premises Licence as the Premises was a restaurant and not a night club. He emphasised that the Premises Licence was already heavily conditioned for a five-star restaurant, however, he added that he would not object if the Sub-Committee were minded to place additional conditions onto his Premises Licence.

Ms P., local resident, gave a background to her living in the area and how both commercial and residential parts of the community worked together to keep the area safe and presentable. She advised how the residential community had negotiated directly with the Premises (and not with the freeholder or the Council) regarding best practice however, it was only after the Council's involvement that relationships had improved. She advised that since then the residents had very much appreciated the increased communication however, with that said they would prefer everything to be conditioned so everyone knew what was expected of them because it was easy to let things slip.

In response to questions from the Sub-Committee, Ms P., confirmed that since the last hearing the late-night noise of car doors closing, people talking, shouting and fighting in the street had stopped. She advised that they were delighted with the change in alarm system. She confirmed that she would like everything conditioned on the Premises Licence, so everyone's expectations were clear because there were

consequences to people drinking a lot of alcohol. She emphasised that it was a very residential area where residents had lived for over 20-30 years.

Mr Feeney, Legal Advisor to the Committee, discussed the wording of the agreed proposed conditions (if the application were granted), with all parties. Ms P. confirmed that conditions 24 and 29 addressed her concerns in relation to CCTV and the dispersal policy. Mr Iskandarbek Narzibekov agreed to accept the Council's MC 42, MC 26 (with amended wording but along the lines of door staff will ensure that people enter and exit the Premises in an orderly fashion so there is no public nuisance or obstruction to the public highway) and a condition regarding door staff being available on Thursday, Friday and Saturday evenings from 18:00 hours onwards.

During her summing up, Ms P., thanked the Sub-Committee, officers and the Premises for all their hard work in keeping the area clean and safe for residents.

During his summing up, Mr Iskandarbek advised that he had taken into consideration all the residents' concerns and considered that the conditions on the Premises Licence would alleviate their concerns.

Conclusion

The Committee has determined an application for Variation of a Premises Licence under the Licensing Act 2003. The Sub-Committee realises that it has a duty to consider each application on its individual merits and did so when determining this application.

The Sub-Committee was pleased to hear that in recent months there had been an improvement in problems associated with the Premises and that there was a better relationship between the Applicant and neighbouring residents. The Sub-Committee agreed with Ms P. that including the commitments made by the Applicant as conditions on the Premises Licence would help ensure the promotion of the licensing objectives.

The Sub-Committee therefore considered it appropriate and proportionate to impose two further conditions requiring that the area outside of the Premises be cleaned and requiring that there be at least one member of door staff on duty from Thursday to Saturday to ensure that those entering and leaving the Premises do not cause a public nuisance. The Sub-Committee noted that Ms P. confirmed that the proposed conditions in relation to CCTV and the dispersal policy addressed her concerns on those points. The Sub-Committee also considered it appropriate to amend condition 12 in order to reflect the increased capacity as applied for.

The Sub-Committee in its determination noted that the Environmental Health Service was satisfied with the application and had no concerns given the conditions that had been agreed. The Sub-Committee placed great weight on the position of EHS as the responsible authority with primary expertise concerning the licensing objective of public nuisance. The Sub-Committee concluded that the Application (including the conditions that would be imposed) would promote the licensing objectives.

Having carefully considered the committee papers, the additional papers and the submissions made by all of the parties orally, the Sub-Committee has decided, 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:

Late Night Refreshment Indoors

Monday to Thursday: 23:00 to 23:30

Friday to Saturday: 23:00 to 00:00

Sunday: N/A

Sunday before Bank Holidays: 23:00 to 00:00

Sale by Retail of Alcohol On Sales

Monday to Thursday: 10:00 to 23:30

Friday to Saturday: 10:00 to 00:00

Sunday: 12:00 to 22:30

Sunday before Bank Holidays: 12:00 to 00:00

Opening Hours

Monday to Thursday: 10:00 to 23:30

Friday to Saturday: 10:00 to 00:00

Sunday: 12:00 to 22:30

Sundays before Bank Holidays: 12:00 to 00:00

2. To add relevant Mandatory Conditions to apply.
3. To add conditions proposed to form part of the operating schedule:
9. Save for the Bar area (as shown on the plan, PMC P101 P1, dated 31/10/2023) alcohol shall only be served to persons seated at tables and the service of alcohol shall be by way of waitress/waiter service only and ancillary to a table meal.
10. In the 'Bar Lounge' alcohol shall only be served to persons seated at tables and the service of alcohol shall be by way of waitress/waiter service only.
11. The provision of Alcohol 'On' the premises in the Bar area and in the Bar Lounge shall only be to persons having a drink before and/or after a table meal.
12. The maximum number of persons to be accommodated at any one time in the premises (exclusive of staff) shall be 120 with the following local maximums for each area of the premises:-
 - Bar: 12
 - Bar Lounge: 21
 - Private Dining Rooms: 14
 - Restaurant: 73
13. Substantial food and non-intoxicating beverages shall be available throughout the permitted hours in all parts of the premises where alcohol is sold or supplied for consumption on the premises.

14. A proof of age scheme, such as Challenge 21, shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence or passport.
15. Any entertainment, performance, service, or exhibition involving nudity or sexual stimulation which would come within the definition of a sex establishment in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Greater London Council (General Powers) Act 1986 (whether or not locally adopted), shall not be provided.
16. There shall be no striptease or nudity and all persons shall be decently attired at all times.
17. All patrons leaving the premises, whether to smoke or not, shall not take any open bottles or glasses with them and there shall be no consumption of drink outside the premises.
18. The highway and public spaces in the vicinity of the premises are to be kept free of litter from the premises at all material times to the satisfaction of the Council.
19. No rubbish including bottles will be moved, removed or placed in outside areas between 23:00 hours and 08:00 hours.
20. No deliveries of stock are to be received between 23:00 hours and 08:00 hours.
21. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
22. Loudspeakers shall not be located in the entrance area or outside the premises building.
23. Notices shall be prominently displayed at exits requesting persons to respect the needs of local residents and to leave the premises and area quietly.
24. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises and will include the external areas 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.
25. 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.

26. There shall be no sales of alcohol for consumption off the premises.
27. There shall be no provision of late night refreshment for consumption off the premises.
28. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents in the vicinity.
29. A copy of the premises' dispersal policy shall be made readily available at the premises for inspection by a police officer and/or an authorised officer of Westminster City Council.
30. 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.
31. On Thursdays from 18:00 to 23:30 and on Fridays and Saturdays (including Sundays before Bank Holidays) from 18:00 to 00:00, there shall be at least one member of door staff on duty. The door staff shall ensure that customers entering and leaving the premises do not cause a public nuisance and do not cause an obstruction to the public highway.

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

**The Licensing Sub-Committee
6 December 2023**

2. ARC LE SALON, 1 CURZON STREET, W1J 5HD: 11.30AM TO 1.30PM

This application was adjourned at the request of the Applicant to enable them to address the Additional Information that had been submitted by the Environmental Health Service.

3. DORSET HOUSE SERVICE STATION, 170-172 MARYLEBONE ROAD, NW1 5AR: 2.15 TO 4.15PM

WCC LICENSING SUB-COMMITTEE NO. 2
("The Committee")

Thursday 6 December 2023

Membership: Councillor Maggie Carman (Chair) and Councillor Caroline Sargent

Officer Support Legal Advisor: Michael Feeney
Policy Officer: Kerry Simpkin
Committee Officer: Sarah Craddock
Presenting Officer: Jessica Donovan

Others present: Mr Robert Botkai (Agent), Mr John Mahon (Applicant), Mrs Sally Fabbicatore (Environmental Health Service) and PC Reaz Guerra (Metropolitan Police Service)

Application for a Premises Licence Variation in respect of Dorset House Service Station, 170-172 Marylebone Road, London, NW1 5AR

Full Decision

Premises

Dorset House Service Station
170-172 Marylebone Road
London
NW1 5AR

Applicant

Motor Fuel Limited

Ward

Regent's Park

Cumulative Impact Area

None

Special Consideration Zone

None

Summary of Application

This is an application for Variation of a Premises Licence under the Licensing Act 2003 ("The Act"). The Premises currently operates as a petrol station and has applied for the following:

1. To extend the hours for the sale of alcohol to 24hrs daily.
2. To include the following conditions on the licence:
 - 1) The sale of alcohol from the premises outside the following times:
0800-2300 Monday to Saturday
0900-2230 Sunday
shall be for delivery only by couriers employed by the licence holder or through 3rd party courier contractors.
 - 2) An incident log/register shall be maintained to record all incidents of crime and disorder occurring on delivery of products. This log/register will be available for inspection by a police officer or other authorised officer on request.
 - 3) The premises licence holder will ensure that an age verification policy will apply whereby all 3rd party courier contractors will ensure that couriers will be trained to ask any customer to whom alcohol is delivered, who appears to be under the age of 25 years to produce, before being sold alcohol, identification being a passport or photocard driving licence bearing a holographic mark or other form of identification that complies with any mandatory condition that may apply to this licence.
 - 4) All 3rd party courier contractors shall be required to ensure that couriers receive training in age restricted sales.
 - 5) A warning shall be displayed on the digital platform on which an order is placed informing customers that they must be aged 18 or over to make a purchase of alcohol and notifying customers that the courier will carry out age verification on delivery. The customer will be required to declare that he or she aged 18 or over.

There is a resident count of 383.

Representations Received

Environmental Health Service
Metropolitan Police Service
Five Local Residents

Issues raised by Objectors

EHS: The supply of alcohol for the hours requested may have the likely effect of causing an increase in Public Nuisance and may affect Public Safety

MPS: The proposed extension of licensable activities is likely to undermine the licensing objectives. The hours sought exceed the Council's Core Hours policy.

Local Residents:

Very residential area.

Increase in public nuisance and noise.

Increase in anti-social behaviour.

Policy Considerations

Policies HRS1, SHP1 and DEL1 apply.

SUBMISSIONS AND REASONS

The Presenting Officer, Jessica Donovan, Senior Licensing Officer, introduced the application to the Committee.

Mr Robert Botkai (Agent) outlined the application along with Mr John Mahon (Applicant). He advised that the application was in two parts: one to extend the morning hour start time to 09:00 hours in line with the Council's amended policy and the second was to effectively make it operational for 24 hours but that the additional hours applied for would be used for delivery only so that patrons would not come into the store and purchase alcohol. He highlighted that alcohol would only be delivered through the night by way of motor bike.

Mr Botkai advised that the Motor Fuel Limited Group had 494 licensed stores which traded through third party couriers such as Uber Eats between the hours of 23:00 hours and 08:00 hours. He explained that at this store the Applicant had been operating during the day without alcohol since June 2020 and although the existing Premises Licence contained robust conditions, the Applicant was willing to add an additional five conditions to allow stringent controls for delivery throughout the night. He outlined that all couriers would be trained in age restricted sales and would be given clear written instructions to use their vehicles in a responsible manner so as not to cause a nuisance. He emphasised that no noise nuisance would be caused to residents and the impact of this variation would be negligible. He advised that he believed that on average there would be a 1.63% increase in deliveries if this variation was granted with it being a little higher on Friday and Saturdays. He estimated that approximately an additional 2-4 movements per night was likely which was unlikely to disturb any residents.

Mr Botkai advised of the operation of the deliveries and how the Premises would use either Uber Eats or Just Eats as their third-party couriers. He set out how the app alerted the rider that there was a delivery to be made. The rider would then collect and deliver the order to the customer. He stated that riders would not congregate on the forecourt and that all drivers would need to undertake the approximate training.

He confirmed that they had received no complaints from residents at the store. He referred to the representations from residents and considered that there had been a misunderstanding that the petrol station would be open 24 hours for customers to come into store which would increase the number of intoxicated people in the area at night, however, this was not the case.

Mr Botkai advised that the likely effect of the grant of this variation would be negligible as the Petrol store was already operating 24 hours a day. He emphasised that he believed that the Applicant had met the Council's policy consideration and the section 182 guidance allowed for shops to provide alcohol for sale off the Premises at any time when their retail outlet was open for shopping. He advised that he appreciated that the Applicant was requesting operating hours outside the Council's Core Hours policy but given the negligible impact on the licencing objectives and the measures and the experience of the operator he requested that the Licensing Sub-Committee grant the variation to the Premises Licence.

In response to questions from the Sub-Committee, Mr Botkai explained how a typical transaction takes place in that it was placed on the Uber Eat or Just Eat app which then comes through to the store to be made up and then collected by one of the riders. He advised that all riders' details were checked to ensure they were validly registered with the courier company. They then showed the order reference number to the cashier, collected the package and delivered it to the customer. Although he said there had been recent caselaw on this question, he stated that his understanding was that all drivers were self-employed and were contracted with Uber Eats or Just Eats who provided training in operating Challenge 25. He advised that some transactions would take place anyway without the sale of alcohol. He confirmed that they did not have any further sites located in Westminster and the Applicant hoped that the additional hours would create a little more business than what was indicated from the data. He added that the Premises had the facilities to offer this service to their customers and the customers enjoyed having further choice. He confirmed that he did not have the figures/data on how many delivery refusals there had been in relation to the Applicant's other stores, however he believed it would be relatively few as nothing had hit the Applicant's desk regarding returns in sales of alcohol or any incidents relating to the delivery of alcohol. He emphasised that the relationship between the courier companies and the Applicant was that the courier was an independent contractor or self-employed who was trained by the delivery company. The Applicant could not check the training of all the couriers, and it was the third party such as Just Eat who committed to training all their drivers. Mr Botkai advised that the Applicant had not received any complaints regarding the current use of the Premises by drivers as they were not expected to sit and wait for orders outside the Premises. He advised that the Applicant kept a close eye on congregation outside of the Premises.

Ms Sally Fabbicatore (Environmental Health Service, EHS) advised that the EHS had maintained their representation due to the proposed late operating hours. She outlined however that the Premises was already open 24/7 to sell fuel so there would be no additional foot traffic because after 23:00 hours all sales of alcohol would be done via delivery companies. She added that customers would not be attracted to the Premises for alcohol beyond their current operating hours. She advised that on paper it appeared to be a shocking application with 24/7 operating hours however with the additional conditions that the Applicant had offered and the age verification

system in place the EHS did not have any further concerns regarding the disturbance to residents within the vicinity as it was already a working 24/7 petrol station. She suggested that MC 98 regarding delivery drivers be added to the Premises Licence if the application were granted.

PC Reaz Guerra (Metropolitan Police Service, MPS) advised that the MPS had maintained their representation as the hours proposed clearly went beyond the Council's Core Hours Policy which was a key policy in promoting the licensing objectives. He referred to the Council's Statement of Licensing and emphasised that it was not reasonable for off sales of alcohol to be allowed 24/7 because the Applicant had not addressed how they would manage any potential risk regarding the off sale of alcohol, particularly because they could not check the training of the drivers from the third party companies and there has been no documentation or evidence as to what training was actually being offered/given to the drivers. He outlined that there was also a lack of detail about the location of other sites and also a lack of detail about any operational plan as to how delivery personnel would collect and/or return to the Premises refusals of alcohol sales.

PC Reaz Guerra explained that at night clubs or late-night bars there were usually additional controls in place and trained staff and welfare officers to help intoxicated people. He added, additionally, that Premises that had both on and off sales of alcohol usually had their off sales restricted and not permitted past 23:00 hours. He advised that the Police had to consider worst case scenarios such as who wanted and needed alcohol in the early hours of the morning and why. He advised that in reality delivery staff would probably not be able to assess whether a person was intoxicated in the brief encounter at the point of delivery and with their limited interaction with them. He added that there would also be the potential for confrontation if refusal was made leaving staff isolated and potentially vulnerable meaning it would be easier for them to make the sale as opposed to dealing with any confrontation that may occur for a refusal. He explained how intoxication was associated with crime and disorder and that customers that had purchased alcohol to be delivered to their address might not continue to stay indoors but might migrate outside or to a wider locality potentially increasing the risk of anti-social behaviour. He outlined how granting this application could set a precedent for other sites to operate such systems within Westminster. He concluded by saying that although it was difficult for the MPS to say that there was a direct link between off sales and crime and disorder on the balance of probabilities there was risk and that risk was ever-increasing with these types of applications being granted.

In response to questions from the Sub-Committee, PC Guerra advised that although the five additional conditions were welcomed he was unsure how enforceable they were especially regarding the age verification and training of the drivers.

Mr Feeney, Legal Advisor to the Committee, discussed the wording of the agreed proposed additional conditions (if the application were granted), with all parties.

During his summing up, PC Guerra advised that the MPS were not opposed to the additional hour applied for on the Sunday, however the MPS were opposed to the later hours in the night for off-sales.

During her summing up, Ms Fabbriatore advised that she had not received any noise nuisance complaints regarding the current operation.

During his summing up, Mr Botkai advised that this was a carefully thought-out application, and that the Applicant knew the locality and the neighbours very well. He considered that it would have been beneficial to have spoken to the MPS before the hearing however, the current operation had not received any complaints as confirmed by the Environmental Health Service and the Premises currently did have delivery services. He advised that the Police's submission needed to be evidence based and that the police had provided no evidence to substantiate their claims that the application would lead to an increase in crime and disorder. The Applicant had offered additional conditions to mitigate and alleviate any concerns regarding the new proposed operation.

Conclusion

The Committee has determined an application for Variation of a Premises Licence under the Licensing Act 2003. The Sub-Committee realises that it has a duty to consider each application on its individual merits and did so when determining this application.

On the basis of the evidence presented by the Applicant and the representation made by Environmental Health, the Sub-Committee considered that the Application would not undermine the licensing objective of the prevention of public nuisance.

However, the Sub-Committee agreed with the MPS that the Application would undermine the licensing objectives of prevention of crime and disorder and the protection of children from harm. In reaching this conclusion the Sub-Committee placed great weight on the position of the Metropolitan Police as the responsible authority with expertise in relation to crime and disorder. The Sub-Committee acknowledged the criticisms of the Police's approach made by the Applicant but considered that it was reasonable to assume that (absent evidence to the contrary) the variation of the Premises Licence to allow off-sales of alcohol for 24 hours would lead to increased drinking in the early hours of the morning. This in turn would likely have an impact on the licensing objectives.

The Application was outside Core Hours and so in accordance with Policy DEL1 was considered on its own merits, with regard to the considerations listed in Clause B of Policy DEL1.

The Sub-Committee was particularly concerned with the introduction of off-sales for 24 hours because the Applicant would be reliant on third party couriers to provide delivery services. The considerations listed in Clause B of Policy DEL1 include 'Whether the delivery personnel are directly employed by the applicant or whether the delivery service will be provided by a third party', 'If a third party will provide the delivery service on behalf of the applicant what are the contractual arrangements with that third party to ensure that the operation of the delivery service does not adversely impact the licensing objectives, breach the terms and conditions of the licence or commit offences under the Act' and 'what specific measures and processes the applicant or the third party providing the delivery service has put

forward to mitigate the risk from the delivery of alcohol to children to ensure that they are protected from harm.'

Paragraph G15 states: 'Applicants who employ their own delivery staff are likely to have far greater control to ensure that the licensing objectives are not negatively impacted upon. Therefore, the Licensing Authority will consider whether the delivery service is being delivered by the applicant or provided by a third party and their ability to manage any risk associated with the licensing objectives when determining that application. Applicants that do provide their own delivery service, with sufficient measures in place to promote the licensing objectives are likely to be considered more favourably than those using third party delivery companies.'

Paragraph G16 states: 'The Licensing Authority and the Metropolitan Police Service have specific concerns around the delivery of alcohol off the premises due to issues around the end location of delivery, age verification checks, the increased possibility for alcohol to be consumed in open spaces or parks, as well as the personal safety of drivers when having to refuse to deliver the alcohol to the customer due to intoxication or failed age verification.'

Paragraph G17 states: 'Alcohol delivery poses a unique set of challenges as it often transfers the final age verification to a person who has no responsibility in relation to the Premises Licence which authorised the sale of alcohol. A premises licence holder needs to be satisfied that their drivers or the delivery drivers of the third-party company they chose to use, have received regular and comprehensive training in age verification and identifying persons who have consumed too much alcohol.'

The Sub-Committee did not consider that the Applicant had produced sufficient evidence or reasons as to why the strong and legitimate concerns raised in the Council's SLP should be discounted. The Sub-Committee was provided with limited evidence of the Applicant's other businesses in the form of a single table, but no evidence was provided to explain where these businesses were located or how the particular circumstances for those businesses related to the particular circumstances in Westminster. The Applicant was also unable to provide any evidence concerning the number of refused alcohol sales in relation to these businesses. The Applicant also did not provide any details as to the training in relation to age verification and not delivering alcohol to intoxicated customers that would be provided to couriers by third parties. The Applicant was open about the fact that the Applicant would not have control over this training.

The Sub-Committee also agreed with the Metropolitan Police that it would in practice be difficult to police the proposed conditions and ensure compliance. The proposed incident log would have to record every incident of crime and disorder occurring on delivery of products, but it would be difficult for the Police to know if this condition were complied with or not, as the incidents would be happening away from the Premises. The Sub-Committee considered that the proposed conditions in relation to training and age verification placed the onus on third party delivery companies and that the Responsible Authorities would have limited ability to enforce these conditions.

The Sub-Committee did not therefore consider that the Applicant had demonstrated that the variation of the Premises Licence to allow for off-sales of alcohol via delivery 24 hours a day would promote the licensing objectives.

Finally, the Sub-Committee did consider it appropriate to increase the hours for off-sales on Sundays mornings by one hour. The revised hours are within the Council's core hours, and the Metropolitan Police confirmed that there was no objection to this limited extension.

Having carefully considered the committee papers, the additional papers and the submissions made by all of the parties orally, the Sub-Committee has decided, 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:

Late Night Refreshment

Monday to Sunday: 23:00 to 05:00

Sale by Retail of Alcohol Off Sales

Monday to Saturday: 08:00 to 23:00

Sunday: 09:00 to 22:30

Opening Hours

Monday to Sunday: 00:00 to 00:00

2. To add relevant Mandatory Conditions to apply.
3. To add conditions proposed to form part of the operating schedule:
6. 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 and the night pay window and the petrol forecourt will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.
7. 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.
8. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.

9. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
10. All tills shall automatically prompt staff to ask for age verification identification when presented with an alcohol sale.
11. Outside of the hours authorised for the sale of alcohol and whilst the premises are open to the public, the licence holder shall ensure that all alcohol within the premises (excluding alcohol behind the counter) is secured in a locked store room or behind locked grilles, locked screens or locked cabinet doors so as to prevent access to the alcohol by both customers and staff.
12. No super-strength beer, lagers, ciders or spirit mixer of 5.5% ABV (alcohol by volume) or above shall be sold at the premises, except for premium beers and ciders supplied in glass bottles.
13. No single cans or bottles of beer or cider or spirit mixtures shall be sold at the premises.
14. No more than 15% of the sales area shall be used at any one time for the sale, exposure for sale, or display of alcohol.
15. There shall be no self service of spirits on the premises, save for spirit mixtures less than 5.5% ABV.
16. Prominent signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises, where alcohol is on public display, and at the point of sale.
17. A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
18. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police. It must be completed within 24 hours of the incident and will record the following:
 - (a) all crimes reported to the venue
 - (b) all ejections of patrons
 - (c) any complaints received concerning crime and disorder
 - (d) any incidents of disorder
 - (e) all seizures of drugs or offensive weapons
 - (f) any faults in the CCTV system, searing equipment or scanning equipment
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service
19. Late night refreshment at the premises is limited to the provision of hot drinks for consumption off the premises after 23:00 and before 05:00.

20. The entrance door to the shop will be locked to customers between the hours of 00:00 and 05:00 a remote door lock facility will be available for use by any cashier on duty.
21. The licence holder will maintain a written risk assessment which covers the training for the cashiers in when to deploy the door lock facility. This assessment must be reviewed on a weekly basis and signed by the DPS. It must always be available for Police and the Responsible Authorities to view.
22. 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.

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

**The Licensing Sub-Committee
6 December 2023**

The Meeting ended at 3.48 pm