

Licensing Sub-Committee Report

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| Item No: | |
| Date: | 22 October 2015 |
| Licensing Ref No: | 15/06480/LIPN - New Premises Licence |
| Title of Report: | Duck & Rice First Floor 90-91 Berwick Street London W1F 0QB |
| Report of: | Director of Public Protection and Licensing |
| Wards involved: | West End |
| Policy context: | City of Westminster Statement of Licensing Policy |
| Financial summary: | None |
| Report Author: | Mr Ola Owojori Senior Licensing Officer |
| Contact details | Telephone: 020 7641 7830 Email: owojori@westminster.gov.uk |

1. Application

| 1-A Applicant and premises | | | |
|-----------------------------------|---|---------------------|----------|
| Application Type: | New Premises Licence, Licensing Act 2003 | | |
| Application received date: | 3 August 2015 | | |
| Applicant: | Duck & Rice Limited | | |
| Premises: | Duck & Rice | | |
| Premises address: | First Floor 90-91 Berwick Street London W1F 0QB | Ward: | West End |
| | | Stress Area: | West End |
| Premises description: | <p>The premises are currently operated as a restaurant on the first floor and a bar on the ground floor with an outside area for tables and chairs.</p> <p>The application is to seek a new premises licence for the first floor with toilets and kitchen facilities on the ground and basement levels.</p> | | |
| Premises licence history: | The premises are currently licensed and the licence history can be found at Appendix 3 | | |
| Applicant submissions: | Proposed conditions | | |

| 1-B Proposed and previous licensable activities, areas and hours | | | | | | |
|--|---|-------------------|-----------------|-------------|--|-----------------------------------|
| Late Night Refreshment | | | | | | |
| Indoors, outdoors or both | | Proposed : | | | Existing: | |
| | | Indoors | | | Both | |
| | Proposed Hours | | Existing | | Licensable Area | |
| | Start: | End: | Start: | End: | Proposed: | Existing |
| Monday | 23:00 | 01:00 | 23:00 | 23:30 | Basement, Ground and First Floors The Environmental Health has proposed condition to restrict Licensing Activities to the first floor | Basement, Ground and First Floors |
| Tuesday | 23:00 | 01:00 | 23:00 | 23:30 | | |
| Wednesday | 23:00 | 01:00 | 23:00 | 23:30 | | |
| Thursday | 23:00 | 01:00 | 23:00 | 23:30 | | |
| Friday | 23:00 | 01:00 | 23:00 | 00:00 | | |
| Saturday | 23:00 | 01:00 | 23:00 | 00:00 | | |
| Sunday | 23:00 | 01:00 | N/A | N/A | | |
| Seasonal variations: | Proposed: | | | | Existing: | |
| | To extend authorised hours on New Year's Eve until the start of hours on New Year's Day | | | | Not applicable | |
| Non-standard timings: | Proposed: | | | | Existing: | |
| | Not applicable | | | | Sunday before Bank Holiday 23:00 to 00:00 | |

| Sale by Retail of Alcohol | | | | | | |
|------------------------------|---|-------|------------|-------|--|---|
| On or off sales or both: | | | Proposed : | | | Existing: |
| | | | On sales | | | First Floor – On Ground Floor – On and Off |
| | Proposed Hours | | Existing | | Licensable Area | |
| | Start: | End: | Start: | End: | Proposed: | Existing |
| Monday | 10:00 | 01:00 | 10:00 | 23:30 | Basement, Ground and First Floors The Environmental Health has proposed condition to restrict Licensing Activities to the first floor | Basement, Ground and First Floors |
| Tuesday | 10:00 | 01:00 | 10:00 | 23:30 | | |
| Wednesday | 10:00 | 01:00 | 10:00 | 23:30 | | |
| Thursday | 10:00 | 01:00 | 10:00 | 23:30 | | |
| Friday | 10:00 | 01:00 | 10:00 | 00:00 | | |
| Saturday | 10:00 | 01:00 | 10:00 | 00:00 | | |
| Sunday | 12:00 | 01:00 | 12:00 | 22:30 | | |
| Seasonal variations: | Proposed: | | | | Existing: | |
| | To extend authorised hours on New Year's Eve until the start of hours on New Year's Day | | | | Not applicable | |
| Non-standard timings: | Proposed: | | | | Existing: | |
| | Not applicable | | | | Sunday before Bank Holiday 12:00 to 00:00 | |

| Hours premises are open to the public | | | | | | |
|---------------------------------------|---|-------|----------------|-------|---|-----------------------------------|
| | Proposed Hours | | Existing Hours | | Premises Area | |
| | Start: | End: | Start: | End: | Proposed: | Existing: |
| Monday | 10:00 | 01:30 | 10:00 | 23:30 | Basement, Ground and First Floors The Environmental Health has proposed condition to restrict the provision of Licensing Activities to the first floor | Basement, Ground and First Floors |
| Tuesday | 10:00 | 01:30 | 10:00 | 23:30 | | |
| Wednesday | 10:00 | 01:30 | 10:00 | 23:30 | | |
| Thursday | 10:00 | 01:30 | 10:00 | 23:30 | | |
| Friday | 10:00 | 01:30 | 10:00 | 00:00 | | |
| Saturday | 10:00 | 01:30 | 10:00 | 00:00 | | |
| Sunday | 12:00 | 01:30 | 12:00 | 22:30 | | |
| Seasonal variations: | Proposed: | | | | Existing | |
| | To extend authorised hours on New Year's Eve until the start of hours on New Year's Day | | | | Not applicable | |
| Non-standard | Proposed: | | | | Existing: | |

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| timings: | Not applicable | Sunday before Bank Holiday 12:00 to 00:00 |
| Adult Entertainment: | Not applicable | |

2. Representations

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| 2-A Responsible Authorities | |
| Responsible Authority: | Environmental Health |
| Representative: | Ian Watson |
| Received: | 26 August 2015 |
| <p>I refer to the application for a New Premises Licence.</p> <p>The premises are located within the West End Stress Area as stated in the City of Westminster's Statement of Licensing Policy.</p> <p>The applicant has submitted floor plans of the First floor dated 12/3/14</p> <p>This representation is based on the plans and operating schedule submitted.</p> <p>The applicant is seeking the following</p> <ol style="list-style-type: none"> 1. To provide for the Supply of Alcohol 'On' the premises Monday to Saturday between 10.00 and 01.00 hours and Sunday between 12.00 to 01.00 hours. On New Year's Eve Supply of Alcohol from the end of authorised hours to commencement of authorised hours on New Year's Day. 2. To provide Late Night Refreshment 'Indoors' Monday to Sunday between 23.00 and 01.00 hours. On New Year's Eve Late Night Refreshment from the end of authorised hours to commencement of authorised hours on New Year's Day. <p>I wish to make the following representation</p> <ol style="list-style-type: none"> 1. The provision and hours requested for the Supply of Alcohol will have the likely effect of causing an increase in Public Nuisance within the West End Stress Area. 2. The provision and hours for Late Night Refreshment will have the likely effect of causing an increase in Public Nuisance and impact on Public Safety within the West End Stress Area. <p>The granting of the application as presented would have the likely effect of causing an increase in Public Nuisance and impact on Public Safety within the West End Stress Area.</p> <p>The applicant has provided conditions in support of the application which do not fully address the concerns of Environmental Health and additional conditions have been proposed.</p> <ul style="list-style-type: none"> • Licensable activities are permitted on the first floor only. | |

- Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall not be permitted to take drinks or glass containers with them.
- The premises licence holder shall ensure that any patrons smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.

These conditions have not been agreed by the applicant

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| Responsible Authority: | Metropolitan Police |
| Representative: | Adam Deweltz |
| Received: | 18 August 2015 |

With reference to the above application, I am writing to inform you that the Metropolitan Police, as a responsible authority, will be making a representation. It is our belief that if granted the application would undermine the Licensing Objectives.

The venue is situated within the 'West End Stress Area', a locality where this is traditionally high crime and disorder. There are concerns that this application will cause further policing problems in an already demanding area and add to the cumulative impact.

In order for the police to withdraw their representation, we would like the following conditions added to the operating schedule:

1) The premises shall only operate as a restaurant (i) in which customers are shown to their table, (ii) where the supply of alcohol is by waiter or waitress service only, (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery, (iv) which do not provide any take away service of food or drink for immediate consumption, (v) which do not provide any take away service of food or drink after 23.00, and (vi) where alcohol shall not be sold, supplied, or consumed on the premises otherwise than to persons who are seated in the premises and bona fide taking substantial table meals there and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

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

2) 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. 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 preceding 31 day period.

3) 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.

4) A Challenge 21 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.

5) A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the premises by the police or an authorised officer of the City Council at all times whilst the premises is open. These conditions have not been agreed by the applicant.

| 2-B Other Persons | |
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| Name: | The Soho Society |
| Address and/or Residents Association: | St Anne's Tower 55 Dean Street London W1D 6AF |
| Received: | 28 August 2015 |

I write to make a relevant representation to the above application on behalf of The Soho Society.

The Soho Society objects to this application as it is currently presented, on the grounds of prevention of public nuisance, prevention of crime and disorder and cumulative impact in the West End Stress Area.

About The Soho Society

The Soho Society is a charitable company limited by guarantee established in 1972. The society is a recognised amenity group and was formed to make Soho a better place to live, work or visit by preserving and enhancing the area's existing diversity of character and uses, and by improving its facilities, amenities and environment. In particular, the society supports the Westminster City Council's policies, including the cumulative impact policy, as set out in the Statement of Licensing Policy.

Application summary

| Activity | Indoors/Outdoors | Alcohol Consumed | Time Period | From | To |
|---------------------------|------------------|------------------|--------------------|----------|----------|
| Late Night Refreshment | Indoors | | Monday to Sunday | 11:00 PM | 01:00 AM |
| Sale by Retail of Alcohol | Indoors | On Premises | Monday to Saturday | 10:00 AM | 01:00 AM |
| Sale by Retail of Alcohol | Indoors | On Premises | Sunday | 12:00 PM | 01:00 AM |

Hours of operation

The proposal includes licensable activities, including sale of alcohol, outside of Westminster core hours. The premises are in the West End Stress Area. There is a concentration of private homes in nearby buildings, and residents in the immediate area are subject to noise and general nuisance every night of the week. They are particularly concerned about the possibility of extending the hours of operation of this premises. We therefore feel it is necessary to keep the operating hours within defined core hours, namely Monday to Thursday 10am – 11.30pm, Friday and Saturday 10 am – 12 midnight and Sunday 12 noon – 10.30 pm.

Licensing policy

This area has been identified by the Westminster City Council (2.4.1 of the Statement of Licensing Policy, as amended) as under stress because the cumulative effect of the concentration of late night and drink led premises and night cafes has led to serious problems of disorder and/or public nuisance affecting residents, visitors and other businesses.

The policies in relation to the stress areas are directed at the global and cumulative effects of licences on the area as a whole (2.4.5 of the policy). The policies are intended to be strict and will only be overridden in genuinely exceptional circumstances (2.4.2 of the policy). The growth in the entertainment industry in Soho has led to a marked deterioration in the quality of life and well-being of local residents and it has jeopardised the sustainability of the community. Soho has a substantial residential community and many of these residents suffer from problems such as, but not limited to, high levels of noise nuisance, problems with waste, urinating and defecating in the streets, threats to public safety, anti-social behaviour, crime and disorder and the change in character of historic areas. For the reasons I have set out, we believe that the application, if granted in its present form, would fail to promote the licensing objectives of prevention of public nuisance and prevention of crime and disorder. I respectfully urge the Licensing Sub-Committee to reject this application.

Please let me know if any proposals are made to amend the application; particularly in respect of the hours sought or any further conditions proposed.

Yours faithfully,

David Gleeson
Licensing Chair

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| Name: | Miss Clair Malone |
| Address and/or Residents Association: | 2 Kemp House 103 Berwick Street London W1F 0QT |
| Received: | 28 August 2015 |

I want to object to this licence on the grounds of preventing crime and disorder and preventing public nuisance.

The applicant is seeking to extend the licence outside core hours. There are many hundreds of residents within 50m of this public house. Including Kemp House, The Salt House, Ingestre Court, Trenchard House and many others.

Make no mistake – the ground floor of this establishment IS a public house – despite the bar snacks offered. Indeed, on the 9th September 2014 Graham – representing Duck and Rice - took to the West End Girls show on Soho Radio – the local radio station and later to twitter to reassure people that it was indeed a pub.

It seems that when Duck and Rice are dealing with Licensing applications they mention food – but when advertising the premises to their customers they mention pub. In truth it is both, the first floor being a restaurant and the ground floor being a pub – as per the terms of the applicant's lease requiring pub use. It is possible to consume alcohol on the ground floor without having to purchase the optional bar snacks on offer.

This means that there will be intoxicated people leaving the premises in the middle of a residential area of Soho at 1.30am. I find this proposal simply unacceptable.

I do hope the committee will leave the license as it is – within core hours in the Westminster stress area is

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| Name: | Mr Andrew Murray |
| Address and/or Residents Association: | Kemp House Association 53 Kemp House Berwick Street London W1F 0QU |
| Received: | 31 August 2015 |

Kemp House Residents Association objects to any licensed activity beyond core hours in this highly residential location.

Kemp House (57 flats) and Ingestre Court (52 flats) are in the immediate vicinity, along with a number of private flats on Berwick and Broadwick Streets. In addition, Trenchard House (78 flats) is due to be occupied in the near future.

After the applicant had made amendments to its initial application, KHRA did not object to the licence that was granted to Duck and Rice in 2013. These amendments included a reduction in hours back to core hours. The applicant was fully aware of our objection to anything beyond this, and it is therefore disappointing that there was no direct consultation with us before the present application was submitted. However, nothing has changed in the local situation and we have not changed our position.

Any extension of hours will lead to a loss of residential amenity and is also likely to set a

precedent which would begin a change of character for this location, both against council policy. Currently night time activity ceases with core hours. Some residents would argue this is already too late. The significant extension of hours applied for would inevitably lead to increased incidents of noise disturbance by patrons as they leave, however well-behaved they might be in general. This would be more of an intrusion than at present, as the area is significantly quieter after core hours. In the summer months it would have a particularly detrimental effect on flats without air conditioning -including Kemp House and Ingestre Court - when open windows are desirable.

The immediate area is not currently part of Soho's late night economy and, given the intensity of residential accommodation, we expect the council to resist any expansion here.

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| Name: | Mr Mark Teverson |
| Address and/or Residents Association: | 9 Berwick Street London W1F 0PJ |
| Received: | 7 August 2015 |

I have rung the noise people at Westminster about late night noise, which is not controlled by this new pub. I have also rung the noise enforcement team about heavy drill work on the outside at 6am in the morning - this call was made after being abused by the workmen when asked to wait till am.

The opening hours for this noisy pub are already a disturbance. 1.30am is ridiculous. The residents would prefer 11pm at the latest, and no-one outside after 9pm

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|--|--------------------------------|
| Name: | Berwick Street Community Group |
| Address and/or Residents Association: | 9 Berwick Street W1F 0PJ |
| Received: | 7 August 2015 |

Berwick Street Community Group strongly object to this 1.30 am application. In the short time this pub/restaurant has been open, we have complained twice to Westminster noise control.

The street noise every night from these premises is always a nuisance. All the other small winebars and restaurants on Berwick Street have a 12 midnight closure, and rarely cause any disturbance.

The previous pub, The Endurance, also attracted complaints, and had a 9pm no-one outside restriction. We strongly recommend that is imposed on the current licensees. These premises seem to attract owners with no concern for the local community and with only an eye for profit.

All the local residents are fearful Westminster council will allow the nature of our famous cultural and residential street to irrevocably change. Please show your concern by denying this application and restricting the street noise to 9pm.

| | |
|--|---------------------------------------|
| Name: | Berwick Street Community Group |
| Address and/or Residents Association: | 9 Berwick Street London W1F 0PJ |
| Received: | 7 August 2015 |

1.30am is too late.
 12 midnight max, 10.30 Sun
 We have objected to noise at this venue.
 There is considerable disturbance outside in this very residential area

3. Policy & Guidance

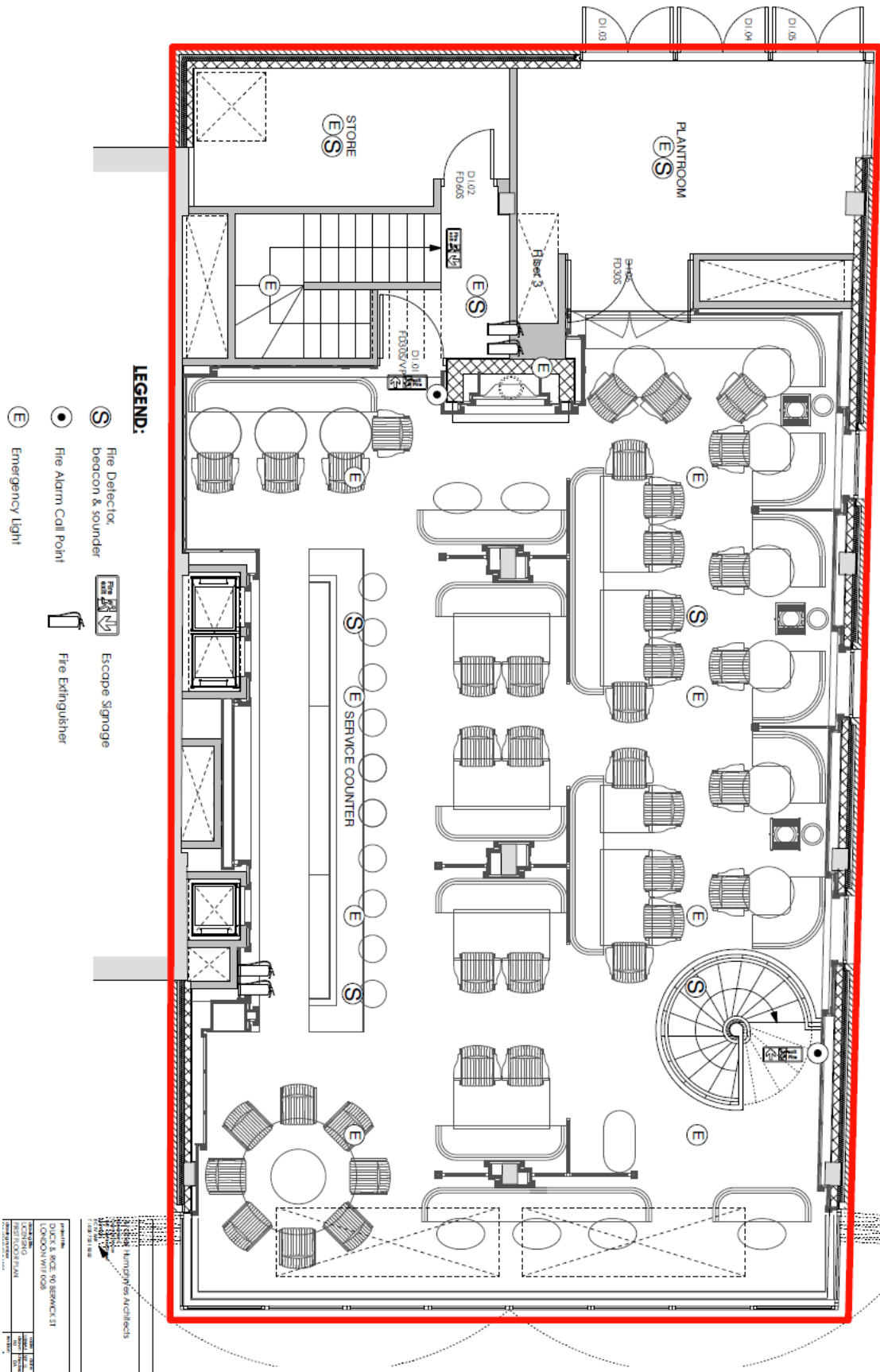
The following policies within the City Of Westminster Statement of Licensing Policy apply:

| | |
|-----------------------------|---|
| Policy STR1 applies: | (i) It is the Licensing Authority's policy to refuse applications in the Stress Areas for: pubs and bars; fast food premises, and premises offering facilities for music and dancing; other than applications to vary hours within the Core Hours under Policy HRS1. |
| Policy HRS1 applies: | (ii) Applications for other licensable activities in the Stress Areas will be subject to other policies and must demonstrate that they will not add to cumulative impact in the Stress Areas.: (i) Applications for hours within the core hours set out below in this policy will generally be granted, subject to not being contrary to other policies in the Statement of Licensing Policy. (ii) Applications for hours outside the core hours set out below in this policy will be considered on their merits, subject to other relevant policies. |
| Policy RNT2 applies: | Applications will be granted subject to other policies and subject to the relevant criteria in Policies CD1, PS1, PN1 and CH1, provided it can be demonstrated that they will not add to cumulative impact in the Stress Areas. |

4. Appendices

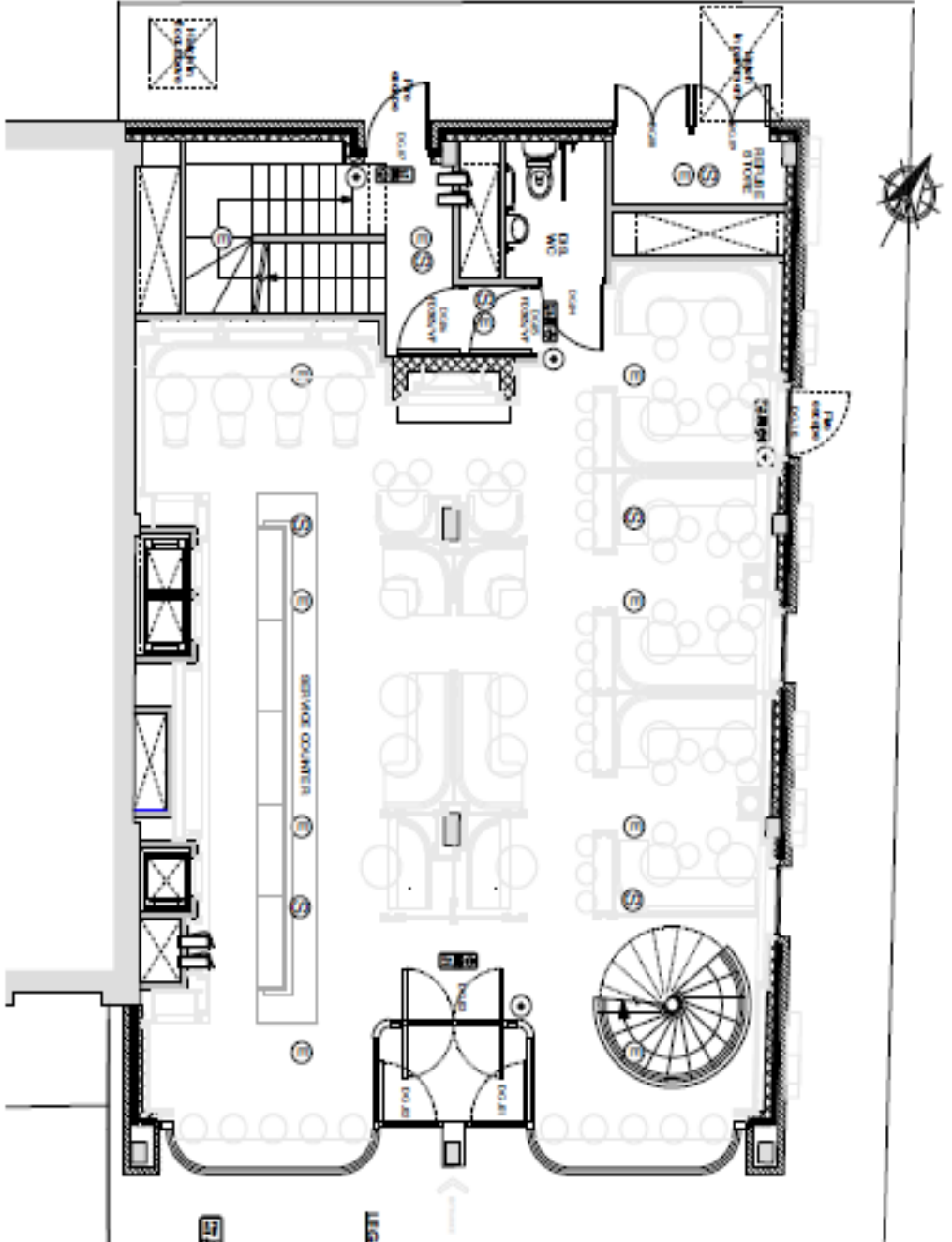
| | |
|-------------------|--|
| Appendix 1 | Premises plans |
| Appendix 2 | Applicant supporting documents |
| Appendix 3 | Premises history |
| Appendix 4 | Proposed conditions |
| Appendix 5 | Residential map and list of premises in the vicinity |

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| Report author: | Mr Ola Owojori Senior Licensing Officer |
| Contact: | Telephone: 020 7641 7830 Email: owojori@westminster.gov.uk |



Licensable activities may take place anywhere within the red line. The position of any loose furniture is shown for diagrammatic purposes only. The location of the equipment is shown as is on the date hereof but may be moved in consultation with the fire officer

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NOT TO SCALE
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LEGEND

- Fire Detector
- Fire Alarm Call Point
- Emergency Light
- Exempt Signage
- Fire Extinguisher

| | |
|-------------------------|-------------------------|
| DATE: 10/10/2023 | SCALE: 1:50 |
| DRAWN BY: [Name] | CHECKED BY: [Name] |
| PROJECT: [Project Name] | CLIENT: [Client Name] |
| LOCATION: [Location] | NO. OF FLOORS: [Number] |

DUCK AND RICE
FIRST FLOOR, 90 – 91 BERWICK STREET

MANDATORY CONDITIONS

All applicable Mandatory Conditions

PROPOSED LICENSING CONDITIONS

9. Substantial food and suitable beverages other than intoxicating liquor (including drinking water) shall be available during the whole of the permitted hours in all parts of the premises where intoxicating liquor is sold or supplied.
10. There shall be no striptease or nudity, and all persons shall be decently attired at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue licence.
11. There shall be no payment made by or on behalf of the licensee to any person for bringing customers to the premises directly off the street.
12. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of a Metropolitan Police Crime Prevention Officer. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the venue is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.
13. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public. This staff member shall be able to show Police recent data or footage with the absolute minimum of delay when requested.
14. All waste should be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times save for the waste kept in sealed receptacles off the high way and no glass bottles at all should be placed outside the premises between 22:00 and 08:00
15. The pavement from the building line to the kerb edge immediately outside the premises, including gutter/channel at its junction with the kerb edge, is swept and or washed and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.
16. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.

17. 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 and businesses in the vicinity.
18. As soon as possible and in any event within 1 month from the grant of this licence, the premises shall join the local pubwatch or local crime reduction scheme approved by the police and local radio scheme, if available.
19. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
20. Signs to remind their customers to exit the premises very quietly and respect the residential neighbourhood when leaving the premises shall be put up very visibly inside the premises.
21. The first floor of the premises shall only operate as a restaurant (i) in which customers are shown to their table, (ii) where the supply of alcohol is by waiter or waitress service only, (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery, (iv) which do not provide any take away service of food or drink for immediate consumption, (v) which do not provide any take away service of food or drink after 23.00, and (vi) where alcohol shall not be sold, supplied, or consumed on the premises otherwise than to persons who are seated in the premises and bona fide taking substantial table meals there and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.
22. A Challenge 21 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.
23. There shall be no payment made by or on behalf of the licence holder to any person for bringing customers to the premises.
24. 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.
25. All external doors shall be kept closed after 21.00 hours except for the immediate access and egress of persons.
26. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
27. The licence holder shall enter into an agreement with a hackney carriage and/or private carriage firm to provide transport for customers, with contact numbers made readily available to customers who will be encouraged to use such services.

28. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the premises by the police or an authorised officer of the City Council at all times whilst the premises is open.
29. On each Wednesday, Thursday, and Friday a SIA registered door supervisor shall be on duty on the ground floor entrance in use at the premises after 18.00 hours whilst the premises are open to the public.
30. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed:

First Floor - 100.

Licence & Appeal History

| Application | Details of Application | Date Determined | Decision |
|--------------------------|---|------------------------|---|
| Conversion and variation | To convert the existing licences and vary the licence | 09.09.2005 | Conversion granted under delegated authority Variation refused |
| Appeal | Appeal against the conversion and variation application | 13.12.2006 | Determined by Magistrates Court |
| Review | Review of the Premises Licence | 26.06.2008 | Determined by Licensing Sub Committee |
| Appeal | Appeal against Review application | 30.06.2009 | Appeal refused by Magistrates Court |
| Appeal | Appeal against decision of Magistrates Court decision | 21.07.2009 | Appeal dismissed |
| Court of Appeal | Application to the Supreme Court seeking permission to appeal. | 26.01.11 | Appeal refused |
| Minor | Application for a minor variation | 19.09.2011 | Granted under delegated authority |
| Transfer | Transfer the premises licence | 11.04.2012 | Granted under delegated authority |
| Variation | Application to vary the premises licence | 17.07.2012 | Application withdrawn by applicants |
| Transfer | Application to transfer the premises licence from Shaftesbury Soho Limited to Duck & Rice Limited | 15.06.2013 | Granted under delegated authority Licence suspended 11.11.13 for outstanding annual fee. |

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| New | Application for a new premises licence for the ground and first floor | 10.10.13 | Granted by Licensing Sub-Committee |
| Minor Variation | Application to change the layout of the premises and to vary capacity so as to reduce by 20 on the ground floor and increase by 20 on the first floor | 31.3.14 | Granted under delegated authority |
| TEN | Temporary Event Notices for extension of hours on New Year's Eve until 03:00 | 24.11.14 | Notice acknowledged |
| TEN | Temporary Event Notices for extension of hours on 25.7.15 until 02:00 | 10.7.15 | Notice acknowledged |
| TEN | Temporary Event Notices for extension of hours on 1.8.15 until 02:00 | 17.7.15 | Notice acknowledged |
| TEN | Temporary Event Notices for extension of hours on 12.9.15 until 02:00 | 3.8.15 | Notice acknowledged |
| TEN | Temporary Event Notices for extension of hours on 19.9.15 until 02:00 | 3.8.15 | Notice acknowledged |
| TEN | Temporary Event Notices for extension of hours on 26.9.15 until 02:00 | 3.8.15 | Notice acknowledged |

Appeal History re: ENDURANCE, 90-91 BERWICK STREET W1

On 26 and 27 July 2008 the Licensing Sub-Committee considered an application made by the Environmental Health Service for a Review of a premises licence in respect of the Endurance Public House, 90-91 Berwick Street W1 on the grounds of public nuisance. Representations in support of the application for Review were also received from the Police and from local residents. In addition, representations against the Review were received from the licensee, from the Westminster Licensees Association, and from a number of local residents in Berwick Street and Hanson Street. In addition representations in support of the licensee, and against the Review, were received from 36 local businesses, and 10 traders from Berwick Street Market.

The decision of the Sub-Committee was to add a number of additional conditions to the premises licence including that "no customer shall be permitted to take drinks from the premises in an open container after 18.00".

Notice of appeal was received from Hope and Glory Public Houses Ltd against the decision of the Licensing Sub-Committee.

Judgment was handed down on 30 June 2009 dismissing the appeal, and awarding costs to the City Council.

On 13 July 2009, the City Council was served with the Notice of Hearing in the High Court for an Application to Stay the decision of the Magistrates' Court. The City Council, as Interested Party in the proceedings, served additional written evidence in advance of the hearing.

On 15 July 2009, Burton J in the High Court considered the Claimants application and the written evidence submitted on behalf of the Claimant and the Interested Party. At that hearing the Claimants, undertook to withdraw their request for District Judge Snow to state a case and instead requested leave to proceed by way of an amended application for Judicial Review of the District Judge's decision. Burton J ordered that there be leave for the Claimant's to amend their application for Judicial Review and adjourned proceedings to continue on 21 July 2009.

On 21 July 2009, the hearing of the above matter continued before Burton J in the High Court. Burton J refused permission for Judicial Review and refused to grant a stay. He awarded costs to the City Council.

A renewed application to the Court of Appeal for permission to Judicially Review District Judge Snow's decision was refused by the Court of Appeal on the papers. A renewed application for an oral hearing was then made by the Claimants.

On 19 May 2010 Application for permission to appeal was granted in the Court of Appeal but limited to only one ground whether "The court erred in directing that it would only reverse the decision of the Licensing Sub-Committee if it was satisfied that the decision was wrong". The appeal was heard on 9 November 2010 before Wall LJ, Laws LJ and Toulson LJ. Judgment was received dismissing the appeal. Costs were awarded to the City Council.

The Claimant then submitted an application to the Supreme Court seeking permission to appeal. The City Council lodged a notice of objection to the notice of appeal with the Supreme Court. The Supreme Court refused the Claimant's permission to Appeal.

CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE AND CONDITIONS PROPOSED BY A PARTY TO THE HEARING

When determining an application for a new premises licence under the provisions of the Licensing Act 2003, the licensing authority must, unless it decides to reject the application, grant the licence subject to the conditions which are indicated as mandatory in this schedule.

At a hearing the licensing authority may, in addition, and having regard to any representations received, grant the licence subject to such conditions which are consistent with the operating schedule submitted by the applicant as part of their application, or alter or omit these conditions, or add any new condition to such extent as the licensing authority considers necessary for the promotion of the licensing objectives.

This schedule lists those conditions which are consistent with the operating schedule, or proposed as necessary for the promotion of the licensing objectives by a responsible authority or an interested party as indicated. These conditions have not been submitted by the licensing service but reflect the positions of the applicant, responsible authority or interested party and have not necessarily been agreed

Mandatory Conditions

1. No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
4.
 - (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
 - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to;
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

- (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
 - (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
5. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
6. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
- (a) a holographic mark, or
 - (b) an ultraviolet feature.
7. The responsible person must ensure that—
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml;
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
 - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

A responsible person in relation to a licensed premises means the holder of the premise licence in respect of the premises, the designated premises supervisor (if any) or any individual aged 18 or over who is authorised by either the licence holder or designated premises supervisor. For premises with a club premises certificate, any member or officer of the club present on the premises in a capacity that which enables him to prevent the supply of alcohol.

- 8(i) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- 8(ii) For the purposes of the condition set out in paragraph 8(i) above -
- (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
- (b) "permitted price" is the price found by applying the formula -
- $$P = D + (D \times V)$$
- Where -
- (i) P is the permitted price,
- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
- (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -
- (i) the holder of the premises licence,
- (ii) the designated premises supervisor (if any) in respect of such a licence, or
- (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.
- 8(iii). Where the permitted price given by Paragraph 8(ii)(b) above would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
- 8(iv). (1) Sub-paragraph 8(iv)(2) below applies where the permitted price given by Paragraph 8(ii)(b) above on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Conditions proposed by the applicant

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

10. There shall be no striptease or nudity, and all persons shall be decently attired at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue licence.
11. There shall be no payment made by or on behalf of the licensee to any person for bringing customers to the premises directly off the street.
12. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of a Metropolitan Police Crime Prevention Officer. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the venue is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.
13. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public. This staff member shall be able to show Police recent data or footage with the absolute minimum of delay when requested.
14. All waste should be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times save for the waste kept in sealed receptacles off the high way and no glass bottles at all should be placed outside the premises between 22:00 and 08:00
15. The pavement from the building line to the kerb edge immediately outside the premises, including gutter/channel at its junction with the kerb edge, is swept and or washed and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.
16. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
17. 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 and businesses in the vicinity.
18. As soon as possible and in any event within 1 month from the grant of this licence, the premises shall join the local pubwatch or local crime reduction scheme approved by the police and local radio scheme, if available.
19. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
20. Signs to remind their customers to exit the premises very quietly and respect the residential neighbourhood when leaving the premises shall be put up very visibly inside the premises.
21. The first floor of the premises shall only operate as a restaurant (i) in which customers are shown to their table, (ii) where the supply of alcohol is by waiter or

waitress service only, (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery, (iv) which do not provide any take away service of food or drink for immediate consumption, (v) which do not provide any take away service of food or drink after 23.00, and (vi) where alcohol shall not be sold, supplied, or consumed on the premises otherwise than to persons who are seated in the premises and bona fide taking substantial table meals there and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

22. A Challenge 21 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.
23. There shall be no payment made by or on behalf of the licence holder to any person for bringing customers to the premises.
24. 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.
25. All external doors shall be kept closed after 21.00 hours except for the immediate access and egress of persons.
26. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
27. The licence holder shall enter into an agreement with a hackney carriage and/or private carriage firm to provide transport for customers, with contact numbers made readily available to customers who will be encouraged to use such services.
28. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the premises by the police or an authorised officer of the City Council at all times whilst the premises is open.
29. On each Wednesday, Thursday, and Friday a SIA registered door supervisor shall be on duty on the ground floor entrance in use at the premises after 18.00 hours whilst the premises are open to the public.
30. The number of persons permitted in the premises at any one time (excluding staff) shall not exceed.

Conditions proposed by the Police

31. The premises shall only operate as a restaurant (i) in which customers are shown to their table, (ii) where the supply of alcohol is by waiter or waitress service only, (iii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery, (iv) which do not provide any take away service of food or drink for immediate consumption, (v) which do not provide any take away service of food or drink after 23.00, and (vi) where alcohol shall not be sold, supplied, or consumed on the premises otherwise than to persons who are seated in the premises and bona fide taking substantial table meals there and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.

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

Alternative to condition 21

32. 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. 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 preceding 31 day period.

Alternative to condition 12

33. 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.

Alternative to condition 13

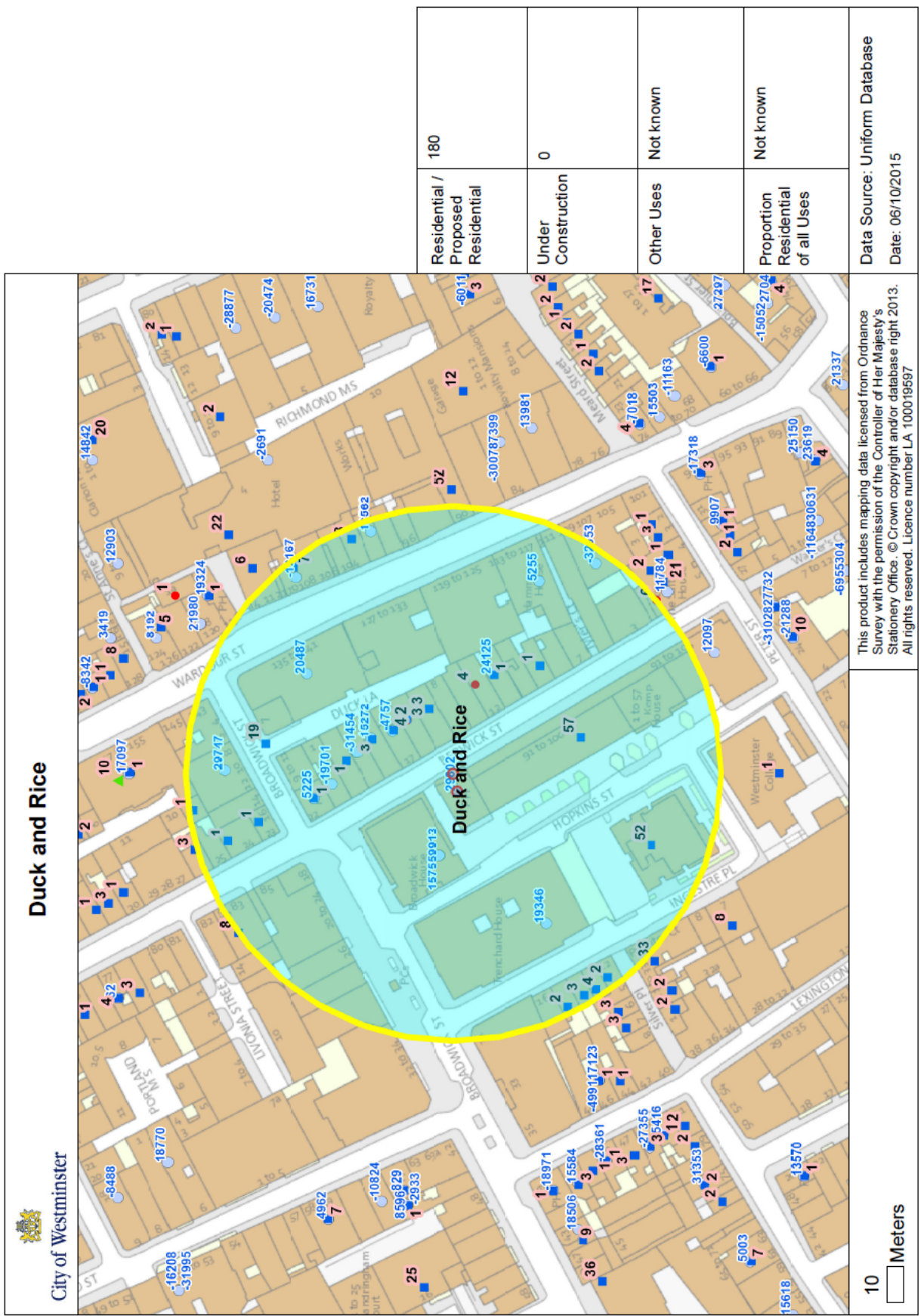
Conditions proposed by the Environmental Health

34. Licensable activities are permitted on the first floor only.

35. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall not be permitted to take drinks or glass containers with them.

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

Residents in the Vicinity - Appendix 5



If you have any queries about this report or wish to inspect one of the background papers please contact the report author.

Background Documents – Local Government (Access to Information) Act 1972

| | | |
|-----------|---|------------------------------|
| 1 | Licensing Act 2003 | N/A |
| 2 | City of Westminster Statement of Licensing Policy | 7 th January 2011 |
| 3 | Amended Guidance issued under section 182 of the Licensing Act 2003 | March 2015 |
| 4 | DPS Details | 6 August 2015 |
| 5 | Public Notice | 6 August 2015 |
| 6 | Residents notification | 6 August 2015 |
| 7 | Application form | 6 August 2015 |
| 8 | Responsible Authorities consultation | 6 August 2015 |
| 9 | Application acknowledged | 6 August 2015 |
| 10 | DPS consent | 6 August 2015 |
| 11 | Mark Teverson representation | 7 August 2015 |
| 12 | Berwick Street Community Group representation | 7 August 2015 |
| 13 | Newspaper Advert | 18 August 2015 |
| 14 | Police representation | 18 August 2015 |
| 15 | Environmental Health representation | 26 August 2015 |
| 16 | Hearing notification to interested parties | 27 August 2015 |
| 17 | Hearing notification to the applicant | 27 August 2015 |
| 18 | Soho Society representation | 28 August 2015 |
| 19 | Clair Malone representation | 28 August 2015 |
| 20 | Andrew Murray representation | 28 August 2015 |
| 21 | Hearing notification to Clair Malone | 14 September 2015 |
| 22 | Revised Plan | 21 September 2015 |
| 23 | Applicant proposed conditions | 5 October 2015 |
| 24 | Environmental Health conditions | 6 October 2015 |
| 25 | Hearing notification | 8 October 2015 |
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