

# Licensing Sub-Committee Report

Item No:	
Date:	13.10.2016
Licensing Ref No:	16/08637/LIPN - New Premises Licence
Title of Report:	Duke of York 45 Harrowby Street London W1H 5HX
Report of:	Director of Public Protection and Licensing
Wards involved:	Bryanston And Dorset Square
Policy context:	City of Westminster Statement of Licensing Policy
Financial summary:	None
Report Author:	Mr David Sycamore Senior Licensing Officer
Contact details	Telephone: 020 7641 8556 Email: dsycamore@westminster.gov.uk

# 1. Application

1-A Applicant and premises			
<b>Application Type:</b>	New Premises Licence, Licensing Act 2003		
<b>Application received date:</b>	12 August 2016		
<b>Applicant:</b>	H Company 2 Limited		
<b>Premises:</b>	Duke Of York		
<b>Premises address:</b>	45 Harrowby Street London W1H 5HX	<b>Ward:</b>	Bryanston and Dorset Square
		<b>Cumulative Impact Area:</b>	No
<b>Premises description:</b>	A traditional pub in a busy residential area where other small businesses operate.		
<b>Premises licence history:</b>	The application is to replace a previous licence which lapsed when the premises licence holder went into liquidation. A history of the previous premises can be found at appendix 3.		
<b>Applicant submissions:</b>	Agreed conditions with the Police and Environmental Health. Police have withdrawn after conditions have been agreed. Email sent to objectors at appendix 2.		
	Hours of recorded music have now been reduced to those of all other licensable activities after consultation with Environmental Health.		

1-B Proposed licensable activities and hours							
<b>Late Night Refreshment:</b>				<b>Indoors, outdoors or both</b>			Indoors
<b>Day:</b>	<b>Mon</b>	<b>Tues</b>	<b>Wed</b>	<b>Thur</b>	<b>Fri</b>	<b>Sat</b>	<b>Sun</b>
<b>Start:</b>	23:00	23:00	23:00	23:00	23:00	23:00	N/A
<b>End:</b>	23:30	23:30	23:30	23:30	23:30	23:30	N/A
<b>Seasonal variations/ Non-standard timings:</b>		From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.					

<b>Sale by retail of alcohol</b>				<b>On or off sales or both:</b>			Both
<b>Day:</b>	<b>Mon</b>	<b>Tues</b>	<b>Wed</b>	<b>Thur</b>	<b>Fri</b>	<b>Sat</b>	<b>Sun</b>
<b>Start:</b>	10:00	10:00	10:00	10:00	10:00	10:00	12:00
<b>End:</b>	23:00	23:00	23:00	23:00	23:00	23:00	22:30
<b>Seasonal variations/ Non-standard timings:</b>		From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.					

Recorded Music				Indoors			
Day:	Mon	Tues	Wed	Thur	Fri	Sat	Sun
<b>Start:</b>	10:00	10:00	10:00	10:00	10:00	10:00	12:00
<b>End:</b>	23:00	23:00	23:00	23:00	23:00	23:00	22:30
<b>Seasonal variations/ Non-standard timings:</b>			From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.				

Hours premises are open to the public							
Day:	Mon	Tues	Wed	Thur	Fri	Sat	Sun
<b>Start:</b>	10:00	10:00	10:00	10:00	10:00	10:00	12:00
<b>End:</b>	23:30	23:30	23:30	23:30	23:30	23:30	23:00
<b>Seasonal variations/ Non-standard timings:</b>			From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.				
<b>Adult Entertainment:</b>			N/A				

## 2. Representations

2-A Responsible Authorities	
<b>Responsible Authority:</b>	Environmental Health
<b>Representative:</b>	Mr David Nevitt
<b>Received:</b>	8 <sup>th</sup> September 2016

Representation is made in relation to the application, as the proposals are likely to increase Public Nuisance and may impact upon Public Safety.  
The applicant has proposed Conditions which are under consideration.

*Conditions have been proposed and agreed, the representation is maintained due to resident objections.*

### NOISE COMPLAINT HISTORY

#### 16/06538/ENC45 05.03.2016 19:00

Noise complaints after karaoke evening. Event finished at 21:00hrs.

#### 15/28927/ENC45 24.10.2015 21:00

Loud music coming from Duke Of York. Return call requested.

Music not audible in customer Flat. Went to pub and spoke to a member of staff who said he was not DPS but was a License Holder. Admits they had a band for a Private Party tonight but it finished at 10pm. Now just background music.

A few people outside but appears well controlled

**15/25019/ENC45 17.09.2015 22:00**

Pub is blaring music into the street very loudly. No call back required.  
 Visit The Duke of York noise from loud amplified music clearly audible in the street.  
 Spoke to member of staff and music turned down on request. NFA taken because noise not substantiated within complainant's premises.

**15/06696/ENC45 18.03.2015**

This pub is running a rave/disco on Saturday nights, with unacceptably high noise levels passed 10pm. The pub does not hire bouncers or any form of control which results in patrons coming outside the premises and being very loud without any consideration for the residents nearby. This has been happening on Saturday nights, for the last few weeks. Logged

<b>2-B Other Persons</b>	
<b>Name:</b>	Mr Nic Protopsaltis
<b>Address and/or Residents Association:</b>	Flat 232 Marble Arch Apartments 11 Harrowby Street London W1H 5PQ
<b>Received:</b>	9 <sup>th</sup> September 2016
<p>I have been resident at this address for almost five years. In the last three years the pub has been a nuisance on most weekends and weekdays during the summer months. We have made numerous calls to the Westminster Noise Pollution team as the pub management has decided to host live bands and dance nights without the appropriate noise insulation installed, making the noise coming out of the venue too loud. The patrons of the pub have also been very noisy in the evening, and numerous calls to the pub have not resulted in managing the outside area either via a door man or by posting signs asking the patrons to respect the residents in the area.</p> <p>During the time the pub has been closed it has made a huge improvement to our quality of life, and I hope that the license will not be re-issued which will allow the neighbouring residents to have a improved quality of life.</p> <p>I would also like to add that there are four pubs in the two square blocks between Brendon Street and Shouldham Street, and none of these establishments cause the amount of noise and complaints that the Duke of York has.</p>	
<b>Name:</b>	Mrs Julia Lloyd
<b>Address and/or Residents Association:</b>	27 Molyneux Street London W1H 5HW
<b>Received:</b>	6 <sup>th</sup> September 2016
<p>I would like to make two comments:</p> <p>First, we note that the bins should not be filled or emptied during unsociable hours. of course, what happens in practice is that the bins are filled when the pub closes (at 2330) and are emptied by the Council at 6am. The bins are on Molyneux Street, which is a residential street. As the Duke of York's postal address is on Harrowby Street, which is more commercial, can we request that the commercial waste bin is located</p>	

adjacent to the pub door on Harrowby Street?

Second, it is not clear to me whether the tables outside are on the premises or on the highway. If they are on the premises, please can the terms of the licence state that the tables should not be used after 9pm (as is common with the other pubs in the immediate vicinity, such as the Larrik). Currently, there seems to be no restriction on when these tables can be used for people to sit/stand and be served alcohol. In addition, the tables are not tied up at night, which means that passers by (at 3, 4 in the morning) can sit at the tables and talk/drink. As this is a residential neighbourhood, I would hope that the same conditions to serving alcohol outdoors which apply to other pubs, such as the Larrik, can be observed here too. If the tables are not on the premises, but are on the highway, I note that there is no planning permission for the tables (and the decking). Please can you let me know whether this should also be referred to the planing team? We have n objection to the outdoor tables per se - just that they not be used right up until 2330 each day, and that they are tidied away/tied up when they are not in use? Thank you.

### 3. Policy & Guidance

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

**Policy PB/1 applies**

Applications will only be granted if it can be demonstrated that the proposal meets the relevant criteria in Policies CD1, PS1, PN1 and CH1.

**Policy HRS/1 applies**

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.

## 4. Appendices

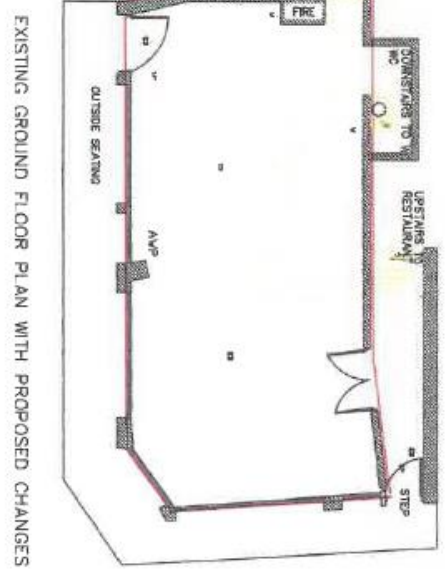
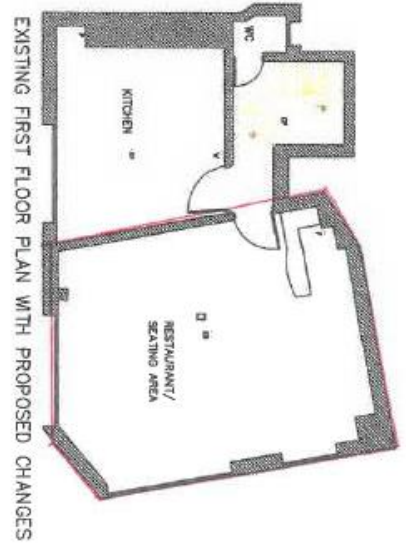
<b>Appendix 1</b>	Premises plans
<b>Appendix 2</b>	Applicant supporting documents
<b>Appendix 3</b>	Premises history
<b>Appendix 4</b>	Proposed conditions
<b>Appendix 5</b>	Residential map and list of premises in the vicinity

<b>Report author:</b>	Mr David Sycamore Senior Licensing Officer
<b>Contact:</b>	Telephone: 020 7641 8556 Email: dsycamore@westminster.gov.uk

**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**

<b>1</b>	Licensing Act 2003	N/A
<b>2</b>	City of Westminster Statement of Licensing Policy	January 2016
<b>3</b>	Amended Guidance issued under section 182 of the Licensing Act 2003	March 2015
<b>4</b>	Representation from EH	September 2016
<b>5</b>	Representation from Police - Withdrawn	September 2016
<b>6</b>	Resident comments.	September 2016
<b>7</b>	Resident Comments	September 2016
<b>8</b>	Police conditions agreed	September 2016
<b>9</b>	EH conditions agreed	September 2016



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- KEY**
- CALL POINTS
  - SHOCK DETECTORS
  - ▲ FIRE ALARM SYSTEM
  - ▼ WATER EXTINGUISHERS
  - ∇ FOAM EXTINGUISHERS
  - ∩ DRY POWDER EXTINGUISHERS
  - CO2 EXTINGUISHERS
  - WET CHEMICAL EXTINGUISHERS
  - ILLUMINATED 'EXIT' SIGN
  - ILLUMINATED 'EMERGENCY EXIT' SIGN
  - ILLUMINATED 'EXIT' SIGN WITH DIRECTIONAL ARROW
  - EXIT SIGN
  - FRUIT MACHINE
- MILEN C.A. ACTIVATED ACTIVITIES



**LOLLIPOP SQUARE**  
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**PROJECT:**  
**TITLE:**  
**DATE:**  
**DRAWING NO.:**

Office of York, 45, Hammer Street, W1H 8PT  
 Proposed changes  
 20th April 2012  
 1001-0001

**SCALE:**  
**REVISION:**  
**STATUS:**

1/100 @ A3  
 C

Email sent from solicitors to objectors.

I act for the applicant in respect of the above premises. I have received a copy of your representations to the above application from the Licensing Department at Westminster City Council.

I note that you have commented on issues regarding disposal of rubbish and also use of the outside tables and chairs from the previous operators of this premise.

Our clients are intending to work with both the authorities and the local residents to ensure this pub becomes part of the community rather than a nuisance to all concerned.

We have been in consultation with the relevant authorities during the consultation period for this application and I would like to confirm the following further conditions have been agreed between all parties:-

- 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.
- 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.
- 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.
- An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police, which will record the following:
  - all crimes reported to the venue
  - all ejections of patrons
  - any complaints received concerning crime and disorder
  - any incidents of disorder
  - all seizures of drugs or offensive weapons
  - any faults in the CCTV system or searching equipment or scanning equipment



- any refusal of the sale of alcohol
- any visit by a relevant authority or emergency service.
- Alcohol consumed outside the premises building shall only be consumed by patrons seated at tables.
- All outside tables and chairs shall be rendered unusable by 2300 each day.
- All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
- A risk assessment will be carried out to determine the maximum occupancy figure for the first floor in agreement with the Council's Environmental Health Officer. This risk assessment will be updated upon the granting of any works to this floor.

These conditions are to be added to those already provided in our application, namely:-

- All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
- No waste or recyclable materials, including bottles, shall be moved, removed or placed in outside areas between 23.00 hours and 08.00 hours.
- No deliveries to the premises shall take place between 23.00 hours and 08.00 hours
- 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.

I wonder whether the above would alleviate your concerns in respect of this application and would be grateful if you would let me have your thoughts by return? If you wish to discuss any of the points raised please feel free to call me on the number below.

<b>Application</b>	<b>Details of Application</b>	<b>Date Determined</b>	<b>Decision</b>
05/05720/LIPCV	Conversion from the old Act.	06.09.2005	Granted under delegated authority.
11/01667/LIPDPS	Vary Designated Premises Supervisor	10.03.2011	Granted under delegated authority
12/04092/LIPVM	Vary Designated Premises Supervisor	11.06.2012	Refused
14/00424/LIPDPS	Vary Designated Premises Supervisor	05.02.2014	Granted under delegated authority
15/09681/LIPT	Transfer	28.01.2016	Granted under delegated authority

## **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 Environmental Health**

9. Alcohol consumed outside the premises building shall only be consumed by patrons seated at tables.
10. All outside tables and chairs shall be rendered unusable by 23.00 each day.
11. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
12. A risk assessment will be carried out to determine the maximum occupancy figure for the first floor in agreement with the Council's Environmental Health Officer. This risk assessment will be updated upon the granting of any works to this floor.

### **Conditions proposed by the Police and agreed with applicants.**

13. 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.
14. 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.
15. A Challenge 21 or Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram. Challenge 21
16. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police, which 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 or searching equipment or scanning equipment
  - (g) any refusal of the sale of alcohol
  - (h) any visit by a relevant authority or emergency service.

## Conditions consistent with the operating schedule

17. All waste shall be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
18. No waste or recyclable materials, including bottles, shall be moved, removed or placed in outside areas between 23.00 hours and 08.00 hours.
19. No deliveries to the premises shall take place between 23.00 hours and 08.00 hours
20. 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.

