

## SUMMARY OF PROPOSALS

---

### OPIUM, 21 RUPERT STREET, W1

---

1. This is an application on the exact same terms as the Existing Premises Licence ref 18/01592/LIPT, as amended by variation reference 18/12503/LIPVM. As such, there is no additional use or impact within the “CIA”.
2. The concept of a Shadow Licence is not new. Its origins lie in ***R (OTA) Extreme Oyster v Guildford Borough Council [2013] EWHC 2174 (Admin)***.

Turner J “*There are provisions in the 2003 Act upon which Guildford rely which allow an owner to apply for the transfer of the original licence back from the tenant in the event of insolvency or surrender or because the tenant had given up occupation but these are circumscribed by time restraints and depend in part upon the cooperation of the tenant which may not always be forthcoming*”. (Para 51).

3. The learned judge was also impressed by **The DCMS Guidance** which states this at paragraph 8.19:

*“There is nothing in the 2003 Act which prevents an application being made for a premises licence at premises where a premises licence is already held”.*

4. The Judge cited the case of ***Thwaites*** at paragraph 45-46 of his judgment in support of his view that s.16 should be given a broad interpretation:

“Firstly, the Licensing Act 2003 was not intended to support a regime based on a narrow and restrictive approach to licensing. As Black J. observed in ***R (Daniel Thwaites plc) v Wirral Borough Magistrates’ Court and Others [2008] EWHC 838 (Admin) at para. 13:***

*“The Licensing Act 2003 was intended to provide a ‘more efficient’ ‘more responsive’ and ‘flexible’ system of licensing which did not interfere unnecessarily. “*

5. The statement of licensing policy provides at 3.2.16:

- *Increasingly, applications have been made for premises licences at premises where a licence is already in force. Typically the applicant is the landlord of the premises where the licence holder of the licence already operating is their tenant. The landlord in many cases is seeking what they term a “shadow licence” on the same or similar terms to the licence already existing.*
- *The Act permits more than one licence to be in effect at any one time at the same premises and it has been established in law that the landlord may apply for a second or subsequent licence.*
- *The council remains concerned however that the holding of additional licences has the potential to undermine the sanctions available to it in response to a review application under the Act. This would be the case if action was taken in respect of one of the licences in effect at the premises, but the premises continued to operate under the authority of a second licence which had not been affected by the review proceedings.*
- *The council recognises that landlords have powers over their tenants outside of the licensing regime and would expect responsible landlords to exert that control to promote the licensing objectives. Where the landlord is also a licence holder of a premises licence in effect at the premises the council considers that the landlord has further responsibilities in respect of the operation of the premises to promote the licensing objectives.*
- *In order to promote the licensing objectives the council will take a holistic view of the licensing circumstances at the premises. When the licensing authority makes an application to review a premises licence to promote the licensing objectives at a premises, it will also consider whether it is appropriate to review all the licences in effect at the premises in order to promote the licensing objectives. Where the applicant for the review is not the licensing authority it*

*will encourage the applicant to also consider whether it is appropriate to review all the licences in effect at the premises, and will consider bringing a review of any other licence in effect at those premises if it considers it appropriate to promote the licensing objectives.*

- *To support the council's approach to multiple licences for the same premises it is the licensing authority's policy that all licences take effect when granted and continue to have effect in accordance with section 26 of the 2003 Act, and that the imposition of a condition which purports to suspend the effect of a licence would not promote the licensing objectives.*

6. Representation is made by the **Metropolitan Police** (emphasis added):

*"...The venue is situated in the West End Cumulative Impact Area, a locality where there is traditionally high crime and disorder. We have concerns that this application will cause further policing problems in an already demanding area.*

*There is insufficient detail in the operating schedule to address the Crime Prevention Objective.*

*It is for **these reasons** that we are objecting to the application."*

7. Representation is made by the **Licensing Authority**:

*"...The "shadow licence" is made on the same terms to the licence already existing.*

*However paragraph 3.2.13 states that The council remains concerned however that the holding of additional licences has the potential to undermine the sanctions available to it in response to a review application under the Act. This would be the case if action was taken in respect of one of the licences in effect at the premises, but the premises continued to operate under the authority of a second licence which had not been affected by the review proceedings.*

*The council remains concerned however that the holding of additional licences has the potential to undermine the sanctions available to it in response to a review application under the Act. This would be the case if action was taken in respect of one of the licences in effect at the premises, but the premises continued to operate under the authority of a second licence which had not been affected by the review proceedings.”*

8. No representation is made by the **Environmental Health Team**:

*“...The application has been made on the same terms as premises licence ref. 18/13366/LIPDPS, which is currently in issue. As presented, the application **is not likely to have Public Nuisance and Public Safety** effect within the area West End Cumulative Impact Area for which reason Environmental Health **has no objection.**”*

9. As can be seen in the Witness Statement of Cosmina Stan, the Applicant has:

- Comprehensive lease provisions in place as regards the Tenant’s Premises Licence;
- Engaged in a comprehensive improvement and re-development of the Trocadero;
- Surrendered late night licences when not conducive to the development and location amenity and replaced them with more appropriate uses;
- Engaged pro-actively with Tenants;
- Met with the owner and DPS;
- Is a member of the Heart of London BID;
- Meets regularly with the Police Licensing Team;
- Has its own CCTV which is being developed and improved;
- Has 24 hour site security; and
- Made this application so the Landlord can have more control over the Premises.

**Conclusion**

10. The Applicant is a respected Landlord in the City of Westminster. It has proven record of “cleaning up” its portfolio, with the surrendering of a 3am licence in Leicester Square in favour of the development of a more attractive, and less contentious, hotel operation, thus reducing cumulative impact.

11. The safeguarding provisions that the Applicant brings, together with the leverage that the shadow licence will give it over the existing or future operator, will provide a will promote the Licensing Objectives.