

**50 Carnaby Street
London
W1F 9PY**

SUMMARY OF PROPOSALS

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Introduction

1. The premises are discretely situated in Kingly Court, albeit the postal address is Carnaby Street. There is an entrance at ground floor level with licensable activities being proposed in the basement only. The proposed customer capacity is 120.
2. The Freeholder is Shaftesbury, who own over 300 licensed premises in Westminster. They are more than a responsible Landlord.
3. The unit was previously storage for Ben Sherman, but the site has a history of being an entertainment venue. This location was deliberately chosen and developed due to its unique location and the positive attributes of Kingly Court.
4. Planning Permission was granted in April 2019 for use of the basement with hours and capacity per the Application as either a:
 - a) Vertical drinking bar; or
 - b) Live Music Venue.
5. Those uses in this location were described by the report for the City Council's executive Director of Growth Planning as:

"The proposed night club/live performance [venue] will add to the diversification of uses within Kingly Court. These uses are also considered appropriate to the area."

6. The report recognised London's Mayor's adopted Culture and Night-time Economy SPG states that *"London has lost 103 nightclubs and live music venues since 2007, a decline of almost a third and figures show that 1,220 pubs and bars shut between 2001 and 2019 an average of 76 a year. The provision of night-time activities are encouraged in order to expand that cultural offer¹."*
7. The planning report² also highlights safeguarding elements in the management of Kingly Court, such as a 24/7 estate security team and 14 public area facing CCTV cameras providing on site security at the Premises, as appropriate "other issues" consideration in the planning decision.
8. Of those uses, Shaftesbury has decided to implement the more benign of the two uses, that being a live music/performance venue and after a long search for a suitable Tenant will be (subject to Licensing) granting a long Lease to the Applicant.

The Application

9. The only representations are from the Responsible Authorities and the Soho Society.

¹ Paragraph 8.9 of the planning report

² Paragraph 8.13 of the planning report

10. There has been pre-application advice, dialogue with the Responsible Authorities and other stakeholders (including local residents) throughout the planning and licensing process. As a result, the following conditions/amendments are also now proposed:

- a) No off-sales;
- b) Minimum two SIA on Thursday, Friday and Saturday; and
- c) That the banquette area is set out with fixed seating at all times.

Shaftesbury and Kingly Court

11. Shaftesbury are a major stakeholder in Soho with a unique and bespoke policy of fostering and maintaining local culture and economy. They have strict lease provisions and management controls.

12. Kingly Court has, over the past 10 years, been successfully developed into a food court, with the main influence being high quality, independently run food businesses. The Court provides an attractive dining option, with a variety of restaurants in a safe, supervised and managed location. This includes:

- Active Estate Management across the whole of Carnaby,
- 24/7 security guards on patrol and overseeing CCTV;
Dispersal via Kingly Street/ Carnaby Street towards the more adjacent transport hubs;
- Membership of the Safer West End Business Crime Reduction Partnership;
- Tenant radio links to police and estate security;
- Carnaby WhatsApp group membership to communicate issues and emergencies between tenants, managing agents, Safer West End and Estate Security;
- Partnership working with Westminster City Council on a variety of measures managing the public realm, including discussions on a Licensing Pilot for Carnaby.
- Promotion of safe place – supporting those within the vicinity who are vulnerable as a result of intoxication or other issues associated with the night time economy.

13. These safe-guarding measures negate any impact to the CIA resulting from the application, and actually assist in the reduction of existing licensing impact in CIA.

14. The Court has a complete absence of residential property.

History of the Premises

15. 50 Carnaby Street was once home to 'The Florence Mills Social Parlour', opened in 1929 by Sam Manning and Amy Ashwood. Manning was a pioneering black recording artist and calypso singer;

Ashwood was the wife of black political activist, Marcus Garvey. The premises was part restaurant, part social centre and part jazz club; it was a trailblazer for Afro-Caribbean culture in the UK.

16. Throughout preceding decades 50 Carnaby Street has been the site of many iconic nightclubs, including the 'Blue Lagoon Club' in the 1940s and the 'Sunset Club' in the 1950s, where jazz was played until 7am. In 1962 the premises became 'The Roaring Twenties' and hosted the likes of The Beatles, The Rolling Stones and Georgie Fame. The 1970s saw the premises become Columbo's with Bob Marley playing in 1975. In the mid 1980s it closed its doors.

The Applicant

17. The operation is a collaboration between 'The Lost Estate', market leaders in immersive music and dining experiences, award-winning restaurateur Neil Rankin, award-winning musicians in their own right and PEPPER, an investment and operations group founded to support the cutting edge in culinary talent, who will provide operational and managerial support.
18. 50 Carnaby Street will be a premium live music venue – a dedication to the Soho days of the 1930s; a home for great music, food and cocktails.
19. The Team includes design by Lenny Kravitz in his first UK collaboration. Music collaborations are proposed in the form of:
 - **Miss Baby Sol** – collaborator with Paloma Faith and Jamie Cullum – who brings to life the female stars of the jazz world including Ella Fitzgerald and Aretha Franklin;
 - The critically acclaimed **Monocled Man** – a trio at the forefront of the contemporary British jazz scene, led by trumpet virtuoso Rory Simmons;
 - **Hackney Colliery Band** – previous collaborated with Amy Winehouse and Madness, performed at top UK jazz venues. Blend of hard hitting brass powered arrangements of classics ('Africa', Rolling in the Deep') alongside original material – one of the most exciting groups on the UK jazz scene.
 - **Jamie Cullum** – UK's most renowned jazz singer with 8 critically acclaimed albums, jazz and MOBO award winning.
 - **Ayanna Witter-Johnson** – singer, cellist and songwriter; MOBO award nominated, performed with the London Symphony Orchestra. A blend of classical, urban and jazz sound-scapes.
 - **Peter Horsfall**, acclaimed trumpet player, vocalist and songwriter.
 - **Old Dirty Brasstards** – tweed-clad 10-piece drum 'n' brass

The MAKE Report and Cumulative Impact

20. A Licensing Impact Assessment Report was commissioned to consider the likely licensing impact of the opening of the premises in its location in respect of the Statement of Licensing Policy, on

the licensing objectives and to analyse the broader context of the evening and night-time economy in and around this part of Carnaby Street.

21. In summary, the Report:

- a) Identifies the precise location of the premises is also a key consideration in the likely impact in the CIA: *"...Kingly Court is situated to the south of Carnaby Street in the west of Soho. There is high footfall here during the day and moderate to high footfall on nights, rising slightly higher on weekend nights. However, it is by no means as busy as other Soho streets such as Wardour, Old Compton, Dean etc. Whilst Carnaby Street itself and neighbouring streets - such as Ganton and Newburgh Street - are low in licensed premises, Kingly Street itself features a considerable number of licensed premises³"*
- b) Highlights an analysis of other premises in the vicinity; *"what is unusual is just how dominated these venues are by food / A3 premises, as well as the lack of A4 drink-led venues, with only 5 or 13% falling into this category...In summary, this part of Soho is heavily food focused, with some drink-led venues but virtually zero cultural and entertainment offer⁴."*
- c) Notes the substantial variance of the Cumulative Impact Area on a street by street basis, by way of, land-use, types of licensable activity and customer types. The cultivation of the Applicant, as Landowner, of the Carnaby area has resulted in a *"food and retail driven destination...that attracts an upmarket crowd...this has proved fruitful because the area around Carnaby and Kingly is low (even non-existent) in recorded incidents [of crime and disorder and ASB] relative to the rest of the West End Stress Area⁵";*
- d) Identifies the available crime and ASB statistics also show clearly that *this area is one of the safest in Soho and is not currently subject to cumulative impact, despite being captured within the West End Stress Area;*
- e) Highlights the following as "unique qualities "of this application:
 - the presence of a 24/7 security team in the public realm around the venue and CCTV both externally as well as internally,
 - *the culturally led nature of its high-end live music offer,*
 - *the type of clientele that it will attract will, like those other venues in Kingly Court, not have a propensity towards creating public nuisance or violence,*
 - *it has in place effective dispersal conditions and a strong Operation Management Plan approved by the council,*
 - *its small scale*
 - *it is in a location within minimal existing impact around crime and disorder and public nuisance, and*

³ Paragraph 58 of the MAKE Report

⁴ Paragraphs 61 & 62 of the MAKE Report

⁵ Paragraph 64 of the MAKE Report

- *is not in the immediate vicinity of residents.*

Statement of Licensing Policy

PVC2

22. It is the Applicant's case that Policy PVC2 applies, which states:

"Applications will be granted subject to other policies in this Statement, provided it is demonstrated that they will not add to cumulative impact in the Cumulative Impact Areas."

23. The Policy "test" therefore is not to require an exception but only to establish that the use does not add to cumulative impact.

24. This is because City Council:

a) welcomes *"the vital contribution that theatres, cinemas, concert halls and other performance venues make in providing the diverse cultural and entertainment that attracts people of all ages into Westminster, and maintains its status as a world class city. The council as the Licensing Authority accepts that these types of uses are unlikely to be linked with crime and disorder, and generally have less impact on residents than other licensable activities";*
and

b) *wishes to see a less alcohol led and a more diverse range and variety of entertainment available later at night, and will allow for greater flexibility to those premises that add to a more varied offer of entertainment and cultural activity. The council wishes to encourage a wider range of people to frequent the West End, both so that they can enjoy what it has to offer and because a wider range of age groups can act to curb anti-social behaviour. In doing this it will further the licensing objectives of prevention of crime and disorder and public nuisance."*

25. *"Bars are a normal feature of performances venues but they should be ancillary to the overall use of the premises as a performance venue.*

26. *"Premises where regulated entertainment is provided to a seated audience(e.g. cinemas, theatres and concert venues), provide a diverse range of cultural and entertainment facilities and are attended by a wide range of age groups. They generally have little association with crime and disorder or public nuisance. Because of this, these types of premises will be given the opportunity to operate more flexibly late at night. Any relevant representations received and the availability of transport will be matters for careful consideration.*

27. The application seeks a Premises Licence as a performance venue consistent with Policy PVC2 and proposes the following condition: *"The primary use of the premises will be as a live music/performance venue".*

CIP Policy (if an exception was needed to be established)

28. In any event, even if the use was not a performance venue, the factors which, cumulatively, prove an exception are set out below in paragraphs [28 to 34.]
29. It is submitted that the live music performance/venue use sought does not align the Premises with those of the nature which undermine the reasons for having the Cumulative Impact Policy, described in Policy paragraph 2.4.1.
30. These area[s] have been identified as Cumulative Impact Areas because *“the cumulative effect of the concentration of late night and drink led premises and/or night cafés has led to serious problems of disorder and/or public nuisance affecting residents, visitors and other businesses.”*
31. The Policy provides *“in relation to the Cumulative Impact Areas, are directed at the global and cumulative effects of the licences on the area as a whole.”*
32. It is submitted that the proposed use of the Premises neither adds to cumulative impact nor undermines the reason for the Policy.
33. *It is not possible to give a full list of examples of when the council may treat an application as an exception. However, in considering whether a particular case is exceptional, the Licensing Authority will consider the reasons underlying the Cumulative Impact Area special policies on cumulative impact.*
34. Those reasons are:

Reason for Policy (characteristics of cumulative impact – Appendix 14)	Specifics of Application addressing characteristics
(a) High levels of noise/vibration/disturbance	<ul style="list-style-type: none"> - Specific size and geographical location of premises, with designated entrance within the confines of Kingly Court. - Not a residential area. - Small capacity
(b) High levels of bad behaviour – anti-social, dangerous, criminal	<ul style="list-style-type: none"> - 24/7 Shaftesbury estate security and CCTV coverage. - Minimal impact on crime and disorder in specific location - Small capacity - Proposed SIA
(c) Insufficient pedestrian footways	<ul style="list-style-type: none"> - Dispersal from the Kingly Court area. - Dispersal Plan

	- Small capacity
(d) High volumes of litter	- Estate management of external areas
(e) Fouling of doorways, alleyways etc	- Estate management of external areas and CCTV coverage
(f) Difficulties in providing adequate street cleaning/refuse collection etc	- Estate management of external areas
(g) Traffic congestion	- N/A – pedestrianised location
(h) Perception of threat to personal safety	- 24/7 Shaftesbury estate security and CCTV coverage. - The specific location of the premises, both in terms of the Kingly Court area and within the realms of the Shaftesbury estate, afford unique safeguarding provisions.

Statutory Guidance

35. Indeed the Secretary of State’s section 182 Guidance (“*the Guidance*”) specifically notes in relation to the designation of a cumulative impact area⁶: “[w]hen establishing its evidence base for publishing a CIA, licensing authorities should be considering the contribution to cumulative impact made by **different types of premises** within its area, in order to determine the appropriateness of including different types of licensed premises within the CIA.” [Emphasis added].

36. The Guidance continues⁷: “A CIA should never be absolute. Statements of licensing policy should **always allow for the circumstances of each application to be considered properly and for applications that are unlikely to add to the cumulative impact on the licensing objectives to be granted**. After receiving relevant representations in relation to a new application for or a variation of a licence or certificate, the licensing authority must consider whether it would be justified in departing from its CIA in the light of the **individual circumstances of the case**. **The impact can be expected to be different for premises with different styles and characteristics**. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact, a small restaurant or a theatre may not.” [Emphasis added].

HRS1

⁶ Guidance paragraph 14.43

⁷ Guidance paragraph 14.44

37. The proposed hours are in line with planning and consistent (if not earlier) than other live music venues, such as Ronnie Scott's.
38. Whilst the proposed hours are beyond "Core", the same factors apply to the PVC or exceptional circumstances to grant and more particularly:

HRS1 Factors	Specifics of Application addressing these factors
(a) The demonstration of compliance with relevant criteria in policies CD1, PS1, PN1 associated with the likelihood of the effect of the grant of a licence for later or earlier hours on crime and disorder, public safety and public nuisance.	See paragraph [] above
(b) Whether there is residential accommodation in the proximity of the premises that would be likely to be adversely affected by premises being open or carrying out operations at the hours proposed.	A complete absence of residential amenity within the Court and minimal number of residents in the vicinity generally
(c) The proposed hours of the licensable activities and when customers will be permitted to remain on the premises.	In line with recently granted planning permission.
(d) The proposed hours when any music, including incidental music, will be played.	In line with recently granted planning permission.
(e) The hours when customers will be allowed to take food or drink outside the premises or be within open areas which form part of the premises.	In line with recently granted planning permission.
(f) The existing hours of licensable activities and the past operation of the premises (if any) and hours of licensable premises in the vicinity.	Historic use as live music venue to 7am (see paragraphs 15 and 16 above)
(g) Whether customers and staff have adequate access to public transport when arriving at and leaving the premises, especially at night.	Excellent transport links Bespoke Dispersal Policy

(h) The capacity of the premises.	Conservative sized premises (120 capacity)
(i) The type of use: recognising that premises that sell alcohol, play music for dancing, provide fast food, are more likely to be associated with crime and disorder and public nuisance than restaurants, theatres, cinemas, other performance venues or qualifying clubs.	Performance venue - live, predominantly jazz, music
(j) The Licensing Authority will take into account the active measures proposed for a 'winding down' period including arrangements for people to be collected from the premises to travel home safely.	Bespoke Dispersal Policy

Supporting Policies:

Draft Soho Neighbourhood Plan

39. The development of new live music venues will be supported provided they are low impact in terms of noise and how the arrival and dispersal of customers is managed⁸.

40. *"The Plan recognises live music as part of Soho's history and heritage and is closely related to the creative industries. It is a crucial part of London's live music culture long term and Policy 13 wishes to help reverse the decline in the number of venues offering live musical events by these polices but they will only succeed if viable commercial proposals for such use come forward⁹."*

The London Mayor's adopted Culture and Night-time Economy Supplementary Planning Guidance (SPG)

41. *"It is devastating to know that "London has lost 103 nightclubs and live music venues since 2007, a decline of almost a third. The capital is set to lose 3,500 artist studios by 2019. That equates to a loss of a third of the capital's creative workspace.....A phenomenal rate of growth puts London in danger of falling victim to its own success. Sustainable growth means placing importance on those facilities and services that help make London so attractive in the first place. Cultural venues are on such example.¹⁰"*

⁸ Paragraph 2.4 of the Draft Soho Neighbourhood Plan

⁹ Paragraph 7.4.2 of the Draft Soho Neighbourhood Plan

¹⁰ The Mayor's adopted Culture and Night-time Economy Supplementary Planning Guidance (SPG) paragraphs 3.1 and 3.5

42. *“Boroughs should generally encourage a wide range of night-time activities including the expansion of existing culture and leisure venues¹¹ .. making London’s night-time culture more diverse goes hand in hand with ensuring a wide range of evening and night-time activities are on offer to London’s diverse population¹².”*

Draft Westminster City Plan 2019-2040

43. In the draft New City Plan, the location falls within the designated West End Retail and Leisure Special Policy Area (“**WERLSPA**”). This states that the WERLSPA should deliver a diverse evening and night-time economy and will aim to enhance its cultural offer. In doing so, the Council will support applications which appropriately manage and enhance diversification of the evening and night-time economy.
44. *“The West End is home to the largest evening and night-time economy in the UK. It has a wealth of cultural uses, pubs, bars, restaurants, nightclubs, cinemas, theatres and other leisure uses. To ensure the area is welcoming and attractive to all communities, the appropriate management and further diversification of the evening and night-time economy will be supported¹³.”*

Conclusion

45. Whilst the Premises is in the West End Cumulative Impact Area, it will operate as a live music and performance venue and will not add to existing cumulative impact because:
- a) It’s PVC use and the reasons behind that Policy;
 - b) The location within Kingly Court;
 - c) 24 hour security and CCTV;
 - d) The limited number of standing persons;
 - e) The ‘micro-climate’ of Kingly Court and the relative lack of residential amenity;
 - f) Lack of live music/performance venues in both the locality and wider CIA;
 - g) The lack of residential amenity and residential objection; and
 - h) Safeguarding of vulnerable persons within the vicinity.

46. If an exception needed to be established, in *Merran v Westminster City Council*, District Judge Roscoe said:

“If the application promotes the Licensing Objectives then, presumably, it must be exceptional.”

*“In my view there are reasons that persuade me that there are **genuinely exceptional circumstances** that take these premises outside the constraints of the Policy. I **should***

¹¹ The Mayor’s adopted Culture and Night-time Economy Supplementary Planning Guidance (SPG) paragraph 3.13

¹² The Mayor’s adopted Culture and Night-time Economy Supplementary Planning Guidance (SPG) paragraph 4.1

¹³ WERLSPA paragraph 2.9

make it clear that there is not one single characteristic that persuades me of this, but that it is a combination of factors and circumstances. These are as follows:-

- 1) *The situation of the club is an area where there are **no residents nearby** and where there is no vehicular through traffic at night (save for the cleansing vehicles).*
- 2) *There is **good access to main roads and transport links** that assist the exodus of the clubs customers, without them entering or traversing residential areas.*
- 3) *The establishment of its own PCO registered cab office must diminish the use of illegal mini-cabs, (which should diminish further with an extension of opening hours).*
- 4) *The existence of a **restaurant** within the premises and the service throughout the night of meals. Some free provision of snacks.*
- 5) *The absence of drinks promotions, save for the provision of free soft drinks in certain circumstances.*
- 6) *The high ratio of **security** staff to customers.*
- 7) *The high specification **CCTV** and use of hand held monitors in the club.*
- 8) *The door and booking policy and details, and the checks on identity.*
- 9) *The willingness of the Appellant to take advice and particularly to have a restrictive last entry time.*
- 10) *The willingness of the Appellant to assist with the **street cleaning problems**.*
- 11) *Last but not least is the management of the premises ...*

47. Those exceptional circumstances indeed were found when the City Council granted a partial bar use recently on the ground floor of these premises. The sub-committee found:

“After carefully considering the evidence that had been received, the Sub-Committee were satisfied that the exceptional level of management, security and provisions for safeguarding; together with the compliance with core hours, provision for seated drinking only, local support and lack of objections were circumstances that merited an exception to Cumulative Impact Policy.”

48. The proposed use falls fair and square within the PVC2 and HRS1 Policies to grant.

49. Further or alternatively, the proposition as a whole, with the safeguarding and estate management, alongside the conservative-sized live music-led premises in a locality which, although within the CIA **in these particular circumstances** do not undermine the reasons for the policy and therefore are an exception.

2 January 2020
THOMAS & THOMAS PARTNERS LLP