

**Re: 'Heritable House', 28-29 Dover Street, London W1S 4NA**

**Application to vary premises licence, ref: 20/03360/LIPV**

**Submission on behalf of objectors**

1 Introduction

- 1.1 This submission is made on behalf of objectors to the application. I have been asked to represent these objectors at the hearing of this application, due to take place on Thursday 4 June 2020.
- 1.2 These objectors are: Residents Society of Mayfair and St. James' ("RSMSJ", via Mike Dunn); and 17 Berkeley Street Residents Association ("17BSRA", via Jaleh Zand) (collectively, "the objectors").
- 1.3 This submission is intended to assist the Licensing Sub-Committee and the parties by setting out in more detail why the residents believe that i) the application will, if granted, harm the licensing objectives; and ii) the number of late night and/or drink-led premises in the area has given rise to a cumulative impact which is having a manifestly disproportionate effect on residents. This application is an extension of hours for a premises which already benefits from a premises licence well beyond 'core hours'. The residents feel very strongly that this application falls within the scope of these concerns and should therefore be refused.

2 Background

- 2.1 The representations refer to the negative cumulative impact of late night and/or drink-led premises in the area.
- 2.2 It will be common ground that the location of the premises does not fall within a 'cumulative impact area' ("CIA") as designated in the City Council's Statement of Licensing Policy ("the Policy").
- 2.3 Nevertheless, the objectors are of the view that the location of the premises and its vicinity shares many of the characteristics of a CIA and that the application must be determined with this in mind. Para 14.42 of the Government's Guidance issued under s182 Licensing Act 2003 ("the Act") states that:

*'The absence of a CIA does not prevent any responsible authority or other person making representations on an application for the grant or variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives, However, in each case it would be incumbent on the person making the representation to provide relevant evidence of cumulative impact.'*

- 2.4 The 'relevant evidence' referred to in para 14.42 is set out in the representations. In particular, the representations include a reference to a report produced for the City Council

by an independent expert following a detailed and comprehensive study of the evening and night-time economy in parts of Mayfair and its impact on the statutory licensing objectives. It confirms and supports many of the points which residents have raised with some success on previous applications for hours extensions on nearby Berkeley Street and Dover Street. I will be referring to Dr Hadfield's report at the hearing. It can be accessed here:

[https://www.westminster.gov.uk/sites/www.westminster.gov.uk/files/mayfair\\_evening\\_and\\_night-time\\_economy\\_behaviour\\_study.pdf](https://www.westminster.gov.uk/sites/www.westminster.gov.uk/files/mayfair_evening_and_night-time_economy_behaviour_study.pdf)

2.5 It is my clients' contention that the number of premises operating late at night has increased in recent years, with the effect being that late night licensed premises have cumulatively given rise to serious problems of crime, disorder and nuisance. It is important to note that in their experience restaurants which operate late at night in a manner which seems to have become synonymous with this part of Mayfair materially contribute to this. Local residents have to bear the brunt of it.

### 3 The application

3.1 The application as submitted seeks to:

3.1.1 *Extend the terminal hour for sale of alcohol for consumption on and off the premises to 1am Sun-Thurs; 2am Fri-Sat;*

3.1.2 *Extend the terminal hour for late night refreshment to 1.30am Sun-Thurs; 2.30am Fri-Sat;*

3.1.3 *Extend the terminal for the public to be on the premises to 1.30am Sun-Thurs; 2.30am Fri-Sat;*

3.1.4 *Extend the hours by one hour when Greenwich Meantime becomes British Summer Time.*

3.2 It is noted that the Operating Schedule does not consider that any further measures are considered necessary. Given the late terminal hour sought, this is surprising to the residents particularly bearing in mind the requirements of the s182 Guidance for an applicant to conduct a thorough assessment of the local area and including the outcome of such assessment in the Operating Schedule.

### 4 Licence and planning history

4.1 The premises was previously an art gallery. It has since become one of the latest in a long line of new premises licences in the Berkeley Street/Dover Street/Berkeley Square area. Planning permission was granted (ref: 18/02331/FULL) for use as an A3 restaurant on the ground floor. Following the grant of planning permission, a new premises licence was granted in 2019 (ref: 18/14848/LIPN).

- 4.2 The extent of the A3 use was subsequently extended to include the first floor by way of a further planning application (ref: 19/00678/FULL), which was then reflected in a subsequent further new premises licence application (ref: 19/09000/LIPN), with a concomitant increase in the capacity.
- 4.3 The current and previous premises licence hours are consistent with the planning consents obtained before the grant of the licence. The following licensable activities are permitted:
- 4.3.1 Sale of alcohol for consumption on and of the premises - 10am to midnight Sun-Thurs, 10am to 1am Fri-Sat;
  - 4.3.2 Late Night Refreshment - to 12.30am Sun-Thurs, 1.30am Fri-Sat;
  - 4.3.3 The opening hours of the premises – 7am to 12.30am Sun-Thurs, 7am to 1.30am Fri-Sat.
- 4.4 We understand that the premises opened its doors as recently as November 2019, and so had only been operating for around four and a half months when a further application to vary the licence to extend its scope was received by the licensing authority on 9 April 2020.
- 4.5 The application seeks significant extensions to a premises licence which is already well in excess of ‘core hours’ as set out in HRS1 of the Policy.
- 4.6 Currently, the premises licence benefits from a condition permitting some bar use:  
*‘Notwithstanding condition [1], alcohol may be supplied and consumed in the bar areas (hatched on the plan), by up to a maximum at any one time, of 16 persons on the ground floor and 16 persons on the first floor.’*
- 4.7 It is noted that planning consent has not been obtained prior to the submission of this licence application. The application is therefore well outside the scope of the planning permission in terms of hours and, potentially, the extent of bar use. There is no record of a pending planning application on the City Council’s Planning Register.

## 5 Why are the residents concerned?

- 5.1 The residents note that the current licence for 28-29 Dover Street is already generous, and well beyond ‘core hours’ as set out in HRS1 of the Policy. Given the advertised style of operation and the late hours sought on top of already generous hours, the fact that a ‘restaurant’ condition is proposed for the majority of the premises does not resolve the concerns.
- 5.2 It should also be noted that the licence permits 32 persons to drink at the bar without need to eat. This, combined with publicity about the premises, suggests that particularly late at night (including in the proposed extension of hours) the proposed variation may fall within

the types of premises identified by Dr Hadfield as being the 'popular 'Mayfair model'' which is 'that of a restaurant-hybrid, with added club music, cocktails and late hours' (p3).

- 5.3 We note that the website of the premises states that 'IT London offers a dynamic fusion of fine dining and daily music sets from international DJs, making it one of Mayfair's most dynamic hang-outs' and that there is a private dining room located on the first floor, that offers 'total privacy with added benefits such as own bar and DJ booth'. The capacity of the private room is stated to be 60 seated or 100 standing.
- 5.4 Even if this premises operates exclusively as a restaurant during the proposed extended hours, the terminal sought still causes great concern.
- 5.5 Dispersal of customers will be a major issue at this late hour. It is more likely that residents will be woken up by the noise of revellers and vehicular traffic. It is relevant that Dr Hadfield's report states (p3) that there *'is a preference for transport by Black Cabs and private cars: not Night Buses, the Night Tube, or even minicabs. This is very non-typical of nightlife patron behaviour in London.'* The residents fear this could have a 'knock on' impact on Berkeley Street too.
- 5.6 The proposed activities, changes and terminal hour impacts on the likelihood of public nuisance and crime and disorder, as recognised by the Council's Statement of Licensing Policy.
- 5.7 Residents are very clear that they are suffering from a 'cumulative impact' of licensed premises which is having a negative effect on the licensing objectives in the area. Residents have made these points to the licensing authority on a number of applications, and they were accepted on previous applications for 11 Berkeley Street (ref: 16/01829/LIPN) which was restricted to 'core hours', and 19 Berkeley Street (ref: 17/04528/LIPV) which was refused an extension of hours. I attach the decision notices from each application. Further, an application by 'Bagatelle' at 34 Dover Street to extend its hours was withdrawn in 2019 after resident objections.
- 5.8 I also attach the very recent summary decision (i.e. not the fully reasoned decision notice) for 10 Berkeley Square (ref: 20/01396/LIPV) where the Licensing Sub-Committee accepted the submissions on behalf of objectors that a negative cumulative impact had manifested in the Berkeley Street/Berkeley Square/Dover Street area.
- 5.9 Although it is accepted that this application is different to the 10 Berkeley Square application in some respects, this premises is closer to residents and the late terminal hour sought (and, indeed, that already granted) is a source of great concern. The residents fear that if the application were to be granted, it would encourage other premises in the area to renew their attempts to obtain longer hours or more relaxed conditions for selling alcohol. The residents are concerned that 1am and later will become the new 'norm' and that this would undo the relative successes residents have achieved at contested licence hearings in keeping licences within reasonable bounds.

## The local area

- 5.10 My clients would like to stress that it is vital that the nature of the locality is fully appreciated. The number of licensed premises operating in the Berkeley Street , Dover Street and Berkeley Square area and the total capacities has increased significantly in recent years. Their experience is that this has led to a commensurate increase in nuisance caused to residents, and anti-social behaviour witnessed by residents, and has given rise to the negative cumulative impact referred to above.
- 5.11 19 Berkeley Street, 20 Berkeley Street, 17 Berkeley Street and 11 Berkeley Street, 12 Hay Hill and Club Rififfi on Hay Hill, and Sexy Fish and Amazonico on Berkeley Square, have all either been granted an entirely new licence (i.e. for a premises with no previous licensed history) or have started operating again after lying dormant, in the last few years. The applicant premises is also an entirely new licence, granted in 2018. There have also been further developments on Dover Street, and this pending application for 28-29 Dover Street for extended hours.
- 5.12 All this constitutes what residents feel is an unacceptable increase in intensity of use and what feels like almost constant attempts by different operators to extend hours. Ms Zand has estimated that the grant of licences/licences coming back into use amounts to an increase of well over 1300 in licensed capacity on Berkeley Street and Berkeley Square alone, putting further strain on residents' ability to sleep.
- 5.13 At the same time the upper part of Berkeley Street is very residential. On one side of the street is 10 Berkley Street with 19 flats, 17 Berkeley Street with 12 flats, 18 Berkeley Street with 20 flats and Berkeley House has 42 flats and goes all the way through Hay Hill. Dover Street too has residents at the Berkeley Square end.
- 5.14 The problems that the residents report arising from the cumulative impact of licensed premises include: shouting, screaming and other antisocial behaviour from the clients of these operators late at night to early hours of the morning; vomit, dried urine outside our door steps and this has become more frequent with the increase in the number of operators; waste and garbage left on both sides of the street and the council seems unable to deal with the current load; a massive amount of traffic during the night, with double and triple parking on parts of Berkeley Street. Residents experience cars honking, and people showing off with their sport cars with loud engines.
- 5.15 An additional 180 capacity premises opening until 2.30am and/or operating at least in part as a bar would clearly not improve matters. Although no regulated entertainment is sought or permitted, publicity for the premises clearly references music and DJs.
- 5.16 Ms Zand in particular has been actively involved in trying to bring about positive change to Berkeley Street. She applied for a licence review for the Mayfair hotel in 2014. She also supported the police's review of 'Charlie Berkeley' at 15 Berkeley Street. She was

instrumental in setting up the Berkeley Street Monitoring Group, to promote good practice for licensed premises (albeit the initiative seems now to be in abeyance).

5.17 Residents have made their views known on a number of licence applications of relevance to them, and have attended hearings to address the Sub-Committee. Although new licences have been granted, residents have largely been successful in curbing any further licences granted beyond midnight, or extensions to existing licences, where they have made representations. They fear that if this application is granted, it would drive the proverbial 'coach and horses' through those efforts.

## 6 Mayfair Evening and Night-time Economy Behaviour Study

6.1 The report was published in May 2017 by an independent consultant, Dr Hadfield, following a study of the evening and night time economy in parts of Mayfair and its impact on the statutory 'licensing objectives'. The study was commissioned by Westminster City Council.

6.1.1 The report states that :

*'There is a Mayfair 'table-clubbing' / bar scene, with late-hours impacts on the streets that extend well beyond 01.00 hrs., including, most notably, noise and congestion associated with patron dispersals. The activity outside and around licensed premises was found to be at constantly high levels, including large numbers of persons queuing to seek entry to venues, groups of customers smoking outside venues, and large numbers of patrons spilling from the pavements onto the road during closing time dispersals that often lasted for 45-60 minutes and involved shouting and screaming.'* (p3).

6.1.2 It is not clear what the nature of the operation would be during extended hours, and to what extent the premises would be the type of 'hybrid' operation Dr Hadfield's report identified as the most problematic. However, even if the premises were to operate solely as a premises where sale of alcohol is ancillary to take meal, it would seem logical that given the late hour sought by the extended hours, consumption of food would be minor part of the offer, and that the sort of 'cocktail bar-restaurant' type premises identified by Dr Hadfield would be a more apposite description.

6.1.3 Dr Hadfield's view was that (my emphasis):

*'It is considered that the negative impacts on the Licensing Objectives to be found in this area at night are cumulative, rather than being attributable to the operation and patrons of one – or, of a very small number of - licensed premises. As a result, the author believes Berkeley Street, Berkeley Square and Dover Street to be prima facie candidate locations for Cumulative Impact Area designation, on the basis of current observational evidence and development trends.'*

*It is further suggested that WCC may consider an adapted version of their 'Core Hours Policy' for Berkeley Street and vicinity, which contains a 'presumption not to grant' further new Premises Licences, or variation applications, where such applications involve late-hours trading. In order to address the negative cumulative impacts associated with late-night Licensable Activities in the Berkeley Street area it may be considered appropriate for 'restaurants' to be included within the scope of this new policy measure. (p.4-5).*

6.1.4 Dr Hadfield's report assesses a number of locations, one of which is 'Berkeley Street/Berkeley Square and surrounds', and state that 'There are 24 licensed premises in this immediate area with advertised closing times of 01.00 hrs or later;...The cocktail bar–restaurant is the currently fashionable format for late-night trading in Mayfair and several of these premises operate as de facto nightclubs with no, or minimal, food provision beyond 23:00 hrs and notable noise and congestion impacts associated with patron dispersal.' (p23).

6.1.5 In fact, that figure of 24 is now out of date, as since the publication of Dr Hadfield's report further licences have been granted to 1am (Amazonico) or later (the applicant premises). In addition, 34 Dover Street is not included in Dr Hadfield's report, perhaps because it was between operators at the time.

6.1.6 Indeed, the figure of 24 was in any event likely to have been lower than the true figure of licences which permit a closing time of 1am or later; for instance, Aubaine at 31 Dover Street has a 1am licence but advertises its closing time as 10.30pm.

6.2 The report concludes that the locality is a 'prima facie' candidate for designation as a 'cumulative impact area': 'The areas of Westminster that lie within the Council's 'West End Stress Area' are more apposite comparisons with Berkeley Street / Dover Street, given the levels of activity recorded, the 'churn' of customers, the movement of patrons between licensed premises, congestion issues, noise impacts, late-trading hours and other factors of cumulative impact, as described in this report'. (p43).

6.3 The report goes on to state that 'The author is of the opinion that in the case of Berkeley Street / Dover Street / Berkeley Square a regulatory approach similar to the WESA, involving the designation of a carefully-bounded Cumulative Impact Area may be considered justified and proportionate given the current observational evidence. It is further suggested that such an area designation may include an adapted 'Core Hours Policy' developed for the specific circumstances of this location, in which 'restaurants' are also brought within the scope of the 'hours' policy'. (p44).

## 7 Statement of Licensing Policy 2016 ("the Policy")

7.1 The application falls to be considered under a number of different, albeit interlinked, policies, primarily: HRS1; PN1; CD1; PB1; and RNT1. The application in so far as it relates to bar use in my submission also falls within PB1, rather than RNT1. The 'restaurant' use falls

within RNT1, although in my submission the late terminal hour sought is contrary to that policy in any event and mitigates against a grant.

7.2 Para 2.5.14 of the Policy states that: *'New restaurant premises will generally be granted the core hours (for premises that serve alcohol for consumption on the premises) in line with Policy HRS1. These are times when customers are permitted to be on the premises. The granting of later hours for restaurants would depend on the extent to which the service of customers, closing up operations and customers leaving premises would be likely to give rise to public nuisance and crime and disorder. This would take into account the extent of activities, the operation of plant and equipment and the proximity of residential property. If there are representations made, conditions may be imposed that the sale of alcohol in restaurants later than core hours must be as part of the continuing service and consumption of a table meal at the same table. i.e. no retiring to the bar This is in order to ensure that restaurants continue to function as restaurants and not as late-night bars. **When considering applications for the sale of alcohol after 01:00 where representations are made on the grounds of prevention of crime and disorder or public nuisance, the council will take into account the increased likelihood of crime and disorder and the greater disturbance from activities late at night.**' (my emphasis).*

7.3 Policy HRS1(ii) states that *'Applications for hours outside the core hours set out below in this policy will be considered on their merits, subject to other relevant policies and with particular regard to the following:'* There then follows a list of considerations, most of which are engaged by this application. I will address these as necessary at the hearing.

7.4 Policy PB1 states that *'Applications will only be granted if it can be demonstrated that the proposal meets the relevant criteria in Policies CD1, PS1, PN1 and CH1'.*

7.5 Policy PN1 is a key consideration. Para 2.2.12 of states that: *'Residents are often subjected to nuisance from the noise of people on their way to and from premises, and loitering in the streets after they have left premises. This can affect residents even at some distance from the premises themselves, especially along routes to transport facilities, and to car parks and parking areas and on routes between late night premises of various types. The nuisance from noise depends on its nature and whether it is during the day, the evening or at night. Late night noise is often unsettling; particularly shouting and screaming. Some of this is associated with aggression and assaults but most of it is "high spirits". It is impossible to distinguish between the reasons for these noises and in any case, it is very disturbing late at night. The degree of nuisance caused by noise increases with the lateness of the hour; especially if it disturbs or prevents sleep.'*

7.6 It is accepted that Berkeley Square/Berkeley Street and Dover Street are not currently included within a designated CIA. However, when the application is viewed in the context of the residents' concerns, there is in fact little difference between the approach set out in the CIA policies and the approach which, in my submission, is appropriate to apply to this application in any event; that is, firstly, to accept that there is a negative impact arising from

the operation of licensed premises in the area, and that this impact is cumulative rather than being referable to specific premises. Secondly, that this application engages the same or very similar considerations when the evidence is assessed.

## 8 Amendments to the application

8.1 My clients appreciate the applicant's solicitor contacting them recently to notify them of certain proposals in relation to the application.

8.2 The proposals are noted, but my clients do not feel that they mitigate what they see as the inevitable effect of extending the hours to 1.30am/2.30am in the context of the area.

## 9 Conclusion

9.1 My clients sympathise with the challenges faced by businesses during and the pandemic, which will no doubt resonate for some time. However, the application must be assessed on its merits and must include an assessment not only of the licensing objectives in isolation, but also of the evidence pointing towards the existence of a negative cumulative impact at present, and the potential for this application to add to this. The current premises licence is already beyond 'core hours'.

9.2 When determining licence applications, the focus should be on evaluating what is 'reasonably acceptable' in a particular location (R (on the application of Hope & Glory Public House Ltd) v (1) City of Westminster Magistrates' Court & Ors [2011] EWCA Civ 31). The scope of the licence and conditions should be looked at in a local context (Matthew Taylor v (1) Manchester City Council (2) TCG Bars Ltd [2012] EWHC 3467 (Admin)).

9.3 Such an assessment would involve examining what residents report as their experience and concerns, and the content of Dr Hadfield's report. In my clients' view, such an assessment must lead inexorably to the conclusion that the application should be refused. They feel that granting this application would simply cement the reputation of this part of Mayfair as a late night destination venue, to the detriment of residents.

9.4 Thank you for taking the time to consider the content of this submission.

**Richard Brown, Citizens Advice Westminster**

**1 June 2020**