

Application for new premises licence under s17 Licensing Act 2003

'Jimi Loves Gloria', 7 Greek Street, London W1D 4DF

Ref: 20/04580/LIPN

1 Introduction

1.1 This submission is made on behalf of the Soho Society. I have been asked to represent the Soho Society at the hearing of this application, due to take place on Thursday 10 September 2020 at 1pm.

1.2 Jane Doyle of the Soho Society will also be participating in the hearing.

1.3 The submission is intended to assist the Sub-Committee and the parties by summarising why the Soho Society believes that the application will, if granted, i) add to cumulative impact in the 'cumulative impact area' ("CIA"); and ii) harm the licensing objectives. As such, it is submitted that there are no 'exceptional circumstances' under the relevant policies to justify granting the application.

2 Background

2.1 The premises was previously the 'Pillars of Hercules' public house. It currently benefits from a premises licence ref: 19/09015/LIPDPS, which permits:

- Sale of alcohol: Mon-Thurs: 10:00 - 23:30. Fri-Sat: 10:00 - 00:00. Sun: 12:00 - 22:30
- Late night refreshment: Mon-Thurs: 23:00 - 23:30. Fri-Sat: 23:00 - 00:00. Sun: 23:00 - 00:00
- Private entertainment and recorded music – unrestricted.
- Opening hours: Mon-Thurs: 10:00 - 23:30. Fri-Sat: 10:00 - 00:00. Sun: 12:00 - 23:00

2.2 The licence is subject to a number of conditions, as detailed at pp60-61 of the Licensing Sub-Committee Report.

3 The application

3.1 The application seeks to extend the permitted hours for licensable activities to 2am Mon-Sun, with the opening hours being extended to 2.30am Mon-Sun, time limited until 30 December 2021 and operated only by this applicant.

3.2 These are clearly very significant extensions to the hours permitted on the current licence.

3.3 The applicant has proposed a number of additional conditions. For the avoidance of doubt, the Soho Society does not consider that this either of itself and/or as part of a wider case constitutes a 'genuine exception' to Policy CIP1 and PB2 (for which, see below).

4 Licence history

4.1 The licence history is set out in the Licensing Sub-Committee Report. It is believed that the licence was transferred to the current operator in 2019. It had for many years previously operated as the 'Pillars of Hercules', a traditional public house.

4.2 Under the current licence holder, the premises operates as a cocktail bar, with events and parties etc.

5 The Soho Society's position

5.1 The application is one of the first if not the first application submitted in Soho after the Covid-19 lockdown which seeks to extend the terminal hour for licensable activities for a premises which falls under the 'pubs and bars' policy PB2 and which has gone to a hearing. We understand that an application by the same operator in Covent Garden is also listed for hearing on 10 September and is on similar lines to this application.

5.2 The applicant states that the application is their response to the Covid-19 pandemic and its effect on licensed premises. The Soho Society therefore sees this application as very important and as a 'test case' for the implementation of the City Council's 'cumulative impact area' (CIA) policies in Soho.

5.3 The Soho Society sympathises with the struggles of businesses whether in the hospitality sector or otherwise. They have been broadly supportive of the City Council's plans to reopen the city for the hospitality industry e.g. by making it easier to use outside spaces to provide seating for customers in order to overcome the strictures of social distancing.

5.4 However, they believe that it is vital that the interests of residents are protected, whilst the authorities do what they can to help businesses. The challenges thrown up by the Covid-19 pandemic pose problems for everyone, and it behoves a coordinated and multi-layered response. In the Soho Society's view, the answer cannot be simply to increase hours, particularly when there are other avenues to explore and both the Council and central Government are putting in place measures to help the hospitality industry in ways which may already impact on the licensing objectives.

5.5 The following points arise:

5.5.1 The hours applied for are not only well outside 'core hours' but stretch late into the night on each day of the week, including Sundays.

- 5.5.2 There is no proposal that sale of alcohol will be ancillary to a table meal, therefore the premises will operate as a drink-led cocktail bar. There is no proposal that customers would be seated, or served by waiter/ess.
- 5.5.3 The City Council and the Government have recognised the importance of the hospitality industry and have put into place steps to help such as a fast-track tables and chairs licensing process and closing streets in Soho; introducing a pavement licensing regime and deregulating off sales in most circumstances to 11pm. These measures should be looked at in preference to extensions of hours.
- 5.5.4 The applicant has applied for 'off' sales, but have proposed a condition that customers leaving the premises temporarily e.g. to smoke cannot take drinks outside. In any event, as the premises licence, if granted, was not 'capable of having effect' under s172F(4)(a) Licensing Act 2003 (as amended by Business and Planning Act 2020) on 'day X' (i.e. the day the 2020 Act came into force), it cannot benefit from the deregulation provisions for off sales. However, Members should be aware that the existing premises permits off sales to 11.30pm Mon-Thurs, midnight Fri-Sat. As this licence is not proposed to be surrendered, this could leave an enforcement difficulty, and both licences could, in theory, be operated at the same time.
- 5.5.5 The rationale for addressing Covid-19 difficulties by extending hours could have implications on public safety. In the Soho Society's view, providing flexibility for outside activity until a reasonable hour and on a temporary basis, is preferable. Inhibitions lower with increased alcohol consumption, and for all the applicant's best intentions, the Soho Society feel that social-distancing will either be impossible or severely compromised if customers have been drinking cocktails until 2am.
- 5.5.6 This was seen at first hand by the Soho Society on 4th July 2020, when licensed premises were able to reopen. Their representations states that *'As the Committee will no doubt be aware from the media coverage, Soho witnessed the effect of mass drinking on the streets in Soho during the evening and night-time of 4th July, with social distancing not being maintained with such large numbers on Old Compton Street, Greek Street, Frith Street and Dean Street. Police teams were out in force but were unable to control these crowds.'* A photograph is at p49.
- 5.5.7 The Soho Society's view is that even absent the above consideration, the hours proposed will cause a nuisance both to residents in the immediate area and by having a 'cumulative impact' on Soho in general. Their representation states that *'Residents live in close proximity to these premises, there are flats on either side of the building and 12 flats directly opposite.'*
- 5.5.8 Although none of these residents appear to have submitted representations against the application, it must be appreciated that the application was submitted during the Covid-19 lockdown. This had implications for the efficacy of the public consultation. There are no representations in support of the application.

5.5.9 The Soho Society are concerned that the grant of this application could set a precedent which would be very difficult for the Council to control should other premises inevitably apply for longer hours for drink-led operations.

5.6 The Society has set out their current thinking as follows:

'We are supportive of business returning to profitability and supported WCC's concept of reopening the hospitality sector by introducing special measures until 30th September 2020.

Soho currently has a total of 122 late night licences; 75 licences from 01:00 - 02.30 and 47 from 03:00 - 06:00.

Over the past few months we have seen a series of applications for extended hours and are concerned this trend will continue as the result of the effect of COVID on the hospitality industry. Whilst we acknowledge the difficulties for restaurants, bars, pubs, cinemas and theatres, we also maintain our position that there needs to be a balance between the late night economy and residential amenity. We consider this balance has for some time been in favour of late night premises which in turn has led to a deterioration and reduction in residential amenity.

We will continue to review all applications against the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance, public safety, protection of children from harm and cumulative impact within the West End Cumulative Impact Area.

In responding to applications we will consider all the factors raised and look at increased flexibility on a case by case basis. However it is our view that extensions of hours are not a proportionate way to address the impact of COVID.

We are aware of the changes to Licensing Act 2003 as amended by Business and Planning Act 2020, and the 'pavement licence' regime introduced by the same Act. This means that extensions of hours are an even less proportionate way of dealing with COVID related issues. The measures in the Act have superseded the City Council's own initiatives including that the measures in the Act will last until at least 30 September 2021.'

6 Statement of Licensing Policy (SoLP)

6.1 The following policies are relevant:

Policy HRS1:

(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 and with particular regard to the following:

[]

Policy CIP1:

(i) It is the Licensing Authority's policy to refuse applications in the Cumulative Impact 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.

(ii) Applications for other licensable activities in the Cumulative Impact Areas will be subject to other policies, and must demonstrate that they will not add to cumulative impact in the Cumulative Impact Areas.

Policy PB2

It is the Licensing Authority's policy to refuse applications in the Cumulative Impact Areas other than applications to vary hours within the Core Hours under Policy HRS1.

6.2 Para 2.4 of the Policy goes into some detail regarding the reasons for the CIA policies, and what may and may not constitute a 'genuine exception' to these policies.

Para 2.4.1: *'...The retention of people late at night contributes to the cumulative impact.'*

Para 2.4.13: *'Proximity to residential accommodation is a general consideration with regard to the prevention of public nuisance. However the absence of residential accommodation in the vicinity of premises in an area of cumulative impact is not a reason for exception. The nature of cumulative impact is that it is cumulative and affects not only the immediate vicinity of the premises, but a wider area; thus the number of people visiting the premises, the nature of licensable activities and the lateness of operations have an impact on an area as a whole, irrespective of whether or not there is residential accommodation in proximity to the premises.'*

Para 2.4.5: *'Therefore, a case is most unlikely to be considered exceptional unless it is directed at the underlying reason for having the policy. Exceptions to the Cumulative Impact Area policies to refuse certain types of applications must be for genuinely exceptional reasons.'*

6.3 It is accepted that a pandemic has had a seismic effect on society. However, it does not follow that it is sufficient to constitute 'genuinely exceptional circumstances' for the purposes of the Policy, which is predicated on evidence of nuisance and crime and disorder over a very long period of time. The licensing authority cannot simply concentrate on the present, but must be mindful of the evidence of the recent past, and look to the future. Doing so does not provide sufficient certainty that extending hours to 2am, even for a fixed period of time, will promote the licensing objectives.

6.4 The Soho Society therefore does not agree with the applicant's submissions regarding what is said to constitute an exception to policy. Soho has of course been quieter than normal during the Covid-19 pandemic, but has become busier again as premises reopen and increased their outside activity and off-sales. The 'cumulative impact' policies are in place as a result of many years of evidence of nuisance and crime and disorder caused by the sheer number of licensed premises in Soho. The Policy recognizes that drink-led premises are a primary driver of these issues. The Soho Society does not consider that the current situation justifies an exception to these policies.

7 Conclusion

7.1 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)).

7.2 Jane Doyle (member of the Soho Society's Licensing Committee) will be attending the hearing and will be happy to answer any questions Members may have.

7.3 We should be grateful if this document could be distributed to Members and the parties ahead of the hearing.

Richard Brown, Citizens Advice Westminster

4 September 2020