

**APPENDIX
LSC 19.11.20: WALK TO WOK**

**WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO.1
("The Committee")**

Thursday 19 November 2020

Membership: Councillor Heather Acton (Chairman), Councillor Susie Burbridge and Councillor Maggie Carman

**APPLICATION FOR A VARIATION OF PREMISES LICENCE – WOK TO WALK
GROUND FLOOR 4 BREWER STREET LONDON W1F 0SB**

FULL DECISION

Premises

Wok to Walk
Ground Floor
4 Brewer Street
London
W1F 0SB

Applicant

Mr Dror Appel

Cumulative Impact Area?

The Premises are located within the West End Cumulative Impact Area.

Ward

West End

Summary of Application

The Committee has determined an application for a variation of Premises Licence for the above Premises under the Licensing Act 2003 ("The Act") to extend the terminal hour for Late Night Refreshment (Indoors) Monday to Sunday and the modification of a condition as detailed below: -

- To extend the hours for Late Night Refreshment to the proposed hours of -
 1. Monday to Wednesday 23:00 to 04:00 the following morning;
 2. Thursday to Saturday 23:00 to 05:00 the following morning; and
 3. Sunday 23:00 to 01:00 the following morning.
- To amend condition 3 of the Premises Licence to read "no amplified music shall be played within the premises after 05:00 hours".

The Premises operate as a fast-food restaurant offering traditional Asian Thai cuisine that is affordable and of good quality. Meals are built up from a noodle or rice base and are then topped with a number of optional items. During the day and up to 01:00 hours (as permitted by the current Premises Licence), this choice of topping includes both hot and cold options. The Applicant has seven other restaurants around London

and now wishes to sell hot food beyond 23:00 hours for these Premises which has triggered this application. The Applicant stated in his submissions that the *“effect of this application is not to enable the operation to trade but rather to improve the choice and overall customer experience and hopefully driving revenue for the business”*.

The restaurant can seat 15 Customers, and this is conditioned on the Premises Licence. This application only seeks to extend the hours for which customers can sit inside the premises and have the option of a warm topping on their noodle salad or the option of hot noodles.

The Sub Committee noted that during the hearing the Applicant amended his application. The Applicant sought to extend the hours for Late Night Refreshment Monday to Saturday 23:00 to 02:45 hours the following morning and Sunday 23:00 to 00:00 hours. The Applicant also confirmed that the Premises would not operate a takeaway service and that customers were to remain seated on the Premises when eating food. The Sub Committee was advised that there would be no extension sought for Sunday. It was noted that the time amendment to Condition 3 of the Premises Licence would be 02:45 hours should the Sub-Committee be minded granting the application. The Applicant confirmed also that there will be no amplified music played at 23:00 hours and that Recorded Music was now withdrawn from the application.

The Sub Committee noted that representations were received from the Environmental Health Service and the Licensing Authority and these were considered. Five local residents' objections were received who cited public nuisance as an issue and the disturbance for residents in relation to the later hours. Local residents were represented by Mr Richard Brown of the Citizens Advice Bureau Licensing Project.

The Sub Committee noted that four local objectors did not attend the hearing. However, one objector attended and confirmed that whilst he was not speaking directly on behalf of his neighbours, they all nevertheless shared the same concerns with the application.

The Sub Committee has a duty to consider the application on its individual merits and took into account both Agenda Papers including the Street Management and Smoking Policies provided, the submissions made by the Applicant and the oral evidence given by all parties during the hearing in its determination of the matter.

The Premises are situated within the West End Cumulative Impact Area and so the policy presumption is to refuse the application unless exceptional circumstances can be proven under the relevant paragraphs of the City Council's SLP.

Representations Received

Representations had been received from the Environmental Health Service, the Licensing Authority and several residents.

Summary of Objections

- The Environmental Health Service state that the hours requested to provide late night refreshment have the likely effect of causing an increase in public safety and may affect public nuisance within the West End Cumulative Impact Area.
- The Licensing Authority state that they have concerns in relation to this application and how the premises will promote the licensing objectives.

- The resident objectors state if the application were to be granted it would undermine the licensing objective to prevent public nuisance. The area is already under pressure due to the level of activity. This part of Soho has an especially high level of licensed activity, high footfall and high levels of noise.
- The proposed hours would inevitably attract people who have been drinking in the venues nearby. It is those people that Wok to Walk is mostly targeting with this application.
- I do not want or need more drunks congregating in the area even later than they do already. Adding further noise and general madness to the already crowded stretch of bars and clubs. Everything else closes at 3.00am and this is when Soho goes to bed. We need peace at some point. /

Policy Considerations

Policies CIP1, HRS1 and FFP2 apply under the City Council's Statement of Licensing Policy ("SLP"). The policy presumption is to refuse such applications in the CIA provided the Applicant can demonstrate an exception to policy.

SUBMISSIONS AND REASONS

Ms Donovan, Licensing Officer, summarised the application as set out in the report before the Sub Committee, noting that several representations had been received, including representations from responsible authorities and residents.

Mr Marcus Lavell, Counsel appearing on behalf of the Applicant advised that the application was made by the operator, an independent restaurant chain that has now grown to include seven restaurants around London for 13 years, six of those restaurants trade until 05:00 hours. They currently employ 10 staff. Mr Lavell stated that the premises did not sell alcohol and food was made to order for dining in, and there would be no take-aways. The number of persons permitted in the Premises at any one time was fifteen and with social distancing, this had been reduced to nine customers. Mr Lavell explained that the ability to sell hot food to the small number of customers would make a significant difference to the economic success of the business. He stated that the premises required a lifeline.

Mr Lavell in addressing the concerns of residents, stated that there will be no music played inside the premises, it was proposed that there would be a door supervisor to ensure that the door to the premises remained closed when not in use and no queuing would be permitted outside the premises after 01:00am. He stated that with the limited number of persons and the provision of a door supervisor would reduce the risk of noise escaping from the premises. He also stated that it was not the Applicant's intention to trade beyond 02:45 hours on weekdays and Sundays. At this point, Mr Lavell sought to amend the application by the reduction in hours and this was noted accordingly by the Sub-Committee.

Mr Lavell referred to Policy FFP2 of the SLP paragraph 2.5.18 and stated that it was the premises business model to sell to passers-by as it was not a destination venue. He then went onto state that there had been no representations from the Police which would give rise to issues of crime and disorder.

It was noted that given the unprecedented challenges of the current Covid-19 pandemic the Applicant had taken steps to be compliant with the Government's regulations to manage the Premises.

Mr Lavell stated the closure has had a significant impact on the business with the reduction of the number of tourists and office workers in the West End.

When asked by the Sub-Committee, how the Applicant would advise potential customers that there is no take-away service (whereas the premises appeared on the face of it to be a take-away type establishment) Mr Lavell responded by saying that the door supervisor on duty at the time would be responsible for informing patrons that there was no takeaway service. Staff were suitably trained to deal with any disruption both within and outside the premises. In addition, there were regular staff meetings, including SIA training to discuss dispersal of customers and related issues.

Mr Jackson Senior Licensing Officer addressed the Sub-Committee on behalf of the Licensing Authority. Mr Jackaman stated that the proposed Conditions put forward by the Environmental Health Service, as set out in the Additional Information Pack, were welcomed, as were the amendments to the application. However, it remained the Council's policy to refuse applications for premises which were within a CIA, and that the policy would only be overridden if there were exceptional circumstances. Therefore, the Licensing Authority maintained its representations, noting that it was for the Sub Committee to determine whether the Applicant had established, to the Sub Committee's satisfaction, that there were exceptional circumstances that would allow the Sub Committee to grant the application. He confirmed that the proposed conditions agreed with the applicant were welcomed, also the amendments to the application.

Mr Koduah on behalf of the Environmental Health Service stated that following discussions with the Applicant the proposed conditions were agreed. Regarding the potential source of noise nuisance, Mr Koduah stated it was customers who were outside the Premises or who were walking towards or away from the Premises that presented the greatest likelihood of noise nuisance. He stated that having a door supervisor would allow the potential for noise nuisance outside the Premises to be managed. However, the premises were not able to control possible nuisance by customers walking towards or away from the Premises. It was for this reason that the Environmental Health Service had maintained its representation.

The Sub-Committee noted that the Premises were able to control possible nuisance customers walking towards or away from the Premises but only if they had robust management procedures in place to tackle this very issue.

Mr Brown addressed the Sub-Committee on behalf of the one resident and the Soho Society, he stated that should the application be granted, the Premises would attract customers from other premises at the end of the night. This gave rise to concerns as to how the proposed conditions would operate to prevent queueing outside the premises.

Mr Brown stated that the amendments proposed by the Applicant had changed the application, but they did not address the specific issue of the retention of people within the Cumulative Impact Area as they left other licensed premises. He also indicated that the application was contrary to policy and that the Applicant had not established any grounds that might be deemed exceptional.

Mr Roeber, a local resident who spoke on behalf of other residents who had objected to the application addressed the Sub Committee. He stated that the amendments to the application were welcomed. However, the Cumulative Impact Area policy was there for a number of reasons and one of those reasons was to protect residents and that they did not see why that policy should be waived on this occasion. Any premises

that remained open until late at night would add to the impact in Cumulative Impact Area and add further to the nuisance to residents.

In response to a question raised by the chairman of the Sub-Committee Mr Roeber confirmed, that although, the Premises had been closed for some time due to the redevelopment, he could not recall the Premises having opened later than 01:00 hours. He stated that residents had been concerned about the application as they believed that there would be a demand for hot food after 03:00 hours resulting in continued noise nuisance from the time the Premises are emptied at that time until closed.

When asked by Members whether residents would oppose a time-limited licence as suggested by the Applicant's representative, Mr. Brown stated that he was aware the Sub-Committee had been sympathetic to the plight of operators under the circumstances and that some of the applications had been granted for discreet periods of time. However, he considered two years would be too long and suggested a period of one year.

In reaching their decision, the Sub Committee had noted that the Premises were one of very few premises in the area selling hot food late at night. To grant the application as amended, would mean that the Premises would most likely become a destination for persons leaving the numerous late-night drinking venues in the area.

The Sub-Committee had also acknowledged that there would be a SIA door supervisor to prevent people from queueing outside the premises and to control any noise nuisance outside the premises. The Sub Committee were of the view that this did not address the concerns of local residents about noise nuisance caused by people dispersing from other late-night premises and walking towards the premises as potential customers, or away from the premises as potential customers, or away from the premises having been served or turned away from the premises because it was full.

Conclusion

The Sub Committee heard evidence from all the respective parties and decided that the Applicant had not provided sufficient reasons as to why the granting of the application would promote the licensing objectives and therefore **refused** the application for the extension of hours for licensable activities and modification of the condition.

The Sub Committee noted that the Premises have had the benefit of a Premises Licence since 2005 and that the Applicant had run the business for 13 years.

The Sub Committee has to consider the evidence before it and whether the four licensing objectives will be promoted. The Sub Committee properly considered the Street Management and Smoking Policies but did not view these documents to be exceptional in nature - in fact any competent operator promoting the licensing objectives would produce these documents as a matter of routine to show that they employ good management practices.

Although the extension of hours had been reduced by the Applicant the Sub Committee formed the view that any increase in hours would lead to public nuisance. The Sub Committee took the view that queues forming outside of the Premises and queue management could potentially be an issue for the Premises with customers leaving other licensed premises within the Cumulative Impact Area and trying to gain

entry into the Premises when inebriated. It was felt that trying to manage effectively those type of alcohol fuelled behavioural situations with customers is likely to result in potential disturbance to local residents due to the mixed character of the area which includes a residential element, particularly for those residents who live in such close proximity to the Premises. The Sub Committee noted that the residential count for the area is 255.

It was noted that the Applicant offered a condition regarding SIA door supervisor staff but the Sub Committee was not fully persuaded that during very busy periods the Premises would be able to cope effectively due to the sheer numbers of people within the West End Cumulative Impact Area at later hours, particularly, when nearby licensed premises are closing at similar times which would only exacerbate matters and give rise to problems in the Cumulative Impact Area associated with crime and disorder and public nuisance.

The Sub Committee decided that exceptional reasons had not been provided. Exceptionality must be proven in accordance with the policy aims and objectives. Regrettably, on this occasion the Applicant failed to demonstrate why it should depart from the policy requirements.

In terms of the Policy considerations, the Sub Committee had particular regard to paragraphs 2.5.18 and 2.5.20 of the SLP. Paragraph 2.5.18 states that -

“Fast food premises which are open after 23:00 hours can attract large groups of customers, many of whom have been consuming alcohol in pubs, bars or night clubs sometimes some distance away. The congregation of people around these premises leads to additional noise and disturbance and further congregation in the area. Although premises which serve cold food and drink are not subject to licensing and may stay open all night, they are not so attractive to people who have been drinking as those providing hot food and drink. The Council considers that the addition of hot fast food and hot drinks adds to the attractiveness of premises to people who have been drinking and who are more likely to be involved in anti-social behaviour”.

Paragraph 2.5.20 states -

“These issues are of particular concern in the Cumulative Impact Areas where there are high concentrations of fast-food premises in addition to other licensed premises. On this basis and because the attraction and retention of people by the premises mitigates against their rapid dispersal from the cumulative impact areas, the Licensing Authority considers that the grant of variations or new licences for fast food premises in the Cumulative Impact Areas should be limited to exceptional circumstances.”

The Sub Committee came to the overall conclusion that the additional hours would have a negative impact on the cumulative impact area leading to the licensing objectives being undermined. The Sub Committee considered the stance it has taken to refuse the application to be reasonable, appropriate and proportionate in all the circumstances of the case.

The application is therefore **REFUSED**.

This is the full decision reached by the Licensing Sub-Committee. This Decision takes immediate effect.

The Licensing Sub Committee
19 November 2020