

**WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. 3
("THE COMMITTEE")**

Thursday, 7 January 2021

Membership: Councillor Jim Glen (Chairman); Councillor Jacqui Wilkinson;
and Councillor Rita Begum

**APPLICATION FOR A VARIATION OF PREMISES LICENCE IN RESPECT OF
SUSHI SAMBA 35 THE MARKET COVENT GARDEN LONDON WC2E 8RF
20/09541/LIPV**

FULL DECISION

Premises

Sushi Samba, 35 The Market, Covent Garden, London WC2E 8RF

Applicant

Samba Covent Garden Ltd

Cumulative Impact Area?

West End

Ward

St James's Ward

Summary of Application

The application was for a variation of a premises licence. The premises currently operate as a Bar and Restaurant and is located within the St James Ward and thus in an area of Cumulative Impact. The effect of the variation sought would be to extend by 30 minutes the terminal hour for the licensable activities applied for.

Activities and Hours applied for

The application was for a variation of a premises licence, as follows –

In respect of the first-floor internal area, to extend:

- 1) The permitted hours for licensable activities by 30 minutes to 01:00 hours on Monday to Thursday; and 01:30 hours Friday to Saturday, and Sundays before bank holidays: and
- 2) The opening hours to 01:15 hours, Monday to Thursday; and to 01:45 hours, Friday to Saturday, and Sundays before bank holidays.

Representations Received

- Environmental Health (Anil Dryan)
- Metropolitan Police (withdrawn)
- Licensing Authority (Michelle Steward)

- Covent Garden Community Association (David Kaner)
- James Milburn Crowe (local resident)

Summary of issues raised by objectors

- The thrust of the objections cited public nuisance and the potential numbers entering the cumulative impact area as a concern

DECISION AND REASONS

Mr Jackaman, Senior 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, The Covent Garden Community Association (CGCA), and a local resident. There had also been a representation by the Metropolitan Police Service (MPS), but this had been withdrawn after agreement with the applicant on a proposed condition.

In response to a question by the Chairman, Mr Jackaman confirmed that the premises remained within the West End cumulative impact area (CIA) under the Council's revised Statement of Licensing Policy. It was also noted that the premises were in St James's Ward and not West End Ward.

Mr Alun Thomas, on behalf of the applicant, stated that a meeting had taken place on site with the Environmental Health Service representative; there had been communications with the responsible authorities; and it was the applicant's belief that the concerns expressed by Mr Peake (local resident), had been addressed in the proposed Dispersal Policy and Noise Management Plan ("dispersal policy"). Mr Thomas noted that, in relation to Mr Peake's concerns about noise outside premises, that the application did not extend to the external areas of the premises.

Mr Thomas stated that the relevant Council policies had not changed [since the implementation of the Council's revised Statement of Licensing Policy] and it was for the Sub Committee to consider the application on its merits and whether granting the application would add to the cumulative impact area. It was not, therefore, a question of the applicant having to prove that the application, if granted, was an exception to policy.

The applicant had previously been granted Temporary Event Notices (TENs) and there had been no complaints or problems associated with the granting of those TENs.

It was the applicant's contention that, given the track record of the premises and its management by Capital & Counties (Capco), the application, if granted, would result in a reduction in cumulative impact.

Mr Thomas stated that, if the application was granted, the additional half-hour would allow the applicant, when the premises reopened after the current coronavirus pandemic lockdown measure, to attract post-theatre business, notably from the Royal Opera House next door which was open to 12:30 AM. In addition, the night tube would be open on Friday and Saturday evenings and there was a taxi rank opposite the premises on Russell Street.

Regarding the CGCA witness, Mr James Milburn Crowe, Mr Thomas stated that he had spoken to Mr Kaner of the CGCA and that he had no objection to Mr Crowe addressing the Sub Committee. However, as Mr Crowe had not submitted a

representation, any comments he wished to make would have to be in accordance with the representation submitted by the CGCA.

[The Chairman stated that the Sub Committee would be prepared to hear Mr Crowe on the basis that his presentation would be confined to the comments made in the CGCA representation].

Mr Thomas stated that Sushi Samba had been operating at this location for the past four years. In response to the various representations, a detailed Dispersal policy had been prepared. He confirmed that there was no regulated entertainment in the external areas, which had been a concern for Mr Peake, local resident. The first-floor terrace closed at midnight, and the ground floor terrace closed at 11 PM.

Mr Thomas referred to the proposed conditions which were before the Sub Committee: regarding the proposed Police condition which had subsequently been withdrawn, Mr Thomas noted that this would have had the effect of further extending the existing licence, with the consequence that the premises would then fall within Council's Pubs & Bars policy.

[In response to a question by the Chairman about Condition 14 and the Council's Model Condition (MC) 66,² Mr Thomas, referring to the various plans before the Sub Committee, clarified how the premises operated in accordance with these conditions and the relevant Council policies, and why the Police had withdrawn the proposed amendment to Condition 14].

Referring to the "Summary of Proposals" set out in the Additional Information Pack, Mr Thomas described the management arrangements put in place by Capco for security and managing the public realm, including the disposal of litter (set out in Paragraphs 18 to 23 under the subheading "Safeguarding").

He noted that the Piazza area accounted for only 8% of all antisocial behaviour incidents reported in Covent Garden and that the source of this information had been the Council's Cumulative Impact Assessment Report ("the CIA Report").

Mr Thomas referred to the reduction of alcohol led premises by Capco within Covent Garden, as set out in Paragraph 13 of the "Summary of Proposals". This reduction, it was proposed had significantly reduced the cumulative impact in the area and that a condition had been agreed with the Environmental Health Service that the capacity of the premises would be reduced from midnight from 309 to 250 persons, thereby further reducing the cumulative impact, and that this would constitute an exceptional circumstance, were one required, which would allow the Sub Committee to grant the application.

Referring to the "Reasons for Policy HRS1", set out in the revised Statement of Licensing policy, specifically, Paragraphs E8 and E10, Mr Thomas proposed that the applicant had addressed the matters set out in these paragraphs by providing a Dispersal policy and limiting the proposed hours of operation during the week, the effect of which would be to reduce the cumulative impact.

Mr Thomas stated he had already referred to safeguarding but wished to emphasise that safeguarding was something that Capco and the applicant managed particularly well i.e., ensuring that people felt safe when going to restaurants within an area, and subsequently getting home in a safe manner.

In conclusion, Mr Thomas asked that the Sub Committee grant the application,

noting that –

1. There would be no new admissions to the premises after 1 AM;
2. The only people eating and drinking on the premises would be those persons who were in the premises before the terminal hour;
3. There would be a reduced customer capacity after midnight;
4. A Dispersal Plan had been produced; and
5. Several conditions had been offered which were intended to meet the licensing objectives.

In response to several questions by Members, Mr Thomas and Mr O'Brien provided the following information.

- (a) Mr O'Brien had been in the hospitality industry for over 30 years and was Vice President of Operations of the applicant company with responsibility for the management of three premises, including Sushi Samba in Covent Garden.
- (b) Sushi Samba had originated in New York. The business operated primarily as a restaurant in iconic premises and/or locations, the Covent Garden premises employing between 80 and 150 members of staff, depending on the time of year.
- (c) Mr O'Brien then described the layout of the premises, noting that the average price of a meal at Sushi Samba Covent Garden was £60.
- (d) It was proposed that the reduction in cumulative impact would be achieved by the reduction in customer capacity after midnight from 309 to 250 customers, with less people leaving the premises after midnight. Saying
- (e) Regarding the operation of the premises' folding doors/windows, Mr O'Brien
- (f) stated that this was dependent upon the hours of operation and the weather. Generally, the doors would only be open for two months of the year as wind [from outside, not customers] was an issue. In addition, there was a condition attached to the licence that the doors would be closed at midnight.
- (g) There had been complaints about noise from the balcony area. However, when these had been investigated, it was difficult to discern from the general ambient noise if the source of the complaint was noise from Sushi Samba or from other premises. [Mr O'Brien then described the location of speakers within the premises noting that there was no music played on the terraces].
- (h) A reconfiguration of the premises after Sushi Samba took over operation of the premises meant that there was now a larger internal area and reduced external area.
- (i) Guests could sit in the balcony area until midnight and smokers were asked to use the ground floor Piazza terrace if they wished to smoke. [Mr Thomas noted that it had been proposed that there be SIA door supervisors at weekends]. Mr O'Brien stated that an exception to the smoking policy might be made if there was a TEN event taking place when guests might be allowed to smoke in a designated area on the balcony.
- (j) Referring to the conditions regarding the requirement that doors and windows be closed by a certain time, Mr Thomas noted that the condition did not preclude the use of the terrace area after midnight, but it could not be used as a bar which

was expressly prohibited by Condition 14 [in addition, Condition 12 required that tables and chairs be removed from the external area by 23:00 hours].

Mr Anil Dryan, of Environmental Health Service, referred to his representations set out in the papers before the Sub Committee, noting that there had been two complaints about noise emanating from Sushi Samba [Mr Dryan corrected the details of one of these complaints].

He noted that the applicant played [recorded] music and that, if the music was not controlled, it could result in complaints. However, these were the only two complaints which had been referred to the Council and City Inspectors had confirmed that they were satisfied with the way in which the premises were managed and that there had been no issues with regard to noise breakout or use of the external terrace or ground floor terrace.

Mr Dryan stated that he had visited the premises and he was satisfied that noise breakout from within the premises could be satisfactorily controlled, noting that the application referred only to the internal parts of the premises. Therefore, he had no concern regarding the use of the ground floor and first floor terraces.

Regarding the proposed reduction in capacity, Mr Dryan noted that the premises were within the West End CIA. He referred the Sub Committee to Paragraph D18 (Spatial Policies) in the revised Statement of Licensing Policy which stated that –

“The council will consider whether offers to set capacities (maximum numbers of people permitted to be on the premises) for the first time in premises which have not previously had set capacities and whether offers to reduce capacities, actually do effectively address the underlying reasons for a policy on cumulative impact. There would have to be substantial reductions in relation to the capacity at which premises had been operating. Any proposals for later hours which offer reducing the capacity will have to be shown to lead to a reduction in cumulative impact and represent genuine reductions in the actual number of people using the premises at its peak times and late at night and not on days or at times when the premises are less busy. Later the hours sought, the more significant the reduction in capacity would have to be.”

Mr Dryan stated that it was for the Sub Committee to determine the proposed reduction in capacity and the effect that would have on the cumulative impact in

the area. He stated that he was satisfied that the offer of SIA door supervisors and restricting last entry to the premises to 1 AM, were enough to address any noise concerns.

Mr Dryan stated that he would ask that consideration be given to adding Model Condition (MC) 24(contact telephone number) to the licence, should the application be granted. He also confirmed that he was satisfied with the dispersal policy that had been offered by the applicant. In response to several questions, Mr Dryan provided the following information.

- (a) The Dispersal Plan provided by the Applicant was a reasonably rigorous, enforceable and suitable Plan.
- (b) If the premises' doors, which were double glazed, were closed, and the music volume suitably controlled, noise nuisance should not be an issue. The two complaints that had been received about noise had occurred at times when the first-floor terrace doors had been left open.

- (c) Regarding disabled access, Mr Dryan stated that he believed there was a lift to the first floor of the premises [the applicant confirmed that there was a lift to the first floor near the entrance to the premises].

Ms Steward, Senior Licensing Officer, summarised the representation that was before the Sub Committee. She noted that, initially, the application had been considered under the Council's previous Statement of Licensing Policy. However, the application had subsequently been reviewed in accordance with the revised Statement of Licensing Policy which had just come into effect.

Ms Steward noted that it was for the applicant to demonstrate, in accordance with Policy CIP1, that there would be no additional cumulative impact in the area should the application be granted. It was for this reason that the Licensing Authority had maintained its representation.

Mr Kaner stated that the application was for a 30-minute extension to the time allowed for licensable activities i.e., from 00:30 hours to all 01:00 hours, Monday to Thursday; and 01:00 hours to 01:30 hours, Friday and Saturday. He noted that the application had included several measures intended to address the concerns of the CGCA and others.

Before addressing the detail of his representation, Mr Kaner made the following observations.

- (a) Mr Thomas, in his representation, had stated that the proposed extension to the hours for licensable activities was to cater for late-night theatre audiences, notably those from the Royal Opera House, who might wish to have a meal after the performance. However, most Royal Opera House performances usually ended before 11 PM.
- (b) Regarding the role of the Covent Guardians in keeping the area safe, this did not extend to resolving all problems of antisocial behaviour and that the Cumulative Impact Assessment (CIA) Report referred to by Mr Thomas included only those incidents that had been reported, unlike previous CIA reports which had included reports of antisocial behaviour as well as incidents of antisocial behaviour that had been observed.

Mr Kaner proposed that the question for the Sub Committee to determine was whether the application, if granted, would harm the licensing objectives, in particular, the Licensing Objective of the Prevention of Public Nuisance. To this end, Mr Thomas had referred the Sub Committee to Policy RNT2, stating that applications should be granted if it could be demonstrated that granting the application would not add to the cumulative impact in the area. In support of this, Mr Thomas had offered a reduction in capacity. While it was true that, under the proposals, there would be a reduction of 59 persons between 00:00 hours and 00:30 hours, Monday to Thursday, from 00:30 hours to 01:00 hours there would be an increase of up to 250 people. Similarly, on Friday and Saturday, they would be a reduction of 59 persons between 00:00 hours and 01:00 hours, but an increase of up to 250 persons between 01:00 hours and 01:30 hours.

As Policy PN1 (Prevention of Public Nuisance) at Paragraph C15 made clear – *“The degree of nuisance caused by noise increases with the lateness of the hour; especially if it disturbs or prevents sleep.”*

Regarding the role of Capco and the reduction of alcohol-led licensed premises in the area and the increase in food-led licensed premises, often with later hours, did not mean that the food-led premises did not contribute to problems of nuisance. Furthermore, if an area was under stress, removing part of that stress by reducing the number of licensed premises in the area did not necessarily make the area “stress free”.

The revised Statement of Licensing Policy on Cumulative Impact used different wording to that used in Policy RNT2 in the previous Statement of Licensing Policy.

Special Policies: Cumulative Impact Policy CIP1 at Paragraph C stated – *“Applications for other premises types Within the West End Cumulative Impact Zones will be subject to other policies within this statement and **must demonstrate that they will not add to cumulative impact**”*. [Emphasis added].

For residents, this meant that there should be no additional nuisance should the application be granted. The effect of granting the application would be that on Friday and Saturday nights, people could arrive at the premises as late as 1 AM and have 45 minutes in which to have a meal. The result would be more people in the premises late at night and more people leaving the premises late at night. The effect of this would be an increase in the cumulative impact in the area, not a reduction, with increased levels of noise. It was recognised that putting up signs asking patrons to leave quietly was not an effective means of managing public nuisance and that many patrons were not aware that Covent Garden had a resident population.

All exits from the Piazza went past residential areas and, although the dispersal policy might be of some assistance in reducing the risk to residents, there would still be a problem of public nuisance, only later at night.

At this stage in the proceedings, Mr Kaner invited Mr James Milburn Crowe, a local resident to apprise the Sub Committee of the noise nuisance experienced by residents.

Mr James Crowe, a local resident, stated he lived in a family flat in Russell Street and, although he very much enjoyed living in the area, there were significant problems of noise and antisocial behaviour late at night, including outside the front door to his property. The proposed extension to the hours of operation meant that people leaving the area would have to rely on taxi cabs or other forms of transport as London Underground services would have ceased running by the time patrons dispersed from the premises. All these modes of transport, including pedicabs, some of which had speakers and played loud music into the early hours of the morning, added to the general level of noise nuisance in the area. If the premises were open until late at night, there was a concern that pedicabs would congregate in the area in the hope of attracting customers.

Mr Crowe went on to say that there had been noise nuisance problems in the past associated with Sushi Samba and that he had tried, unsuccessfully, to resolve these issues using Sushi Samba’s customer care line. Ultimately, he had resorted to referring the matter to Westminster City Council.

In conclusion, Mr Crowe, given the levels of noise nuisance he had described, asked that the Sub Committee refuse the application.

Having heard the representations by Mr Crowe, Mr Kaner stated that it was for the Sub Committee to decide whether the measures proposed by the applicant would

address the issues described by Mr Crowe. He stated that the presence of SIA door supervisors would assist as people left the premises. However, this would not prevent noise nuisance after people had left the immediate vicinity of the premises. The dispersal policy may also be of some assistance, but it still entailed customers using the taxi rank on Russell Street or hiring pedicabs, all of which contributed to noise nuisance. That there would be no new admissions to the premises after 1 AM was of limited effect in preventing noise nuisance as patrons would arrive in sufficient time to be able to sit down and have a meal before leaving the premises at the terminal hour, thereby adding to the cumulative impact.

It was a view of the CGCA that 1 AM was sufficiently late and that allowing the premises to operate until later would harm the Licensing Objective of the Prevention of Public Nuisance.

In conclusion, Mr Kaner noted that the premises did not appear to have planning permission to operate to the current hours, but he may stand to be corrected on that point. He, therefore, asked that the Sub Committee refuse the application.

Conclusion

The Committee considered an application for a variation of a premises licence to extend by 30 minutes the terminal hours for the licensable activities. If granted, the effect of the variation would be to allow the sale of alcohol (on sales), late night refreshment and recorded music until 01:00 Monday to Thursday and until 01:30 Friday and Saturday and Sundays before Bank Holidays, with the opening hours to be until 01:15 Monday to Thursday until 01:45 Friday and Saturday and Sundays before Bank Holidays. During the hearing, the Applicant stated that the intention behind the variation was to attract theatre goers (once lockdown measures were sufficiently eased).

The Premises is located within the St James Ward and thus in an area of Cumulative Impact. For an application in a CIA to be granted, it is for the Applicant to demonstrate, in accordance with Policy CIP1, that there would be no additional cumulative impact in the area. The Premises is in Covent Garden. During the course of the hearing, the Committee heard representations from local residents concerning the significant problems of noise and antisocial behaviour late at night in the immediate area.

The Committee were mindful that there had been communication and meetings between the Applicant and stakeholders – the Applicant had submitted that the Dispersal Policy and Noise Management Plan addressed concerns raised by a local resident. Similarly, the Committee had regard to the fact that the Applicant had pointed to their history of good management, both noting that no complaints had been raised with regards to TENs issues for the property and that the Premises had been visited by both City inspectors and Mr Dryan, all of whom were satisfied that the premises were managed well and noise breakout from the premises could be satisfactorily controlled.

However, the Committee noted that the key question for them to determine, as agreed by all parties present, was to consider the application on its merits and to determine whether it would add to the cumulative impact of the area.

During the course of the hearing, the applicant had stressed a condition, agreed with Environmental Health, that the capacity of the premises would be reduced from

midnight from 309 persons to 250 persons. The Applicant had invited the Committee to find that this meant that cumulative impact would be lessened.

However, in accordance with Paragraph D18 (Spatial Policies) in the revised SLP the question for the committee was whether offers to reduce capacity do in fact effectively address the underlying reasons for a policy on cumulative impact. In this instance, the Committee agreed with the CGCA that whilst it was true that, under the proposals, there would be a reduction of 59 persons between 00:00 hours and 00:30 hours, Monday to Thursday, from 00:30 hours to 01:00 hours there would be an increase of up to 250 people. Similarly, on Friday and Saturday, they would be a reduction of 59 persons between 00:00 hours and 01:00 hours, but an increase of up to 250 persons between 01:00 hours and 01:30 hours. It therefore followed that, as a result of this, there could be 250 more people in Covent Garden after 12.30 am if this variation were allowed. Accordingly, the Committee concluded that it was not demonstrated that this variation, if granted, would not add to the cumulative impact.

In reaching this conclusion, the Committee noted that Policy PN1 of the revised SLP, and in particular paragraph C15, indicates that a relevant consideration to nuisance caused by noise is its nature and the time of day it is caused. Paragraph C15 states that "*The degree of nuisance caused by noise increases with the lateness of the hour; especially if it disturbs or prevents sleep.*" In this instance, the Committee concluded that the potential for an additional 250 people would result in nuisance to the area, therefore not promoting the licensing objectives and adding to the cumulative impact of the area. The Committee did not consider that the conditions offered by the Applicant were sufficient to mitigate this.

Accordingly, the Committee, was not persuaded by the Applicant that the additional numbers of people entering the area would not add to negative cumulative in the cumulative impact area leading to the undermining of the licensing objectives in particular the public nuisance licensing objective.

The Committee 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.

This is the Full Decision of the Licensing Sub Committee which takes effect forthwith.

**The Licensing Sub-Committee
7 January 2021**