

APPENDIX 2

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO.2 ("The Committee")

Thursday 8 October 2020

- Membership:** Councillor Tim Mitchell (Chairman), Councillor Barbara Arzymanow and Councillor Aicha Less
- Officer Support:** Legal Adviser: Vivienne Walker
Policy Officer: Aaron Hardy
Committee Officers: Toby Howes & Cameron MacLean
Presenting Officer: Jessica Donovan
- Parties Present:** Michael Bromley- Martin, Counsel for the Applicant, Jack Spiegler, Thomas & Thomas Partners, Solicitor for the Applicant, John McKeown, the Applicant, PC Bryan Lewis, Metropolitan Police Service, Daisy Gadd for the Licensing Authority, Anil Drayan, Environmental Health Service, Richard Brown CAB Licensing Project for the Soho Society, Jane Doyle for the Soho Society and Marcus Lavell for Tony Nash, Objector.

APPLICATION FOR A NEW PREMISES LICENCE – SOPHISTICATS, BASEMENT AND PART GROUND FLOOR 3 -7 BREWER STREET LONDON W1F 0DR - 20/06824/LIPN

FULL DECISION

Premises

Sophisticats
Basement and Part Ground
3-7 Brewer Street
London W1F 0DR

Applicant

John McKeown Clubs Limited

Cumulative Impact Area

The Premises are within the West End Cumulative Impact Area

Ward

West End

Summary of Application

The Sub-Committee has determined an application for a new Premises Licence under the Licensing Act 2003 ("The Act"). The Premises have had the benefit of a Licence number 19/03892/LIPDPS. The Premises also hold a Sexual Entertainment Venue Licence number 20/04218/LISEVR which is valid until 30 September 2021.

The applicant proposed a new Licence on the same terms, conditions, layout and hours as the current Premises Licence save for the renewal of condition 9 which reads: "the sale of intoxicating liquor shall be ancillary to the provision of striptease

entertainment and whilst the premises are operating under a Sexual Entertainment Venue Licence”.

Proposed Licensable Activities and Hours

Live Music, recorded music, performance of dance, Anything of similar description (Indoors)

Monday to Saturday: 09:00 to 03:00 hours
Sunday: 09:00 to 23:00 hours
Seasonal Variations: From the end of permitted hours on New Year’s Eve to the start of permitted hours on New Year’s Day with an additional hour when British Summer time commences.

Late Night Refreshment (Indoors)

Monday to Saturday: 23:00 to 03:00 hours
Seasonal Variations: From the end of permitted hours on New Year’s Eve to the start of permitted hours on New Year’s Day with an additional hour when British Summer time commences.

Sale by retail of Alcohol (On Sales)

Monday to Saturday: 09:00 to 03:00 hours
Sunday: 09:00 to 23:00 hours
Seasonal Variations: From the end of permitted hours on New Year’s Eve to the start of permitted hours on New Year’s Day with an additional hour when British Summer time commences.

Hours Premises are open to the Public

Monday to Saturday: 09:00 to 03:00 hours
Sunday: 09:00 to 23:00 hours
Seasonal Variations: From the end of permitted hours on New Year’s Eve to the start of permitted hours on New Year’s Day with an additional hour when British Summer time commences.

Representations Received

- Metropolitan Police Service (PC Bryan Lewis)
- Environmental Health Service (Anil Drayan)
- Licensing Authority (Daisy Gadd)
- Tony Nash
- Soho Society (Richard Brown)

Summary of issues raised by Objectors

- The application if granted would undermine the licensing objectives. The venue is located in the West End Cumulative Impact Area, a locality where there is traditionally high levels of crime and disorder and this application will cause further policing problems in an already demanding area.
- The hours requested for Regulated Entertainments, the Supply of Alcohol, the provision of Late-Night Refreshment and the non-standard timings may lead to an increase in Public Nuisance.

- There are concerns as to how the premises would promote the four licensing objectives. The operating hours applied for licensable activities currently fall outside core hours.

Policy Position

Policies CIP1, HRS1, MD2, PB2 and CIA apply under the City Council's Statement of Licensing Policy. The Premises are located within West End Cumulative Impact Area and, as such, the Applicant must demonstrate that the application will not add to cumulative impact in the West End Cumulative Impact Area.

SUBMISSIONS AND REASONS

The Presenting Officer, Ms Donovan summarised the application to the Sub-Committee. She confirmed that this was an application for a New Premises Licence made on behalf of the Applicant, John McKeown Clubs Limited.

Mr. Anil Drayan on behalf of Environmental Health Services stated that, as the Applicant had agreed to the proposed conditions, the Environmental Health Service no longer had any objections to the application.

Mr Drayan did, however, draw to the Sub-Committee's attention the following:

- a. The premises used to operate as Shadowlands Nightclub and, as such, had generated a number of complaints to the Environmental Health Service about noise transfer from the nightclub to residential premises above the nightclub;
- b. The Applicant had agreed not to change the sound limiter setting which had been set by the Environmental Health Service in accordance with the operation of the premises as a Sexual Entertainment Venue;
- c. Enquiries to City Inspectors who inspected the premises every quarter confirmed that, having checked the records, there had been no issues with the way in which the premises had operated;
- d. The Environmental Health Service advised against any changes in conditions that would allow the premises to revert to a nightclub operation.

Mr. Bromley-Martin QC, for the Applicant, stated that the Applicant had agreed with the Environmental Health Service that the premises would not operate as nightclub should the licence be granted.

PC Bryan Lewis on behalf of the Metropolitan Police Service, stated that the Police objected to the exclusion of Condition 9, as this would allow the premises to operate as a bar, should a new licence be granted.

In response to member's questions, PC Lewis stated that there had been no recent reports of nuisance relating to these premises.

Ms. Daisy Gadd, on behalf of the Licensing Authority, noted that this was an application to permit licensable activity outside Core Hours for a time limited basis until September 2021.

Ms. Gadd stated that the Council's policy was not to refuse applications for licences that went beyond Core Hours, but to consider each application on its merits. Applicants were expected to consider issues such as dispersal.

Ms Gadd stated that the main concern for the Licensing Authority was the temporary change in the way alcohol would be sold at the premises as the licence, if granted, would permit the operation of a bar. The Council's policies on pubs and bars would have to be taken into consideration as there was the potential for the premises to be used exclusively or primarily for the consumption of alcohol which would require the Applicant to rely on exceptional circumstances that would allow the Sub-committee to depart from the policy.

Ms. Gadd stated that, as the premises were located in a Cumulative Impact Area (CIA), the Sub-Committee have to be satisfied that should the licence be granted on a temporary basis, this would not add to the cumulative impact in the area.

Mr. Richard Brown, from the CAB Licensing Project, representing the Soho Society, stated that his purpose in attending the meeting was to clarify the position of The Soho Society, and to consider the proposal that the premises might operate as a restaurant and any concerns this might raise.

Mr. Brown stated that during the consultation period, it was noted that Mr. McKeown had met with some of the residents living above the premises to explain why the application was being made. He stated that the Sexual Entertainment Venue (SEV) had been excluded from reopening as part of the relaxation of the Coronavirus Regulations.

Mr. Brown stated that in terms of impact on the licensing objectives, residents preferred that the premises operate as a (SEV) and not as a nightclub. Therefore, residents were willing to give the applicant some leeway with regard to the present application.

Ms. Jane Doyle, resident, stated the residents were concerned about the proposal that the premises might operate as a restaurant. In particular, residents were concerned that appropriate measures be in place for deliveries, odour extraction and waste disposal.

In response to a Member's question, Mr. Drayan, stated that the capacity of the premises operating as a SEV was 100. It had been agreed with the Applicant that, when there were changes to the Coronavirus Regulations, the Applicant would ensure that the premises operate in accordance with those changes.

Mr Drayan stated that regarding the operation of the premises as a restaurant, the Applicant had confirmed that the premises had a full height discharging extract ventilation and that odours should not cause a nuisance.

Mr. Bromley-Martin, QC, for the Applicant stated the following: -

1. The reason for the application was a direct result of the introduction of the Covid-19 Regulations resulting in the premises closing on 23rd March 2020, and in keeping with all Sexual Entertainment Venues (SEVs), unlike other hospitality venues, having to remain closed.
2. The representations by the Responsible Authorities and The Soho Society had been resolved by the Applicants agreement to further conditions.
3. Should the licence be granted, the two premises licences would not operate at the same time. Should the Government's Covid-19 Regulations permit the reopening of SEVs, the premises would operate under the SEV licence and not as a lounge bar.

4. Regarding policy considerations, Policy PB2 was relevant. Paragraph 2.5.23 of the Council's Statement of Licensing Policy dealt with exceptions to Policy PB2 where there were exceptional circumstances. The exceptional circumstances in this instance were the replacement of the existing licence with a similar licence with added conditions but excluding Condition 9 of the present licence.
5. Should the licence be granted, the replacement licence would operate in the same way as the existing licence. Therefore, there would be no effect on the Cumulative Impact Area.

Having carefully considered all the submissions made by all parties both orally and in writing, the Licensing Sub-Committee decided to **GRANT** the application subject to conditions.

The Sub-Committee decided that the Applicant had provided valid reasons as to why the granting of the application would promote the licensing objectives.

In reaching its decision, the Sub-Committee took into consideration all relevant matters which are not limited to the following:

1. Mr Drayan on behalf of the Environmental Health Service stated that enquiries to City Inspectors who inspected the premises every quarter, had no issues with the way in which the premises had operated;
2. The application was an exception to the Council's Statement of Licensing Policy and would not add to negative the Cumulative Impact Area;
3. The application was time limited until 30 September 2021, and the application was a replacement of the current Licence 19/03892/LIPDPS;
4. Having regard to the Applicant's submissions relating to the impact of the pandemic on the operation of the premises and the fact that the application was time limited deemed it sufficient to provide an exception to policy.

In conclusion, the Sub-Committee was satisfied that, in all of the circumstances of the case, it was appropriate and proportionate to **GRANT** the licence.

The application was granted subject to the following conditions in addition to the Mandatory Conditions applicable to this type of application:

CONDITIONS IMPOSED BY THE COMMITTEE AFTER A HEARING

1. There shall be a minimum of two door supervisors to be employed at the entrance of the premises whenever there is regulated entertainment.
2. All staff engaged outside the entrance to the premises, or supervising or controlling queues, shall wear high visibility jackets or vests.
3. Door supervisors shall remain on duty to supervise the area immediately outside the premises until at least 15 minutes after the last patron has left the premises.
4. There shall be a personal licence holder on duty at the premises at all times when the premises are authorised to sell alcohol.
5. Substantial food and non-intoxicating beverages, including drinking water, shall be available during the whole of the permitted hours in all parts of the premises where intoxicants are provided.

6. The supply of alcohol shall be by waiter/waitress service at tables only and there shall be no vertical drinking of alcohol at the premises.
7. Any person permitted to temporarily leave and then re-enter the premises, e.g., to smoke, shall not be permitted to take drinks or glass containers with them.
8. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of a Westminster Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises are open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewings of recordings shall be made available immediately upon the request of the Police or authorised officer of the City Council throughout the preceding 31-day period.
9. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open. This staff member must be able to provide the Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
10. The premises management will become members and actively participate in a pub watch scheme (or similar) if one is operating in the area of the premises.
11. A sound limiting device located in a separate and remote lockable cabinet from the volume control shall be fitted to any musical amplification system and set at a level determined by and to the satisfaction of an authorised officer of the Environmental Health Service to ensure that no noise nuisance is caused to local residents. No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device. The operational panel of the noise limiter shall then be secured to the satisfaction of officer from the Environmental Health Service. The keys securing the noise limiter cabinet shall be held by the licence holder or authorised manager only and shall not be accessed by any other person. The limiter shall not be altered without prior agreement with the Environmental Health Service.
12. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
13. Loudspeakers shall not be located in the entrance lobby or outside the premises building.
14. All external doors shall be kept closed after (21:00) hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.
15. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and use the area quietly.
16. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
17. No waste or recyclable materials, including bottles, shall be moved, removed or placed in outside areas between (23:00) hours and (08:00) hours.

18. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.
19. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police, which will record the following:
- (a) all crimes reported to the venue
 - (b) all ejections of patrons
 - (c) any complaints received
 - (d) any incidents of disorder
 - (e) all seizures of drugs or offensive weapons
 - (f) any faults in the CCTV system
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.
20. Any special effects or mechanical installations shall be arranged and stored so as to minimise any risk to the safety of those using the premises. The following special effects will only be used on 10 days prior notice being given to the Licensing Authority where consent has not previously been given:
- Dry ice and cryogenic fog
 - Smoke machines and fog generators
 - Pyrotechnics including fire works
 - Firearms
 - Lasers
 - Explosives and highly flammable substances
 - Real flame
 - Strobe lighting
21. The licence holder shall enter into an agreement with a hackney carriage and/or private hire firm to provide transport for customers, with contact numbers made readily available to customers who will be encouraged to use such services.
22. All emergency doors shall be maintained effectively self-closing and not held open other than by an approved device.
23. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
24. Curtains and hangings shall be arranged so as not to obstruct emergency signs.
25. The approved arrangements at the premises, including means of escape provisions, fire warning and firefighting equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.

26. The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately and clearly identified in accordance with the plans provided.
27. All exit doors shall be available at all material times without the use of a key, code, card or similar means.
28. Patrons permitted to temporarily leave and then re-enter the premises e.g., to smoke, shall be limited to (5) persons at any one time.
29. Patrons will have a designated smoking area, which shall be supervised by a SIA door supervisor.
30. Performers/Dancers shall not be permitted to temporarily leave to smoke and then re-enter the premises.
31. An attendant shall be on duty in the cloakroom during the whole time that it is in use.
32. A challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
33. The certificates listed below shall be submitted to the Licensing Authority upon written request:
 - a) Any emergency lighting battery or system;
 - b) Any electrical installation;
 - c) Any emergency warning system.
34. Flashing or particularly bright lights on or outside the premises shall not cause a nuisance to nearby properties (save insofar as they are necessary for the prevention of crime).
35. No advertisements of any kind (including placard, poster, sticker, flyer, picture, letter, sign or other mark) that advertises or promotes the establishment, its premises, or any of its highway, or upon any building, structure, works, street furniture, tree, or any other property, or be distributed to the public.
36. There shall be no payment made by or on behalf of the licence holder to any person for bringing customers to the premises.
37. No person on behalf of the premises or on behalf of a person carrying or attempting to carry on a licensable activity at the premises shall cause, permit, employ or allow, directly or indirectly through a third party, whether on payment or otherwise, any person(s) to importune, solicit or tout members of the public on any public highway within the specified area outlined below for the purpose of bringing customers to the premises.
38. For the purposes of this condition, 'Specified Area' means the area encompassed within Shaftesbury Avenue, Piccadilly Circus, Regent Street up to the junction with Pall Mall, Cockspur Street, Trafalgar Square, Strand up to the junction with Bedford Street, Garrick Street, Great Newport Street and Charing Cross Road to the junction of Shaftesbury Avenue.

39. The maximum number of persons accommodated at any one time (excluding staff and performers) shall not exceed 100 persons.
40. There shall be no striptease or nudity, and all persons shall be decently attired at all times, except when the premises are operating under the authority of a Sexual Entertainment Venue Licence.
41. Customers shall not enter or leave the premises other than the Brewer Street entrance/exit, except in the event of an emergency.
42. The sale of alcohol shall be ancillary to and whilst the premises are operating as either:
 - a. a lounge bar providing live music and/or dance performances, with alcohol consumed only by persons seated;
 - b. a restaurant where alcohol is sold ancillary to a table meal.
43. The premises licence holder shall not allow a queue to form outside the premises.
44. The licensable activities permitted under this licence shall end after 30 September 2021.

INFORMATIVE: The Applicant will ensure measures are taken to discourage pedicabs operating within the vicinity of the premises late at night.

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