

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

Thursday 3 June 2021

Membership: Councillor Tim Mitchell (Chairman) and Councillor Jacqui Wilkinson

Application for a Review of Premise Licence - Montcalm Hotel and Grand Ballroom 2 Wallenberg Place London W1H 7TN 20/00177/LIREVP

Applicant

Mr Benjamin Rhode

Summary of Application

This is an application for a Review of a Premise Licence known as Montcalm Hotel 2 Wallenberg Place Grand Ballroom London W1H 7TN ("The Premises") under the Licensing Act 2003 ("The Act"). The Premises operate as a Hotel and Grand Ballroom and are within the Bryanston And Dorset Square Ward but not located in the *West End Cumulative Impact Zone*. ***It is the Grand Ballroom ("The Ballroom") area of the Premises giving rise to these Review proceedings.*** The Premises has had the benefit of a Premise Licence since 2011. The Premises operates under licence reference number **17/05077/LIPDPS**. The Designated Premises Supervisor is Ankur Bakshi.

The Review application has been made by a local resident, Mr Benjamin Rhode. Mr Rhode's sole aim in undertaking this licence review was to resolve the issue of noise in his flat caused by loud music from the Ballroom. The Premises has a history of noise complaints stemming back as far as 2016 mainly relating to the playing of loud music and bass frequency levels. Mr Rhode's involvement in this matter is from 2019.

The Applicant has agreed a set of proposed conditions with the respective parties in order to mitigate the concerns raised and these are specified below. The Applicant nor the Responsible Authorities are seeking to invite the Committee to suspend or revoke the Premises Licence and this was duly noted by the Committee.

The Committee noted that all the parties had worked constructively in the run up to the hearing to reach a solution, particularly in the last few days with regard to the agreement of conditions.

The Committee in its determination of the matter considered the Agenda Pack and the Additional Information pack which contained a written submission by Mr Richard Brown from Westminster Citizens Advice Licensing Project on behalf of the Applicant together with further representations and updated witness statements and amended conditions from Mr Stephen Thomas, Solicitor acting on behalf of the Premises Licence Holder.

The Activities and Hours on the Premises Licence are as follows: -

**Regulated Entertainment:
Performance of Dance**

Monday to Sunday: 12:00 to 02:30 (for hotel guests)
Monday to Saturday: 12:00 to 00:30 (for those not staying at the hotel)
Sunday: 12:00 to 23:30 (for those not staying at the hotel)

Exhibition of a Film

Monday to Sunday: 00:00 to 00:00 (hotel bedrooms only)

Performance of Live Music

Monday to Sunday: 12:00 to 02:30 (for hotel guests)
Monday to Saturday: 12:00 to 00:30 (for those not staying at the hotel)
Sunday: 12:00 to 23:30 (for those not staying at the hotel)

Playing of Recorded Music

Monday to Sunday: 12:00 to 02:30 (for hotel guests)
Monday to Saturday: 12:00 to 00:30 (for those not staying at the hotel)
Sunday: 12:00 to 23:30 (for those not staying at the hotel)

**Anything of a similar description to Live Music, Recorded Music or
Performance of Dance**

Monday to Sunday: 12:00 to 02:30 (for hotel guests)
Monday to Saturday: 12:00 to 00:30 (for those not staying at the hotel)
Sunday: 12:00 to 23:30 (for those not staying at the hotel)

Performance of a Play

Monday to Sunday: 12:00 to 02:30 (for hotel guests)
Monday to Saturday: 12:00 to 00:30 (for those not staying at the hotel)
Sunday: 12:00 to 23:30 (for those not staying at the hotel)

Late Night Refreshment

Monday to Saturday: 23:00 to 00:30 (for those not staying at the hotel)
Sunday: 23:00 to 23:30 (for those not staying at the hotel)

Sale by Retail of Alcohol

Monday to Sunday: 00:00 to 00:00
(for residents and their bona fide guests)
Monday to Saturday: 08:00 to 00:30
(Banqueting Suite - for those not staying at the hotel)

Monday to Saturday: 08:00 to 00:00
(Other hotel areas - for those not staying at the hotel)
Sunday: 08:00 to 23:00
(Other hotel areas - for those not staying at the hotel)
Sunday: 08:00 to 23:30
(Banqueting Suite - for those not staying at the hotel)

Seasonal Variations/Non-Standard Timing

The Supply of Alcohol to members of the public shall be permitted from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

The provision of Late-Night Refreshment shall be permitted from 23:00 hours on New Year's Eve until 05:00 hours on New Year's Day.

Summary Decision

The Committee noted that due to the current Covid-19 pandemic the Ballroom has not been used for events by the Premises Licence Holder since the beginning of the first lockdown in 2020. The Committee also noted that the Premises Licence Holder had lost vital revenue as a consequence of it being out of use.

The Committee in its determination of the matter concluded that the Premises Licence Holder should receive a Warning regarding breaches of the licence and considered that the imposition of conditions on the Premises Licence was the right course of action to take as opposed to any suspension or revocation as that would be disproportionate given the full set of circumstances of the case and what the Home Office Guidance says about best practice at Paragraphs 11.1-11.29 on Pages 89-94 when licensing authorities are dealing with a review of premises.

The Committee welcomed that a great deal of dialogue had been entered into between the parties but wants to emphasise that a Review of a Premises Licence is a serious matter, and that the Applicant sought this remedy only as a last resort. The Committee recognised that going forward staff members should take a common sense and pragmatic approach when dealing with any future complaints regarding noise and that these are to be resolved amicably and in a timely manner rather than waiting for matters to escalate.

Whilst the Committee accepts that the issue of noise is not always easy to detect. It should not have taken an application for a Review to establish whether the Premises Licence Holder's sound system was in fact fit for purpose as this clearly caused noise nuisance to nearby residents on a continuous basis which undermined the public nuisance licensing objective, particularly when numerous complaints had been lodged with very little remedial action taken to identify the source of the problem and the necessary actions required to address the substantive issues.

The Committee was of the view that the Premises Licence Holder could have employed the services of a noise expert far earlier rather than seeking to rely upon a report that had been undertaken in 2012. This approach perhaps would have

prevented the Applicant from submitting a Review of the Licence in the first place because the causes would have been known and acted upon sooner. This would have ensured that condition 31 on the Licence was not repeatedly breached every time the Ballroom was used for events which lead to the undermining of the licence objectives. Moreover, it would have taken a great deal of time and effort on the part of the Applicant to prepare and produce comprehensive documentation by way of evidence to support the review process which the Committee fully recognised and appreciated.

The Committee decided that it should impose conditions regarding the installation of a noise limiter, a contact number for the manager of the Premises so that residents can air and resolve any issues, the deregulation of section 177 (a) of the Licensing Act 2003 (save for incidental background music), the closing of doors and windows at specific times to prevent noise escape from the Ballroom.

The Committee did feel that on a positive note this was an opportunity for the licence to be updated with conditions that are considered robust, enforceable and will ultimately have the desired effect of promoting the licensing objectives.

The Committee decided that the Applicant and the Responsible Authorities had provided valid reasons as to why conditions should be imposed on the Licence as opposed to any other action the Committee could have taken.

The Committee properly considered the wording of Condition 31 and concluded that in order to future proof the licence and to prevent public nuisance occurring at some later stage it should be updated to reflect Model Condition 12 as specified below.

The Environmental Health Service proposed condition 6 was considered not to be appropriate by the Committee because the noise limiter condition already covers this particular aspect by Model Condition 11 Sub Paragraph (e) and noted below as Condition 4. However, the Applicant gave a firm commitment that there would be strict compliance for any DJ equipment to be routed through the sound limiter device(s) in any event.

Having carefully considered the committee papers and the submissions made by all of the parties, both orally and in writing, **the Committee has decided**, after taking into account all of the individual circumstances of this case and the promotion of the four licensing objectives: -

1. That the Premises Licence Holder is to be Warned regarding its failure to manage the Premises in accordance with its licence conditions and the promotion of the licensing objectives so that the outbreak of noise does not adversely affect nearby residents and businesses.
2. That the Licence is subject to the following additional conditions to include any amendments or replacement to existing conditions imposed by the Committee which are considered appropriate and proportionate to promote the licensing objectives.

Conditions imposed by the Committee after a hearing

3. Section 177A of the Licensing Act 2003 relating to the performance of live music and any playing of recorded music shall not apply to this licence, and any condition which relates to live music, recorded music or both has effect.
4. A noise limiter must be fitted to the musical amplification system and maintained in accordance with the following criteria:
 - (a) the limiter must be set at a level determined by and to the satisfaction of an authorised Environmental Health Officer so as to ensure that no noise nuisance is caused to local residents or businesses,
 - (b) The operational panel of the noise limiter shall then be secured by key or password to the satisfaction of the authorised Environmental Health Officer and access shall only be by persons authorised by the Premises Licence holder,
 - (c) The limiter shall not be altered without prior written agreement from the Environmental Health Consultation Team,
 - (d) No alteration or modification to any existing sound system(s) should be affected without prior knowledge of the Environmental Health Consultation Team, and
 - (e) No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.
5. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open to the public. This telephone number is to be made available to residents in the vicinity of the premises. Smoke Vent Windows Condition this is accepted.
6. The Premises Licence holder will ensure that the smoke vents windows to the Ground Ballroom shall be kept closed at all times except for when they are tested as part of the building's documented emergency safety procedures or open automatically on alarm in an emergency.
7. No noise generated on the premises, or by its associated plant or equipment shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.'

INFORMATIVE:

8. The licence holder is strongly encouraged to form and promote a live WhatsApp group with residents and businesses in order to facilitate regular meetings to discuss issues directly affecting them regarding the running and management of the Premises including any issues specifically connected to public nuisance.

If problems are experienced, then an application for a Review of the Premises licence can be made.

This is the Summary Decision reached by the Licensing Sub-Committee. The fully reasoned decision will be sent to all parties as soon as possible. The date for appealing the decision will not start until the full reasoned decision has been sent to the Parties.

**Licensing Sub-Committee
3 June 2021**