

Licensing Sub-Committee Report

Item No:

Date:

7 March 2024

Licensing Ref No:

24/00322/LIPN - New Premises Licence

Title of Report:

Marks & Spencer 127A Queensway London

W2 4SJ

Report of:

Director of Public Protection and Licensing

Wards involved:

Lancaster Gate

Policy context:

City of Westminster Statement of Licensing Policy

Financial summary:

None

Report Author:

Kevin Jackaman Senior Licensing Officer

Contact details

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1. Application

1-A Applicant and premises					
Application Type:	New Premises Licence, Licensing Act 2003				
Application received date:	17 January 2024				
Applicant:	London Retail Partners Limit	ed			
Premises:	Marks & Spencer				
Premises address:	127A Queensway Ward: Lancas				
	W2 4SJ	None			
	Impact Area: Special Queensway				
		Consideration Zone:	and Bayswater		
Premises description:	According to the application form the premises intend to trade as a Marks & Spencer Simply Food retail store.				
Premises licence history:	This is a new premises licence application and therefore no premises licence history exists.				
Applicant submissions:	None				
Applicant amendments:	None				

1-B Proposed licensable activities and hours							
Sale by retail of alcohol On or off sales or both: Off						Off	
Day:	Mon	Tues	Wed	Thur	Fri	Sat	Sun
Start:	08:00	08:00	08:00	08:00	08:00	08:00	09:30
End:	23:00	23:00	23:00	23:00	23:00	23:00	22:30
	Seasonal variations/ Non- standard timings:						

Hours premises are open to the public							
Day:	Mon	Tues	Wed	Thur	Fri	Sat	Sun
Start:	06:00	06:000	06:00	06:00	06:00	06:00	06:00
End:	00:00	00:00	00:00	00:00	00:00	00:00	00:00
Seasonal variations/ Non- standard timings: Adult Entertainment:			None				

2. Representations

2-A Responsible Authorities					
Responsible Authority:	Metropolitan Police Service				
Representative:	Dave Morgan				
Received:	30 January 2024				

With reference to the above, I am writing to inform you that the Metropolitan Police Service as a Responsible Authority are **objecting** to this application on the basis that if granted, it would undermine the Licensing Objectives, namely The Prevention of Crime and Disorder and the Protection of Children from Harm.

The applicant is seeking:

Alcohol Sales (off sales):

Monday to Saturday: 0800 - 2300

Sunday: 0930 - 2230

The venue sits within the Queensway & Bayswater Special Consideration Zone and the Police are concerned that this venue may add to the cumulative impact in an already demanding area. I appreciate that you have already supplied a schedule of conditions, but I feel that there are a few more conditions that will need to be added to the licence to help promote the Licensing Objectives.

To move forward, I have attached a list of further conditions that I would like to see added to the licence should it be granted.

Please have a read of these conditions and feel free to contact me should you wish to discuss them further.

- Outside of the hours authorised for the sale of alcohol and whilst the premises
 are open to the public, the licence holder shall ensure that all alcohol within the
 premises (including alcohol behind the counter) is secured in a locked store
 room or behind locked grilles, locked screens or locked cabinet doors so as to
 prevent access to the alcohol by both customers and staff.
- A minimum of 1 SIA licensed door supervisors shall be on duty at the premises at all times whilst it is open for business and they must correctly display their SIA licence(s) when on duty so as to be visible.
- All tills shall automatically prompt staff to ask for age verification identification when presented with an alcohol sale.
- Prominent signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises, where alcohol is on public display, and at the point of sale.
- 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. It must be completed within 24 hours of the incident and will record the following:

- i) all crimes reported to the venue
- ii) all ejections of patrons
- iii) any complaints received concerning crime and disorder
- iv) any incidents of disorder
- v) all seizures of drugs or offensive weapons
- vi) any faults in the CCTV system, searching equipment or scanning equipment
- vii) any refusal of the sale of alcohol
- viii) any visit by a relevant authority or emergency service.
- No miniature bottles of spirits of 20 cl or below shall be sold from the premises.
- There shall be no self-selection of spirits on the premises, save for spirit mixtures less than 5.5% ABV.
- On the Sunday and Monday of the Notting Hill Carnival:
 - Alcohol sales in respect of cans of beer or cider are limited to no more than 4 cans per person.
 - ii) The premises will not externally advertise local promotions of alcohol.
 - iii) No sales of alcohol in bottles or glass containers are made during this period.
 - iv) There shall be no sale of alcohol from the premises after 2000 hours.
 - v) Upon the direction of a Police Officer, using the grounds of the prevention of crime and disorder or public safety, the premises will immediately cease to sell alcohol until further directed by the Police.

2-B Other Persons					
Name:					
Address and/or Residents Association:		South East Bayswater Residents' Association (SEBRA)			
Status:	Valid	In support or objection:	OBJECTION		
Received:	7 Feb 2024				

I am writing on behalf of the South East Bayswater Residents' Association (SEBRA) to make a relevant representation objecting to this licence application on the basis of the likely impact on the licensing objective of 'prevention of public nuisance'.

Introduction

SEBRA was formed in 1970 and works to protect the special character of our area. A non-profit, non party-political, voluntary organisation, we represent more than 1,000 people. SEBRA is consulted by Westminster Council on both major developments and all Council activities which affect the daily lives of residents.

Background

The premises is located in the middle of Queensway, a busy shopping street with commercial units occupying the ground floor and basement with residential units above with the surrounding area predominantly residential.

Under the Council's Licensing policy the premises are in the Queensway/Bayswater Special

Consideration Zone.

SEBRA's position

We welcome the new business to the area and wish all the success to the M&S Food unit. We note the hours requested for 'off sales' of alcohol are Westminster's Core Hours. We do not object to a Premises Licence being granted, however we do have some concerns that the seriid issues in Queensway, of crime, noise, anti-social behaviour, begging, rough sleepers etc are not adequately mitigated by the application.

The additional conditions we require are below and these are Westminster's standard conditions for 'off licence' applications in this area.

We would require, as offered, that only 15% of ground floor sales area to be dedicated to sale, exposure for sale, or display of alcohol but also a condition that spirits are to be kept and displayed behind the sales counter, with wine and beer/cider etc to be displayed away from the front entrance of the premises.

We also require and consider essential, Westminster's standard condition for lockable cabinets to be used for wine and beer outside licensing hours (Condition 28).

We also require a condition controlling hours of deliveries and refuse & recycling collections, that they shall not take place between 20.00 and 07 00 the following day.

We also would not want any 'off sales' of alcohol by way of any deliveries such as by Deliveroo without groceries and no deliveries between 23.00 and 07.00

We note standard condition offered regarding no sale of super strength beer, lagers, or ciders to have APV of more than 5.5% alcohol but we also request standard condition re no sale of miniature bottles of 20cl alcohol, shall be sold at the premises.

Also required are standard conditions in Queensway/Westbourne Grove over the Notting Hill Carnival, namely:

On the Sunday and Monday of the Notting Hill Carnival:

There shall be no sale of alcohol in glass vessels from the premises.

There will be no external advertisement of alcohol promotions at the premises.

Conclusion

We are aware of course that applications can be amended, and as ever, SEBRA is very happy for our contact details to be passed now to the applicant and to discuss the operation and application with them.

We reserve the right to make further representation in due course when we have heard back from the applicant or the relevant authorities.

We trust that agreement can be reached with all parties so that a Licencing Hearing will not be necessary.

3. Policy & Guidance

The following policies within the City Of Westminster Statement of Licensing Policy apply:

Policy SCZ1 applies:

- A. In addition to meeting the other policies within this statement, applications within a designated Special Consideration Zone should demonstrate that they have taken account of the issues particular to the Zone, in question as identified within the 2020 Cumulative Impact Assessment, and should set out any proposed mitigation measures in relation to those issues within their operating schedule.
- B. For the purpose of Clause A, the designated Special Consideration Zone for this application is:
- · Queensway/Bayswater.

Policy HRS1 applies

- A. Applications within the core hours set out below in this policy will generally be granted for the relevant premises uses, subject to not being contrary to other policies in the Statement of Licensing Policy.

 B. Applications for hours outside the core hours set out in Clause C will
- B. Applications for hours outside the core hours set out in Clause C will be considered on their merits, subject to other relevant policies, and with particular regard to the following:
- 1. The demonstration of compliance in the requirements of policies CD1, PS1, PN1 and CH1 associated with the likelihood of the effect of the grant of a licence for later or earlier hours on crime and disorder, public safety, public nuisance and the protection of children from harm.
- 2. If the application is located within a Special Consideration Zone they have demonstrated that they have taken account of the issues identified in that area and provided adequate mitigation.
- 3. Whether there is residential accommodation in the proximity of the premises that would likely be adversely affected by premises being open or carrying out operations at the hours proposed.
- 4. The proposed hours of the licensable activities and when customers will be permitted to remain on the premises.
- 5. The proposed hours when any music, including incidental music, will be played.
- 6. The hours when customers will be allowed to take food or drink outside the premises or be within open areas which form part of the premises.
- 7. The existing hours of licensable activities and the past operation of the premises (if any) and hours of licensable premises in the vicinity.
- 8. Whether customers and staff have adequate access to public transport when arriving at and leaving the premises, especially at night. 9. The capacity of the premises.
- 10. The type of use, recognising that some venues are more likely to impact the licensing objectives than others; for example, pubs and bars are higher risk than theatres, cinemas and other cultural and sporting venues due to the nature of the operation.
- 11. The Licensing Authority will take into account the active measures proposed for a 'winding down' period including arrangements for people to be collected from the premises to travel home safely.
- 12. Conditions on hours may be attached that require that the supply of alcohol for consumption on the premises ceases a suitable period of time before customers are required to leave the premises.
- 13. The council, acting as the Licensing Authority, may reduce hours if, after review, it is necessary to impose conditions specifying shorter hours in order to promote the licensing objectives.

- 14. Specific days for non-standard hours should be identified and justified as part of the application to allow responsible authorities and interested parties to evaluate the impact that these licensable activities may have, and to plan accordingly. The consideration of applications for later hours for Bank Holiday Mondays will take into account that later hours are generally granted for preceding Sundays and that the next day is a working day. Non-specific days are expected to be covered by Temporary Event Notices or variation applications. C. For the purpose of Clauses A and B above, the Core Hours for this
- application as defined within this policy are: 10a. Shops (all licensable activities that are provided as ancillary to the primary use of the premises as a shop except the off sale of alcohol) Monday to Thursday: 9am to 11.30pm.

Friday and Saturday: 9am to Midnight.

Sunday: 9am to 10.30pm.

Sundays immediately prior to a bank holiday: 9am to Midnight.

Policy SHP1(A) applies

- A. Applications for a shop outside the West End Cumulative Impact Zone will generally be granted subject to:
- 1. The application meeting the requirements of policies CD1, PS1, PN1 and CH1.
- 2. The hours for licensable activities are within the council's Core Hours Policy HRS1.
- 3. The operation of any delivery services for alcohol meeting the council's Ancillary Alcohol and/or Latenight Refreshment Delivery Service Policy DEL1.
- 4. The applicant having taken account of the Special Consideration Zone Policy SCZ1 if the premises are located within a designated zone.
- 5. The application and operation of the venue meeting the definition of a shop in Clause C.
- C. For the purposes of this policy:
- 1. A shop is defined as a stall, vehicle, vessel, temporary structure, building or part of a stall, vehicle, vessel, temporary structure or building where the primary activity is the sale of goods or services to customers upon payment.
- 2. The licensable activities for the sale of alcohol for consumption on the premises, regulated entertainment and/or late night refreshment must be ancillary to the primary use of the premises as a shop.
- 3. The licensable activity of the sale of alcohol for consumption off the premises must be an ancillary function to the primary use of the premises unless that primary use is to sell alcohol for consumption off the premises, e.g. a traditional off licence

4. Equality Implications

The Council in its capacity as Licensing Authority has a duty to have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary, section 149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

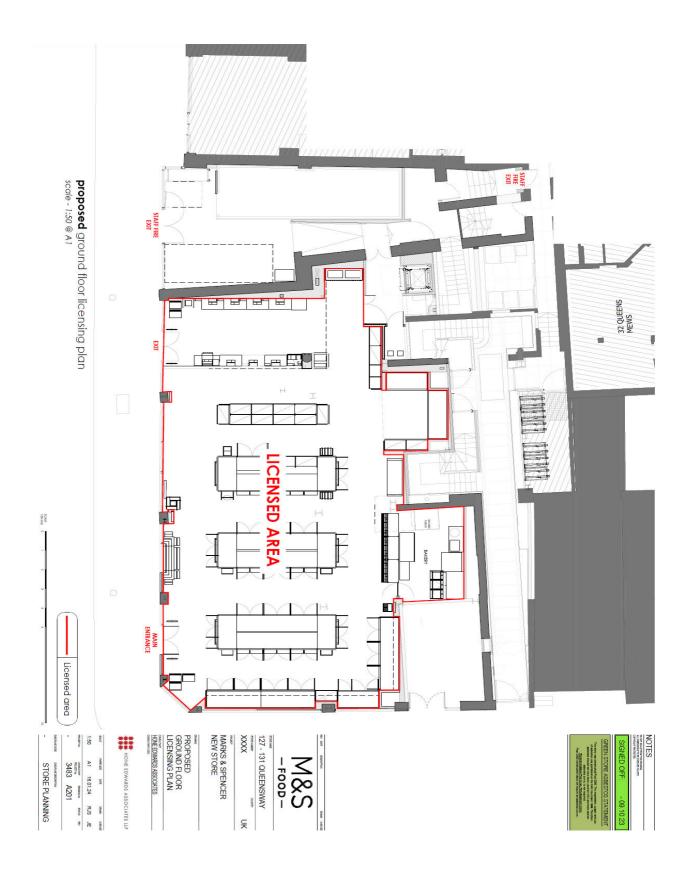
5. Appendices

Appendix 1	Premises plans
Appendix 2	Applicant supporting documents
Appendix 3	Premises history
Appendix 4	Proposed conditions
Appendix 5	Residential map and list of premises in the vicinity

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	Licensing Officer
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If you have any queries about this report or wish to inspect one of the background papers please contact the report author. Background Documents – Local Government (Access to Information) Act 1972 1 Licensing Act 2003 N/A 2 City of Westminster Statement of Licensing 01 October 2021 Policy Amended Guidance issued under section 182 of December 2023 3 the Licensing Act 2003 4 04 December 2023 Cumulative Impact Assessment 5 Metropolitan Police Service representation 30 January 2024 6 Interested Party representation 07 February 2024

Premises Plans Appendix 1



Applicant Supporting Documents

Appendix 2

None

Premises History Appendix 3

There is no licence or appeal history for the premises.

CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE AND CONDITIONS PROPOSED BY A PARTY TO THE HEARING

When determining an application for a new premises licence under the provisions of the Licensing Act 2003, the licensing authority must, unless it decides to reject the application, grant the licence subject to the conditions which are indicated as mandatory in this schedule.

At a hearing the licensing authority may, in addition, and having regard to any representations received, grant the licence subject to such conditions which are consistent with the operating schedule submitted by the applicant as part of their application, or alter or omit these conditions, or add any new condition to such extent as the licensing authority considers necessary for the promotion of the licensing objectives.

This schedule lists those conditions which are consistent with the operating schedule, or proposed as necessary for the promotion of the licensing objectives by a responsible authority or an interested party as indicated. These conditions have not been submitted by the licensing service but reflect the positions of the applicant, responsible authority or interested party and have not necessarily been agreed

Mandatory Conditions

- 1. No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
- 2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
- 3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.
- 4. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
 - (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
 - (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
 - (a) a holographic mark, or
 - (b) an ultraviolet feature.
- 5(i) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- 5(ii) For the purposes of the condition set out in paragraph 5(i) above -

- (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
- (b) "permitted price" is the price found by applying the formula -

P = D+(DxV)

Where -

- (i) P is the permitted price,
- (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
- (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -
 - (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.
- 5(iii). Where the permitted price given by Paragraph 5(ii)(b) above would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
- 5(iv). (1) Sub-paragraph 5(iv)(2) below applies where the permitted price given by Paragraph 5(ii)(b) above on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
 - (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Conditions consistent with the operating schedule

- 6. (a) The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Westminster Police Licensing Team.
 - (b) All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.
 - (c) The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises and will include the external area immediately outside the premises entrance.
 - (d) All recordings shall be stored for a minimum period of 31 days with date and time stamping.
 - (e) Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31-day period.
- 7. 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 is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
- 8. A Challenge 21 or 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.
- 9. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the premises by the police or an authorised officer of the City Council at all times whilst the premises is open.
- 10. All members of staff working on the tills will receive training relevant to the sale of alcohol prior to being authorised to sell alcohol. Such training will be refreshed at least annually. Records of training shall be maintained for a period of at least 12 months and made available for inspection at the premises by the police or authorised officer of the City Council at all times when the premises are open.
- 11. No more than 15% of the sales area shall be used at any one time for the sale, exposure for sale, or display of alcohol.
- 12. No super strength beers. Lagers or ciders of 5.5% abv (Alcohol by volume) or above shall be sold at the premises with the exception of premium specialist beer, lager or cider.
- 13. All sales of alcohol for consumption off the premises shall be in sealed containers

Conditions proposed by the Police

- 14. Outside of the hours authorised for the sale of alcohol and whilst the premises are open to the public, the licence holder shall ensure that all alcohol within the premises (including alcohol behind the counter) is secured in a locked store room or behind locked grilles, locked screens or locked cabinet doors so as to prevent access to the alcohol by both customers and staff.
- 15. A minimum of 1 SIA licensed door supervisors shall be on duty at the premises at all times whilst it is open for business and they must correctly display their SIA licence(s) when on duty so as to be visible.

- 16. All tills shall automatically prompt staff to ask for age verification identification when presented with an alcohol sale.
- 17. Prominent signage indicating the permitted hours for the sale of alcohol shall be displayed so as to be visible before entering the premises, where alcohol is on public display, and at the point of sale.
- 18. 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. It must be completed within 24 hours of the incident and will record the following:
 - a. all crimes reported to the venue
 - b. all ejections of patrons
 - c. any complaints received concerning crime and disorder
 - d. any incidents of disorder
 - e. all seizures of drugs or offensive weapons
 - f. any faults in the CCTV system, searching equipment or scanning equipment
 - g. any refusal of the sale of alcohol
 - h. any visit by a relevant authority or emergency service.
- 19. No miniature bottles of spirits of 20 cl or below shall be sold from the premises.
- 20. There shall be no self-selection of spirits on the premises, save for spirit mixtures less than 5.5% ABV.
- 21. On the Sunday and Monday of the Notting Hill Carnival:
 - a. Alcohol sales in respect of cans of beer or cider are limited to no more than 4 cans per person.
 - b. The premises will not externally advertise local promotions of alcohol.
 - c. No sales of alcohol in bottles or glass containers are made during this period.
 - d. There shall be no sale of alcohol from the premises after 2000 hours.
 - e. Upon the direction of a Police Officer, using the grounds of the prevention of crime and disorder or public safety, the premises will immediately cease to sell alcohol until further directed by the Police.

Conditions proposed by Interested Party not covered by conditions proposed by the Police.

- 22. No waste or recyclable materials, including bottles, shall be moved, removed from or placed in outside areas between (20.00) hours and (07.00) hours on the following day.
- 23. No deliveries to the premises shall take place between (20.00) and (07.00) hours on the following day.
- 24. No deliveries from the premises, either by the licensee or a third party shall take place between (23:00) and (07:00) hours on the following day.



Resident Count: 211

Licensed premises within 75m of 127A Queensway						
Licence Number	Trading Name	Address	Premises Type	Time Period		
				Thursday; 11:00 - 02:00		
				Sunday; 11:00		
				- 23:30 Monday to		
				Wednesday;		
		106		11:00 - 00:00		
		Queensway		Friday to		
		London W2		Saturday;		
19/12635/LIPT	Noodle Oodle	3RR	Restaurant	11:00 - 03:00		

21/14341/LIPVM	Bella Italia	108 - 110 Queensway London W2 3RR	Restaurant	Monday; 09:00 - 00:30 Tuesday; 09:00 - 00:30 Wednesday; 09:00 - 00:30 Thursday; 09:00 - 00:30 Friday; 09:00 - 00:30 Saturday; 09:00 - 00:30 Sunday; 09:00 - 00:00
13/07498/LIPDPS	Gold Mine Restaurant	Basement And Ground Floor 102 Queensway London W2 3RR	Restaurant	Sunday; 12:00 - 01:00 Monday to Thursday; 09:00 - 01:30 Friday to Saturday; 09:00 - 02:30
19/00389/LIPT	Preto	117-119 Queensway London W2 4SJ	Restaurant	Sunday; 10:00 - 22:30 Monday to Thursday; 10:00 - 23:30 Friday to Saturday; 10:00 - 00:00
23/00923/LIPDPS	Gold Mine Restaurant	100 Queensway London W2 3RR	Restaurant	Sunday; 12:00 - 00:00 Monday to Saturday; 10:00 - 00:30
06/10206/WCCMAP	Halal Restaurant	Basement And Ground Floor 98 Queensway London W2 3RR	Restaurant	Sunday; 23:00 - 00:00 Monday to Saturday; 23:00 - 01:00
21/10367/LIPN	Not Recorded	115 Queensway London W2 4SJ	Cafe	Monday to Sunday; 06:00 - 22:00
22/07848/LIPDPS	Prince Alfred Public House	112 Queensway London W2 3RR	Public house or pub restaurant	Sunday; 12:00 - 00:00 Sunday; 12:00 - 23:00 Monday to Saturday; 10:00 - 23:30 Monday to Saturday; 10:00 - 00:30

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		94		
		Queensway		Monday to
		London W2		Sunday; 11:00
23/04772/LIPN	Not Recorded	3RR	Restaurant	- 23:00
				Sunday; 09:00
		92		- 00:30
		Queensway		Monday to
		London W2		Saturday;
14/00835/LIPT	Beity Lebanese	3RR	Restaurant	09:00 - 01:30
		Basement		
		And Ground		
		Floor 111		
		Queensway		Monday to
	Naser	London W2		Sunday; 09:00
23/01277/LIPN	Supermarket	4SJ	Shop	- 03:00
				Sunday; 12:00
				- 00:00
				Monday to
		Ground Floor		Thursday;
		86		09:00 - 01:00
		Queensway		Friday to
	The	London W2	Night clubs and	Saturday;
13/05504/LIPDPS	Beachcomber	3RR	discos	09:00 - 02:00
				Sunday; 12:00
		84		- 00:00
	Four Seasons	Queensway		Monday to
	Chinese	London W2		Saturday;
13/08965/LIPDPS	Restaurant	3RL	Restaurant	10:00 - 00:30