

**THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
DECISION OF THE LICENSING SUB-COMMITTEE (“Committee”)
THURSDAY 28 JANUARY 2021**

Committee: Councillors McVeigh (Chair), Evans and Spalding

Officers: - Paul Phelan (Licensing)
Heidi Titcombe (Legal)
Anne Wright (Governance)

CASA CRUZ, BASEMENT, GROUND AND FIRST FLOOR SOUTH, 123a CLARENDON ROAD, LONDON, W11 4JG (“the Premises/Restaurant”)

The Committee has considered an application for the review of the Premises Licence (“Licence”) in relation to the above Premises under Section 51 the Licensing Act 2003.

The Committee recognised that there has been widespread publicity about this application in the media as the party was held by a celebrity. The Committee wish to make it abundantly clear that the Committee has no power to levy a fine against the Premises in relation to these licensing review proceedings. The Committee noted that there are ongoing Police investigations which may lead to other actions being taken.

In determining this application, the Committee must have regard to the application and representations received and may take any of the following steps as it considers appropriate and proportionate for the promotion of the licensing objectives. The steps are:

- (a) Take no further action.
- (b) Modify the conditions of the licence.
- (c) Exclude a licensable activity from the scope of the licence.
- (d) Remove the Designated Premises Supervisor.
- (e) Suspend the licence for a period not exceeding three months.
- (f) Revoke the licence.

The review was requested by the Metropolitan Police (“Police”) who sought the revocation of the Licence on the grounds of the prevention of crime and disorder and the prevention of public nuisance licensing objectives, because the Premises hosted a private party on 28 November 2020 for around 17 persons during the national lockdown and in breach of the Coronavirus Regulations¹; the Premises also refused entry to the Police investigating the incident and turned off its CCTV before the party started and was unable to produce any CCTV recordings for the 31 day period prior to the incident, both in breach of the conditions of its Licence. The Police were represented by Mr Charles Holland of Counsel and he was accompanied by PC Ian Davis and PC James Larner.

The Licensing Authority and Environmental Health supported the review application because of the seriousness of this matter and the failure of the Premises to promote the prevention of crime and disorder and the prevention of public nuisance licensing objectives. Ms Laura McGahon represented the Licensing Authority, and Mr Kieran McKenna represented Environmental Health. Ms McGahon advised that if the Committee was not minded to revoke the Licence, the Licensing Authority requested a number of additional conditions to be attached to the Licence, as specified on pages 2 and 3 of the main Committee papers.

¹ The Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020

The Committee noted that it did not receive any representations from residents supporting the revocation of the licence

The Licence is held by Casa Cruz London Limited, the Premises Licence Holder. Mr Fallows is the sole director of that company. Mr Grant, of Counsel, represented Casa Cruz and he was accompanied by Mr Alun Thomas and Ms Holly McColgan (Solicitors), Mr Nicholas Fallows and Mr Tibor Balint, the new Designated Premises Supervisor. Ms Marcjanna Kaskiewicz, the former Training Manager of Casa Cruz also joined the hearing from abroad half way through the hearing.

The Committee recognised that 44 representations had been received from local residents, supporting the Restaurant and opposing the revocation, including one from Councillor Elnaghi, who is a Ward Councillor and the Chair of the local Residents' Association. Councillor Elnaghi attended the hearing, along with Mr Berkmen, Mr Marc Chatin and Dion Morina.

At the start of the hearing the Chair introduced the Members of the Committee, identified the Parties attending the hearing who wished to speak and outlined the procedure for the virtual hearing. No declarations of interest were made.

The Committee has carefully considered the review application, the representations made, and the submissions made by all of the parties, both orally and in writing.

In reaching its decision the Committee has had regard to the relevant legislation, the Secretary of State's Guidance ("SS Guidance"), the Authority's Statement of Licensing Policy ("SLP") and The Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020.

In summary, the Committee has decided it is necessary, appropriate and proportionate, having carefully considered the individual merits of this case and the promotion of the licensing objectives:

1. To suspend the Premises Licence for a period of six weeks from the date the full **Reasoned Decision** comes into effect.
2. To modify the existing Licence by adding the following conditions to the Licence:

A. conditions requested by the Licensing Authority and agreed by the Premises Licence Holder

(1) The former Designated Premises Supervisor, Mr Scottie Bhattarai, shall not be permitted to enter or remain on the licensed premises at any time. Nor shall he be employed by, or act on behalf of the Premises or the Premises Licence Holder in any capacity whatsoever whether directly or indirectly or provide any services for the Premises (directly or indirectly and whether for reward or otherwise).

(2) The Premises Licence Holder shall draw up a policy to ensure that the former Designated Premises Supervisor, Mr Scottie Bhattarai shall not be permitted entry into the Premises. The policy shall be implemented within 7 days from the date of this hearing and complied with by the Premises Licence Holder and his staff (whether employed or self-employed) at all times. The policy must be supplied to the Police and Licensing Authority officers within 14 days from the date of this hearing and thereafter, immediately upon request.

(3) A Noise Dispersal and External Management Plan ('the Plan') shall be submitted to

the Royal Borough of Kensington and Chelsea's Environmental Health Department, Licensing Authority and the Police for consultation within 7 days from the date of this hearing. The Plan shall detail the procedures, management controls and practical steps including all measures to control any noise generated by patrons entering or leaving the Premises that will be taken to ensure that Public Nuisance does not arise at any time when licensable activities are taking place on the Premises. The Premises Licence holder shall incorporate any recommendations of the Licensing Authority, Police and Environmental Health into the Plan. Once the revised Plan has been finalised the Premises Licence holder shall implement and comply with the plan at all times. A copy of the revised Plan shall be sent to the Licensing Authority, Police and Environmental Health within 5 working days of it being revised. Any further amendments to the Plan shall be submitted to the Licensing Authority within 28 days of the revision.

(4) The Premises Licence Holder shall organise and accommodate meetings to discuss the operation of the premises with residents at least two times per calendar year. The details of the proposed meeting shall be clearly displayed on a window or door visible to people outside the premises and the Premises Licence Holder shall directly notify local residents' associations of the meeting date at least two weeks before the meeting. The Premises Licence Holder shall take the minutes of meetings with residents that shall be circulated to all attendees and to the Licensing Authority and copies shall be readily available at the premises upon request.

B. conditions requested by the Committee and agreed by the Premises Licence Holder

(5) The current new Designated Premises Supervisor shall attend and pass a duly accredited level 3 Designated Premises Supervisor course and shall send the original certificate to the Licensing Authority for verification within 28 days of attending the course and before the suspension period comes to an end.

(6) There shall be a minimum of one personal licence holder on duty on the Premises at all times when the Premises are authorised to sell alcohol.

C. conditions offered by the Premises Licence Holder

(7) An incident log shall be kept at the premises and made available on request to an authorised Officer of the Council or the Police. It must be completed within 24 hours of the incident and shall record the following:

- a. all crimes reported to the venue
- b. all ejections of patrons
- c. any complaints received concerning noise or crime and disorder
- d. any incidents or disorder
- e. all seizures of drugs and offensive weapons
- f. any faults in the CCTV system
- g. any refusal of sale of alcohol
- h. any visit by a relevant authority or emergency service.

(8) The Premises Licence Holder shall instruct and engage a comprehensive and independent risk assessment within 28 days and shall implement the actions prior to the Premises re-opening.

3. To modify the Licence by removing condition 24 (telephone condition) and replacing it with the following the condition, as agreed with the Premises Licence Holder:

“The Premises Licence Holder shall provide and maintain a dedicated telephone number of the Designated Premises Supervisor or the duty manager for use by any person who may wish to make a complaint during the operation of the licence, which shall be provided to the Licensing Authority and local residents' associations. Any change to the number shall be notified to the Licensing Authority and to local residents' associations within 7 days of the change.”

4. To modify the Licence by removing condition 21 (CCTV condition) and replacing it with the following the condition, as suggested by the Premises Licence Holder and agreed by the Responsible Authorities:

“There shall be CCTV in operation at the Premises and;

a) a member of staff who has been nominated in writing and who is conversant with the operation of the CCTV system shall be on the Premises at all times when the Premises are open to the public.

b) if the Premises are not open, and subject to the tests set out by virtue of the Data Protection Act, within 24 hours of a request for access to the CCTV system from either the Police or the Licensing Authority, this staff member must be able to show a Police, HMRC or authorised Council Officer recent CCTV data or footage with the absolute minimum of delay when requested.

c) all recordings shall be securely stored for a minimum period of 31 days with date and time stamping on a hard drive or cloud-based system to the satisfaction of officers of the Metropolitan Police.

d) all cameras shall continually record whilst the Premises are open for licensable activities and during all times when customers remain on the Premises and shall ensure all areas of the licensed Premises are monitored including all entry and exit points, and the street environment which enable frontal identification of every person entering the Premises in any light condition.

e) recordings shall be made available immediately upon the request of a Police Officer or a Licensing officer throughout the preceding 31-day period and the Police and the Licensing Authority shall be provided with the facility to view the recordings, in real time.

f) the CCTV system shall be maintained according to the current Home Office specification for Premises of this type.

g) should the equipment become faulty then the Metropolitan Police will be notified by e-mail and all reasonable efforts made to have any fault rectified within 24 hours.”

5. The Committee decided that all the conditions amended and added to the Licence, by this Decision, are appropriate and proportionate to promote the licensing objectives.
6. The varied Licence shall be subject to any relevant mandatory conditions which are applicable to the Licence.
7. The existing conditions on the Licence shall apply, in so far as they have not been varied by this Decision.

Preliminary matters

8. The Committee considered the following papers:-
 - the Main bundle of Committee papers circulated 13 January 2021;
 - Skeleton Argument of Mr Holland;
 - Skeleton Argument of Mr Grant;
 - a large bundle of papers submitted on behalf of the Casa Cruz;

- Food Alert letter dated 25 January 2021 submitted by Casa Cruz.

9. Mr Paul Phelan, introduced the report and explained the basis of the review application. He also confirmed that the Premises have given notice of one Temporary Event notice in the last 24 months. Council records indicate that five noise complaints had been received in the preceding 24 months. A complete schedule of complaints from June 2015 to December 2020 was part of the Licensing Authority's representation at Appendix 1 of the main committee papers.

Reasons

Application for the Review

10. Mr Holland started by stating that the facts are not in serious dispute. The Premises came to adverse police attention following receipt of reports that a party was being hosted on 28 November 2020. The person that complained to the Police said large groups of people had arrived at the Premises through the back door; security were marshalling the grounds and there was loud music. This incident took place during the second national lockdown (5 November 2020 to 1 December 2020 inclusive). At this time, Mr Holland stated (a) businesses which provided food or drink for consumption on the premises had to close and cease provision of food or drink for consumption on the premises; (b) there was a restriction on movement which prohibited persons from leaving or being outside the place where they were living without reasonable excuse and (c) it was unlawful to participate in a gathering indoors subject to relevant exceptions, which did not apply in this case.
11. When the Police attended the Premises shortly after 23:30 hours on 28 November 2020, they could see through gaps in the window coverings, a male barman, 2 females at tables and empty glasses at tables. The doors to the Premises were locked. The Police Officers knocked on the doors to gain access. That caused the music they heard to be switched off, but no one came to the door to allow the Police to enter.
12. The Police googled the Premises and found a phone number, which they called but again no one answered. They effectively left the Premises at that time. It subsequently transpired that the Premises had hosted a birthday party for a celebrity, Ms Rita Ora. The Designated Premises Supervisor ("DPS"), Mr Bhattari, was interviewed at the Premises a couple of days later on 1 December 2020. He said, that he had been contacted by Ms Ora's representatives on the night in question and had been offered £5,000 for the use of the Premises that night. He said he agreed to this as he was being greedy. He then travelled to the Premises and admitted access to the group around 19:30 hours. At the peak around 21:00 hours, he counted 17 people attending the party. He was fully aware that the event breached the COVID-19 Regulations. He said he was the sole member of staff that facilitated the event.
13. The purpose of the Police visit was to obtain footage from the CCTV because condition 21 of the Licence, required "*the premises tomaintain a CCTV system that ensures that all areas of the licensed premises are monitored including entry and exit point..... The CCTV system shall continuously record andall recordings shall be available immediately on request of the Police.*" In breach of the condition 21, Mr Bhattarai confirmed that he had, in fact, switched the CCTV off on the night in question at about 18:00-18:30 hours, at the request of Ms Ora's security. A specialist Police Officer attended the visit to check the CCTV, but when he looked at the system, it did not have any recordings before 15:15 hours on 30th November 2020. This was another breach of condition 21. Mr Bhattarai suggested the lack of recordings must

have been caused by the reformatting or replacement of the hard drive. This meant that Police were unable to view the recordings and they were unable to check over the previous 31 day period to see what else had been happening at the Premises. Mr Bhattari has been cautioned and is subject to ongoing police investigation.

14. The press was aware of this incident and there have been extensive reports in the media and this has attracted public interest and concern. The Premises Licence Holder (“PLH”) has taken steps since the incident which include removing Mr Bhattari as the DPS and appointing Mr Balint; they have offered to attach additional conditions to the Licence, which includes proposing to upgrade the CCTV system with a secure cloud storage so that no one can tamper with CCTV recording, as well as debarring Mr Bhattari from the Premises.
15. The issue between the Police and the PLH is what is appropriate and proportionate to meet the licensing objectives going forward. Mr Holland stated that the Police do not consider attaching additional conditions and the steps taken so far, go far enough. The Police consider the Licence should be revoked in order to promote the licensing objectives. Mr Holland stated that “deterrence” is a proper consideration in licensing policy for the reasons set out in his Skeleton Argument.
16. Mr Holland submitted that there had been a string of criminality on 28 November 2020. There were five offences² which took place, including the breaches of lockdown, breaches of the COVID-19 Regulations, locking the doors whilst patrons are on the Premises (fire doors), breaches of Licensing Act (turning off the CCTV), and not permitting access to Police.
17. PC Ian Davis stated it was with deep regret that we find ourselves at this review hearing. These are unprecedented times, no one is above the law and everyone should be held accountable. Allowing the party to take place on the Premises was a breach of the COVID-19 regulations. The failure to leave the CCTV recording on the night and the failure to produce the recordings over the previous 31 day period was serious and has hampered the Police investigations. There has been public and media interest in this matter who will be monitoring the result of this hearing closely. The Police have to take a robust approach for the wider community. The Responsible Authorities are also supporting the review but ultimately the Police will be guided by the Committee’s decision.
18. Mr Holland stated that in deciding what steps to take, the Committee can have regard to the “public interest” and he referred to the case of **R. (Chief Constable of Nottinghamshire Police) v. Nottingham Magistrates’ Court [2010] LLR 112 at [39]** where Moses L.J. said that a licensing decision:

*... is not a decision similar to that which [the District Judge] would be accustomed to resolving in the course of ordinary litigation. There is no controversy between the parties, no decision in favour of one or another of them, **but the decision is made for the public benefit one way or the other in order to achieve the statutory objectives.** (His emphasis). Mr Holland also referred to the case of **East Lindsey District Council v. Hanif [2016] EWHC 1265 (Admin)**, where the Judge stated that the assessment of the licensing objectives “**requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.**”*

² As more fully listed in paragraph 31 of Mr Holland’s Skeleton Argument

19. Mr Holland also referred to the paragraphs 11.1 and 11.26 of the Secretary of State's Guidance which makes it clear that where a review is being conducted on the grounds that the premises have been used for criminal purposes, a licensing authority's role *"is solely to determine what steps are to be taken in connection with the premises licence, for the promotion of the crime prevention objective"*. Even if criminal activity may have taken place *"despite the best efforts of the licence holder and staff working on the premises and full compliance with conditions attached to the licence"* a licensing authority is still empowered to take steps to promote the licensing objectives. Its duty is *"to take steps with a view of to the promotion of the licensing objectives ... in the interests of the wider community and not those of the individual licensing holder"* (His emphasis).
20. In Mr Holland's view the holding of the event caused public nuisance as evidenced by the complaint made and there were a number of aggravating factors which would merit the revocation of the licence including:
- (1) a motive of financial gain;
 - (2) attempts at concealment, including:
 - (3) blacking out of windows;
 - (4) locking of doors including fire doors;
 - (5) denial of access to authorised persons;
 - (6) breaches of CCTV condition in advance of the event;
 - (7) further breaches of CCTV condition after the event in failing to provide recordings.
21. However, Mr Holland also confirmed that the Police also accepted that, but for the incident of which they are aware, the Premises was well run and regarded as a valuable community facility and a business that provides valuable employment opportunities, including to those in the local community.
22. The promotion of the licensing objectives here requires a strong and clear message to both the hospitality trade and the wider public of the consequences of a flagrant breach of the Coronavirus Regulations, taken knowingly, deliberately, for financial gain, and in a manner that was planned to conceal the obvious illegality of what was going on from the authorities by the DPS, the most senior member of staff, the Company had put in charge of the Premises. The country remains in the grip of the pandemic and it is key that licensed premises comply with the COVID-19 Regulations. Mr Holland argued that whilst Mr Bhattari was culpable, the Premises Licence Holder was also responsible for the actions of its staff if it chose to operate in a pandemic. The Committee asked about the ongoing legal actions, which are outside the remit of the Committee, and the payment of the £10,000 fine and were told that there are two sets of ongoing legal proceedings and due to confidentiality the information cannot be shared.
23. In summary, Mr Holland contended that the incident was without question one of the most "egregious" and certainly the most notorious breaches of the Coronavirus Regulations committed on licensed premises during the pandemic. In his view the mere removal of the DPS and attaching further conditions were not sufficient to promote the licensing objectives, but the Police accepted that that the decision as to what steps to take is one for the Committee.

Responsible Authorities supporting the Review

Licensing Authority

24. Ms McGahon confirmed that the Licensing Authority are supporting the review on the grounds of the prevention of crime and disorder, prevention of public nuisance and prevention of public safety. Ms McGahon has dealt with Casa Cruz since it opened 5 years previously.³ Ms McGahon stated a number of noise issues have been caused by the Premises and its customers and the list of complaints are specified in Appendix 1. Ms McGahon stated the complaints received demonstrate that there were management and staff issues over this 5 year period which appeared to be caused by staff and this was worrying. Ms McGahon highlighted a few⁴:-
- On 30 September 2016 – the DPS was advised that loud music was escaping from the Premises and causing nuisance at 03:00 hours; (after its permitted hours). It turned out that this noise was caused by staff and a warning letter was issued to staff members.
 - On 18 December 2017 at 00:32 hours, a noise complaint was made relating to loud music coming from the Premises; again, this was caused by a staff party.
 - On 15 July 2018 at midnight – staff were causing noise and nuisance whilst smoking outside the Premises.
 - On 4 July 2019 – Licensing Officers visited the Premises twice in response to noise complaints at 21:32 and at 04:00 hours the following day, when staff were again causing noise whilst smoking outside.
25. Ms McGahon contended that there was two parts to this review. Firstly, the breach of the COVID-19 Regulations in holding the party at the Premises on 28 November 2020 and Secondly, breaching condition 21 (CCTV), of the licence. Both were unacceptable, especially as they were committed by the DPS, who is supposed to be managing the Premises properly and in accordance with the terms of the Licence. Further, Ms McGahon advised that this is the second time that the Premises have been found to be in breach of the CCTV condition which was a serious concern to the Licensing Authority.
26. Ms McGahon, stated that if the Committee was not minded to revoke the licence, she requested four conditions to be attached to the Licence; the first, to prevent the former DPS, Mr Bhattarai from entering or having any involvement with the Premises; the second, requiring the PLH to implement a policy to ensure that Mr Bhattarai does not have anything to do with the Premises going; thirdly, requiring the Premises to draft and implement a Dispersal and External Management Plan and finally, requiring the PLH to arrange meetings with local residents twice a year. The Committee was mindful that Mr Grant in his written submission, confirmed that these conditions were agreed, and they are attached to the Licence as specified in paragraphs 2 (1) to (4) of this Decision.
27. Ms McGahon advised that the former DPS, Mr Bhattarai, has been removed as the DPS and a new one has been appointed. However, the Licensing Authority wants assurances that new DPS will comply with conditions on the Licence and promote the licensing objectives.
28. Mr Grant asked Ms McGahon if she would agree that five complaints a year was not high for a licensed premises in a dense area. However, Ms McGahon responded that

³ As set out in her representation on pages 69 to 86 of the Committee papers

⁴ Page 73 of committee papers

it was not the number which caused a concern, but the fact that several complaints have arisen because of the actions of staff which was very worrying and indeed, this review has been caused because of the actions of the former DPS, who was supposed to be managing the Restaurant properly.

Environmental Health

29. Mr McKenna represented Environmental Health and confirmed that he supported the review because following the incident on 28 November 2020, he was asked to review the COVID risk assessments. He was not satisfied with the initial assessments which had been carried out because they had not been signed off by senior management and they were generic in nature as opposed to relating to this particular Premises.⁵ However, since his initial review was carried out Casa Cruz have supplied him with a large bundle of updated risk assessments which are acceptable.⁶
30. Mr McKenna emphasised that it was important to prepare and implement risk assessments in order to keep staff safe during a pandemic. In response from questions by Members, it was noted that no risk assessment had been produced for the DPS. More information regarding this issue is covered in paragraphs 45 and 46 below.
31. After a short adjournment, Mr Grant presented his submissions on behalf of Casa Cruz.

Submissions by the Premises Licence Holder

32. Mr Grant on behalf of Casa Cruz Ltd, unequivocally and unconditionally condemned the serious incident which occurred at the Premises on 28 November 2020. He stated that nothing he said would undermine the importance of all licenced premises from obeying the COVID-19 regulations. Casa Cruz fully accepted that the Regulations⁷ are there to protect the entire community. Mr Fallows is the sole director of the Casa Cruz Ltd and he shared the concern, shock and disappointment of what an employee of the Company had allowed to happen on the Premises. However, Mr Grant emphasised that Mr Fallows, did not know about the party and he did not authorise it on behalf of the Company. He contended this is what puts this case outside the vast majority of COVID-19 reviews of licensed premises.
33. Mr Grant contended that the party which took place on 28 November 2020 was authorised by the Manager and Designated Premises Supervisor, (DPS) Mr Scottie Bhattarai, of the Restaurant, who acted alone. The Premises had arranged to supply food to a celebrity at her home, however, the Committee were told that on the day of the event, paparazzi started to gather outside her home and the celebrity's representative asked Mr Bhattarai whether the party could take place at the Restaurant for £5,000. Mr Grant advised that Mr Bhattarai made "a spur of the moment decision" to allow the event and also agreed to turn off the CCTV, at the request of the celebrity's representatives. Mr Grant stated that Mr Fallows did not know until after the event, that Mr Bhattarai had agreed to host the party. He also confirmed that the £5,000 offered to Mr Bhattarai was not received. The Premises Licence Holder acknowledged the importance of all licensed premises obeying the COVID-19 Regulations in order to protect the entire community and referred the

⁵ As explained in his representation on pages 87 and 88 of the Committee papers

⁶ Pages 61 to 319 of the additional bundle

⁷ The Health Protection (Coronavirus, Restrictions) (England) (N0.4) Regulations 2020

Committee to his written Submission.

34. Mr Grant stated that within four days of Mr Fallows finding out about the incident he had taken all the robust steps you would expect a responsible operator to take. He has removed Mr Bhattarai, as the DPS, who was the cause of the breach and as a result he could ensure there will be no repetition. Mr Grant said that punishment in this case is not for the licensing process, but for the criminal court and he confirmed that there are ongoing criminal investigations in relation to the incident. If there is punishment to meet the crime, then that will take place in the criminal courts.
35. Mr Grant submitted that the review is about taking proportionate and appropriate steps that meet the facts of this case to promote the licensing objectives. He contended that there has been punishment in commercial terms due to the adverse publicity that Casa Cruz has already faced and its reputation damaged. He accepted however, that the adverse publicity is not a proper factor that should dissuade the Committee from taking any steps that it would otherwise take. That would be an injustice and that would mean his Client would be judged by what the newspapers say rather than the licensing objectives.
36. Mr Grant agreed with the Police that “deterrence” is a factor which can be taken into account by the Committee. However, he does not agree with the Police that deterrence can only be achieved by imposing the most serious sanction available under Licensing Act, being the revocation of the Licence. There was a discussion about the Police’s case for deterrent in a case of high publicity like this one, by using the **Knightsbridge Crown Court V international Sporting Club** (a casino) as an example when the licence was revoked as a deterrent to other operators. But Mr Grant rebutted this saying in that case there was a whole catalogue of previous wrongdoings on numerous occasions that extended over a number of years, which is not the case here. Mr Grant submitted that there are other steps which can be taken to act as a deterrent to other operators including a short suspension of the Licence and imposing additional conditions on the Licence.⁸
37. Mr Grant submitted that based on the facts of this case, it would not be appropriate for “deterrence” to be taken into account as the PLH, Mr Fallows did not know about the party until after the event. Deterrence, only works if those that are contemplating a breach, think twice because they have heard what happened in another case. This is not the case here.
38. Mr Grant also contended that the Committee would have heard about weddings and night clubs having mass events during the pandemic which have breached the Regulations. However, in his submission this case was not one of them.
39. Mr Grant accepted that the CCTV should not have been switched off. This was done at the request of the Ms Ora’s security team direct to Mr Bhattarai the former DPS. His Clients can only speculate as a company why this was done. Mr Grant suggested that the former DPS had gone “off on a frolic of his own”. However, in his view Casa Cruz acted very swiftly by removing Mr Bhattarai as the DPS and replacing him with an extremely experienced manager from its sister Restaurant. He contended there is no chance of his Client ever being involved in something like this again.
40. In response to questioning Casa Cruz confirmed that whilst the former DPS has been removed as the DPS and manager of the Casa Cruz restaurant, he has not been

⁸ As suggested by the Licensing Authority and Casa Cruz Limited – pages 2 and 3 of the main committee papers and page 15 of the Premises Licence Holder’s evidence

dismissed from the Company, because employment procedures have to be followed. As this is a pending investigation, Mr Grant advised that he was unable to comment further in relation to the former DPS and the Police investigation.

41. Mr Grant contended that in determining what steps to take the Committee had to balance what was appropriate and proportionate in the circumstances of this case. Whilst it was accepted that the former DPS allowed the party to take place in breach of the COVID-19 Regulations, which was a serious matter, and there was a breach of condition 21 of the Licence in turning off the CCTV, he stated that it was not appropriate or proportionate to revoke the Licence for the following reasons:-
- This was first time this venue and the Premises Licence Holder has been the subject of a review.
 - The party was not authorised by the PLH.
 - The Restaurant was intending to provide the catering for a home experience with close friends, when the paparazzi turned up.
 - The former DPS received a phone call asking to hold the event at the Premises, and made a “a spur of the moment decision” to allow the party to take place at the Premises.
 - The former DPS has since been replaced and there is no chance this one off incident can happen again.
 - The Premises made no financial gain from the event.
 - The Police are not aware of any matters prior to the event, to cause, the Police to seek revocation of the Licence.
 - There is no evidence that any other events have taken place at the Premises in breach of the COVID-19 regulations.
 - The PLH has acted properly since the incident has occurred.
 - The Premises has been well-run, and provides employment for up to 39 people, including local residents, and is of benefit to the community
 - The Premises and its staff are receptive to the concerns raised by local residents and works to address any issues which may occur.
42. Mr Grant also stated that before Casa Cruz took over the licensed premises, the previous premises was a very sad and run-down pub, which caused nuisance for local residents. The community have welcomed and supported this transformed licensed restaurant, as evidenced by the 44 letters of support. Many local residents consider the existence of the Restaurant, with a doorman and CCTV, has actually made the community feel safer and has prevented crime from taking place which does promote the crime and disorder licensing objective. The closure of a successful business would result in the loss of 39 jobs, and would leave an empty building and result in a new operator which may or may not engender the same type of community engagement as this Restaurant has.
43. Mr Grant indicated that for the reasons explained above it would not be appropriate for the Committee to revoke the Licence. The Committee might consider a suspension an appropriate response. Mr Grant advised that although the Committee has the power to order a suspension of up to 3 months, he contended that this is a case where a shorter suspension could be imposed in view of the previous good record of the Premises and the fact that any suspension will not come into effect until 21 days after the full reasoned decision is circulated on the Parties. Mr Grant stated that any suspension beyond April would have a financial impact as the Company has to pay £90,000 per annum in rent. Moreover, this would come at a time when the Restaurant, like many licensed premises, has lost a lot of business during the pandemic. Consequently, Mr Grant suggested a 28 day suspension might be more proportionate, bearing in mind the event on 28 November was a terrible mistake by an

individual which has been properly addressed by Casa Cruz.

44. In relation to the questions raised about the quality of the COVID risk assessments and training which had been carried out, Mr Grant stated there was nothing wrong with Casa Cruz using the templates provided by a professional company. Indeed, engaging an expert company called, Food Alerts, to carry out the assessments and training showed the Company took risk assessments very seriously. The assessments were properly signed off by senior management.
45. In March 2020, the Food Alert company visited the Restaurant and subsequently in July provided a 3 day training session. All staff were trained and completed the risk assessments. All staff were aware of their responsibilities and duties. Members raised several questions as to the completeness of the risk assessments and in response Mr Grant called Ms Kaskiewicz, the former training manager as a witness. She confirmed that all risk assessments were properly carried out. Members noted that the former DPS, Mr Bhattarai, did not sign a risk assessment form. Ms Kaskiewicz confirmed he did attend the training, but he was back and forth answering questions for the builders who were doing some work in the Restaurant. Mr Grant stated it was clear when looking at the vast amount of risk assessments carried out that proper training was given.

Conditions

46. In terms of conditions which the Committee might consider attaching to the Licence if it is not minded to revoke the Licence, Mr Grant confirmed that Casa Cruz agreed the four conditions proposed by the Licensing Authority, as amended by Ms Titcombe⁹. The first two, preventing Mr Bhattarai from having any involvement in the Premises; the third condition requiring a Noise and Dispersal plan to be implemented to prevent nuisance occurring and the fourth condition requiring a meeting to be arranged with local residents twice a year. Mr Grant confirmed that Casa Cruz also suggested amending the existing CCTV condition to put in safeguards to prevent the recordings from being switched off. Mr Grant also suggested that conditions should be imposed requiring (1) a notice to be erected, to remind customers to leave quietly; (2) for an incident log to be completed and (3) for a comprehensive risk assessment to be carried out within 28 days.¹⁰
47. Mr Grant noted that Ms Titcombe had circulated a list prior to the hearing containing three other conditions which the Committee might be minded to impose if it does not revoke the licence and he confirmed they were all agreed by Casa Cruz. These conditions required the new DPS, Mr Balint, to attend and pass an accredited level 3 DPS training course; secondly, that a personal licence holder shall be on duty at all times and for condition 24 of the Licence to be amended to provide the updated version of the telephone condition to enable residents to make complaints more easily.¹¹

Supporters of the Premises

48. The Committee noted that 44 representations had been received in support of the Restaurant, including one from Councillor Elnaghi, who is a Ward Councillor and the Chair of the local Residents' Association. Councillor Elnaghi attended the hearing,

⁹ As set out on pages 2 and 3 of the main Committee papers

¹⁰ As set out in paragraphs 2(7), 2(8) and 4 of this Decision.

¹¹ Conditions 1 to 7 are set out in paragraph 2 (1) to (7) and paragraph 3 of this Decision

along with Mr Berkmen, Mr Marc Chatin and Dion Morina.

49. Mr Dion Morina is a local resident and said he has lived in the area his whole life and in his view the staff of the Restaurant are friendly and helpful towards the community. They have a good doorman and CCTV in place which covers a wide range of the area outside and as a result he has felt a lot safer in the area since Casa Cruz has been there, when in the past it had been an area for thefts.
50. Mr Morina stated he was 22 years old and Casa Cruz has provided job opportunities to younger people, which gives them a jump start with their careers. He confirmed that he started working for the restaurant within three months of it opening at 17 and progressed to a head waiter. All in all, he worked at the Restaurant for approximately two and half years in between his studies and is now a teaching assistant speaking to the Committee during his lunch break.
51. Mr Berkman lives directly above the Restaurant.¹² When he moved into his flat it was the Clarendon Pub directly below him and he was disturbed by a high level of noise as the pub was unable to control the customers outside the pub and he also suffered other nuisance as a result of the noise created by rubbish disposal. He has not had any problems with excessive noise with Casa Cruz and he would prefer to have them as a neighbour, rather than another licensed premises, as the Restaurant is very well run and the staff are receptive to residents' concerns. The doorman and the CCTV give security in the whole street and prevents crime and disorder and he doesn't want the licence revoked. He was particularly complimentary about the doorman who lives locally and who is aware of local issues.
52. Councillor Elnaghi lives very near the Restaurant.¹³ He is the Chair of the local residents' association and supports the Premises because he considered that Casa Cruz has been a welcome addition to the community. It has provided "an additional level of safety and security" to the local area, a safety against gangs and drug dealing. The residents' association has never had any complaints about his restaurant and it also gets involved in community charity initiatives. The level of support for the Restaurant from local residents is impressive and he urged the Committee not to revoke the licence.
53. Mr Chatin lives adjacent to and shares a drive with the Restaurant and as explained in his representation he also opposes the revocation of the Licence.¹⁴ He confirmed that this Restaurant has been a welcome addition to the community. He has continuous dialogue with the restaurant staff to ensure their operations does not interfere with the lives of their neighbours. The existence of the doorman has proved to be a very helpful addition from a security and safety point of view, including against gang activity and he felt it would be a "disaster if the Restaurant were to close". He regarded this Restaurant as a business that works. It has respectful staff who work with local residents and he would regard the revocation as an "nuclear option" to address breaches which have occurred.
54. The Committee was mindful that the other 40 written representations received from local residents followed the same vein as above, and residents did not want the Licence to be revoked.

¹² Mr Berkman's representation is on page 94 of the main committee papers.

¹³ Councillor Elnaghi's representation appears at page 89 of the main committee papers.

¹⁴ Page 108 of the main committee papers

55. The Committee was also mindful that no representations had been received from local residents asking for the revocation of the licence or indeed any supporting the review on any grounds.

Conclusions of the Committee

56. In making its decision the Committee has considered all relevant sections of its SLP and the Guidance. The Committee considers the following paragraphs of the Guidance and its SLP are particularly important, but it should be emphasised this is not an exhaustive list as the Committee has considered all relevant provisions of both documents. Relevant paragraphs are: - 1.9, 1.11, 1.12, 1.16, 1.17, 1.19, 2.1 - 2.21, 8.41 - 8.47, 9.26 to 9.30. 9.33, 9.37 - 9.40, 10.10, 10.13, 10.14, 10.15, 10.61 – 10.64, 10.66, 11.5 - 11.28, 13.10, 14.10, 14.12, 14.13, 14.19, 14.42, 14.51 and 14.52 of the Guidance and paragraphs 2.1, 2.4, 2.5, 2.8, 3.10, 6.1 - 6.3, 8.2 - 8.4, 8.8 - 8.13, 8.16, 9.1, 9.5, 14.3 to 14.6, 15.2 -15.3, 22.3, 22.4, 24.1 and 24.2 of the SLP.
57. The Committee recognised that the proceedings set out in the Act for reviewing premises licences represent a key protection for the community when problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. Representations must relate to the particular premises in question and must be relevant to the promotion of the licensing objectives.
58. The Act provides the Licensing Authority with a range of powers on determining a review that it may exercise where it considers them appropriate for the promotion of the licensing objectives. In deciding which of these powers to invoke, the Licensing Authority should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
59. The Committee was mindful that when determining a review in connection with crime and disorder *“the Licensing Authority’s role when determining such a review is not therefore to establish the guilt or innocence of a any individual but to ensure the promotion of the crime prevention objective”*.¹⁵
60. Paragraph 11.25 goes on to state that *“reviews are part of the regulatory process introduced by the 2003 Act and they are not part of the criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need to be delayed pending the outcome of any criminal proceedings”*.¹⁶
61. In Summary, the Committee concluded that the Police were right to apply for this review and seriously considered revoking the Licence because it agreed with the Police, that breaching the COVID-19 Regulations was not only unlawful, it also put the community at risk. This does not promote the licensing objectives, particularly in relation to the protection from crime and disorder. The situation was compounded by the failure to allow the Police entry to investigate the incident on the evening in question; the fact that the CCTV was switched off in breach of condition 21 of the Licence and the CCTV recordings over the previous 31 day period, had not been preserved. This was serious as it hampered the Police’s and the Licensing Authority’s ability to investigate the incident which is contrary to the prevention of crime and

¹⁵ Paragraph 11.24 of the Secretary of State’s Guidance

¹⁶ Paragraph 11.25 of the Secretary of State’s Guidance

disorder licensing objective.

62. Mr Bhattarai was the Designated Premises Supervisor at the time of the incident and allowed the party to take place. As the Designated Premises Supervisor, he was responsible for the day to day management of the Restaurant, and by all accounts he acted alone in this incidence, but the Committee considered that this does not absolve the Premises Licence Holder – Mr Fallows - from responsibility. The incident happened during a pandemic lockdown and Mr Fallows should have ensured that the Restaurant was complying with both the COVID-19 Regulations and the conditions on its Licence, despite his assertion that Mr Bhattarai was acting alone. The Committee also considered that the Premises Licence Holder should have taken a more proactive role in investigating the incident, especially checking and preserving the CCTV once he found out what had happened on Sunday 29 November 2020.
63. The Committee noted from his statement that Mr Fallows oversaw the operation and financial performance of the restaurant. The day to day management of the restaurant was “however, generally left to the Operations/General Manager”¹⁷ and the weekly monitoring meetings he used to have with the General Manager had been suspended during the pandemic¹⁸. Mr Fallows was asked during the hearing what reassurance he could give that this event would not occur again and how he would monitor the situation and manage the newly appointed DPS. Mr Fallows said he had appointed a very experienced manager and DPS, in Mr Tibor Balint who had worked for the Company’s sister restaurant in Mayfair for two and a half to three years and he has full confidence in him. He was also intending to update the CCTV system to have a cloud-based recording system (if this was agreeable to the Police) which would prevent the CCTV from being switched off. The Company would also ensure compliance with all conditions of the Licence. He would now make it clear to all staff that they should contact him directly with any concerns and he would increase his monitoring of the premises.
64. The Committee were disappointed that Mr Fallow did not say that he would be more proactive in monitoring that good management was actually being carried out, especially as apart from this incident, the former DPS used to be regarded as a person who for over two years “*performed his duties with absolute professionalism and diligence at all times*”.¹⁹ So previous experience does not necessarily mean that a manager would always follow the rules. The Committee therefore considered that it was important that the new DPS should attend and pass a level 3 DPS accredited course, and for a personal licence holder to be on duty at the Restaurant at all times. These requirements are reflected in conditions 2(5) and 2(6) of this Decision.
65. The Committee recognised that as no CCTV recordings were available there is a question as to what may or may not have taken place, but there is no question that there was a gathering there contra to the lockdown regulations at the time. It was also acknowledged that the Police sought the review with the support of the Licensing Authority and Environmental Health.
66. Having considered all the above, the Committee also recognised that the Police accepted that this would appear to be an isolated incident and they also accepted the Premises Licence Holder (PLH) was not aware, that the party was taking place; the Police also accepted that the PLH did not make any financial gain from the event. The Committee acknowledge that the breaches of the law and the conditions have been

¹⁷ Paragraph 9 of Mr Fallow’s statement

¹⁸ Paragraph 6 of Mr Fallow’s statement

¹⁹ Paragraph 29 of Mr Fallow’s statement

admitted; the former Designated Premises Holder (DPS) has been replaced; and the Premises Licence Holder has agreed a number of conditions which include, preventing the DPS Mr Bhattarai from managing or working at the Restaurant again; along with other conditions which will help to encourage good management and the promotion of the licensing objectives.

67. Importantly the committee noted this was the first time this Licence has been reviewed and there have been no substantive issues raised by local residents in the last two years which have not been addressed by the operators who were receptive to residential concerns. Further, the residents supporting the Restaurant, living above and adjacent to the Premises regarded the Restaurant to be an improvement on the previous licensed premises, and felt its very existence made the streets safer, promoting public safety and the prevention of crime and disorder and they were keen that the Licence was not revoked. The Committee also considered that it was unusual on a review, not to have one local resident complaining about the Premises, whereas here, 44 residents were supporting the Premises. The Committee was also told that the Restaurant provided employment opportunities for up to 39 staff, some of which were local residents, so providing a benefit to the wider community.
68. The Committee has weighed up all of the above evidence and considers it is necessary and proportionate for robust steps to be taken against the Premises Licence Holder and for a deterrent message to be sent to this and other licensed premises that these sorts of breaches are totally unacceptable. Whilst the former Designated Premises Licence Holder may have allowed the incident to occur, and removing him and adding conditions addresses some causes of the breach, this does not absolve the Premises Licence Holder from responsibility, especially during a lockdown and further steps needed to be taken to address the breaches which have occurred. The lack of monitoring and the failure of the Premises Licence Holder to preserve the CCTV once he found out about the event, necessitated further steps being taken.
69. The Committee concluded that having regard to the merits of this particular case, the Licence should not be revoked, but instead, the Licence should be suspended for 6 weeks from the date this fully **Reasoned Decision** takes effect, in addition to attaching all the conditions specified in this **Decision** which amount to robust steps to promote the Licensing objectives
70. For the reasons stated above, the Committee decided it was necessary, appropriate and proportionate to take the steps specified in this Decision.

Under the terms of the Licensing Act 2003, this Decision and the licence suspension will not commence until 21 days after this fully Reasoned Decision has been sent to the Parties, or if the Decision is appealed against, when the appeal is disposed of.

The applicant for the review, the Premises Licence Holder or a person who has made relevant representation to the review may appeal against the decision to Westminster Magistrates Court, 181 Marylebone Road, London, NW1 5BR, within 21 days of receiving the full reasoned Decision. Further details of the Rights of Appeal can be found in Section 181 and Schedule 5 to the Licensing Act 2003.

Licensing Sub-Committee
28 January 2021