

## Licensing Sub-Committee

MINUTES of the OPEN section of the Licensing Sub-Committee held on Friday 14 December 2018 at 10.00 am at Ground Floor Meeting Room G02C - 160 Tooley Street, London SE1 2QH

---

**PRESENT:** Councillor Ian Wingfield (in the chair)  
Councillor Charlie Smith  
Councillor Kath Whittam

**OFFICER SUPPORT:** David Graham, legal advisor to the sub-committee  
Wesley McArthur, licensing officer  
Andrew Weir, constitutional officer

### 1. ELECTION OF CHAIR

Councillor Ian Wingfield was nominated by Councillor Kath Whittam to chair the sub-committee. This was seconded by Councillor Charlie Smith.

### 2. APOLOGIES

There were none.

### 3. CONFIRMATION OF VOTING MEMBERS

The members present were confirmed as the voting members.

### 4. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT

There were none.

### 5. DISCLOSURE OF INTERESTS AND DISPENSATIONS

There were none.

**6. LICENSING ACT 2003: MV ERASMUS, CHERRY GARDEN PIER, BERMONDSEY WALL EAST, LONDON, SE16 4TU**

The licensing officer presented their report. Members had no questions for the licensing officer.

The applicant and their legal representative addressed the sub-committee. Members had questions for the applicant and their legal representative.

The local residents objecting to the application addressed the sub-committee. Members had questions for the local residents.

All parties were given five minutes for summing up.

The meeting adjourned at 12.23pm for the sub-committee to consider its decision.

The meeting reconvened at 1.49pm and the chair advised all parties of the decision.

**RESOLVED:**

That the application made on behalf of City Cruises PLC for a premises licence to be granted under s.18 of the Licensing Act 2003 in respect of the premises known as MV Erasmus, Cherry Garden Pier, Bermondsey Wall East, London SE16 4TU is granted as follows:

<b>Licensable Activities</b>	<b>Hours</b>
The sale and supply of alcohol to be consumed on the premises	Monday to Sunday from 00:00 to 00:00 (24 hours)
Regulated entertainment: films; live and recorded music, performance of dance, and anything of a similar description	Monday to Sunday from 00:00 to 00.00 (24 hours)
Late night refreshment	Monday to Sunday from 23:00 to 05:00
Opening hours of the premises	Monday to Sunday from 00:00 to 00:00 (24 hours).

**Conditions**

The operation of the premises under the licence shall be subject to relevant mandatory conditions, and to the following additional conditions agreed by the sub-committee:

1. That the maximum number of persons that may be accommodated within the licensed vessel at any one time shall not exceed 353 including staff, comprising of no more than 349 passengers.
2. That clearly legible signage must be displayed at the exit where it can easily be seen and read, requesting that customers leave the premises in a quiet and orderly manner. An announcement must be made to request customers to leave the

premises in a quiet and orderly manner.

3. That no children under the age of 18 years shall be admitted or permitted to remain on the vessel unless accompanied by a parent or other responsible adult at all times.
4. That the premises shall operate a 'Challenge 25' policy whereby customers purchasing alcohol who appear to be under 25 years of age will be asked for proof of age and of identity. Acceptable forms of identity shall comprise only any PASS accredited proof of age card, driving licence or passport.
5. That all staff involved in the sale or supply of alcohol on board the vessel shall be trained in their responsibilities under the Licensing Act 2003, including the terms of this licence and the Challenge 25 policy. Such training must be received before they start to sell or supply alcohol and refresher training must be received at least annually. A record of the training delivered must be maintained for 12 months and made available for inspection upon request by the Council's authorised officers or the police. The record must indicate the date on which each member of staff was trained, the name, signature and contact details of the persons conducting the training, the content of the training, and a legible name and counter-signature of the person who received the training.
6. That signs shall be displayed prominently at the entrance to inform customers that sales of alcohol will not be made to persons under 18 and that age identification will be required.
7. That a register of refused sales of alcohol must be maintained, to specify:
  - The details of the premises, its address and name of the licence holder.
  - The date and time of each refusal.
  - The name and signature of the member of staff who refused the sale.

The register shall be made available at the premises upon request by the council's authorised officers or the police.

8. That the sale of alcohol shall be restricted to persons attending a pre-booked or private function, or persons who have purchased a ticket to board the vessel.
9. That no drinks shall be taken off the vessel by customers.
10. That no alcohol is to be served from Cherry Garden Pier to the vessel.
11. That the vessel must remain in radio contact with the River Police when a charter is in progress.
12. That no customers or passengers shall embark onto or disembark from the vessel at Cherry Garden Pier at any time, except in an emergency. Nor shall there be any embarkation or disembarkation via Butlers Wharf or Bankside Piers between the hours of 23:00 and 07:00 on any day.
13. That non-amplified music shall not be played on outside decks outside the hours of 08:00 to 23:00 on any day.
14. That no music or regulated entertainment of any kind, nor amplified announcements

other than in an emergency, played on board – whether the vessel is moored or cruising – shall be audible in any residential premises on land in the London Borough of Southwark or in any moored residential vessel within the Southwark boundary between 23:00 and 08:00 on any day.

15. That all entertainment and service from the Bar will cease 15 minutes prior to the end of a function.
16. That any person found purchasing alcohol on behalf of a child under 18 years must be refused further service.
17. That no licensable activities shall take place whilst the vessel is moored at Cherry Garden Pier.
18. That the licence holder must ensure that a public meeting is held at least twice annually at which residents may express any complaints. The licence holder must maintain a telephone number and dedicated e-mail address at which members of the public may address any complaints. The e-mail address, telephone number and public meetings must be advertised on the licence-holder's website.
19. That when the premises is in operation and regulated entertainment is provided between 00:00 and 08:00 on any day, then the premises must employ at least one security person registered with the Security industry Authority. The Designated Premises Supervisor will be responsible for recording the details of all security personnel to include SIA badge number, employing company, and the times they commenced and finished work at the premises. The record must be maintained and made available for inspection by the police or an authorised officer of the Council upon request.
20. That the security personnel will be employed solely for the purpose of security screening, crowd management, conflict management, and to facilitate the safe entry and exit from the premises; and shall not have any other responsibility with regard to the operation of the vessel. They must be employed by the premises and not by any outside promoter or other persons hiring the premises.
21. That supplies shall not be taken onto the vessel or waste removed from the vessel after 23:00 and before 07:00 on Mondays to Friday, 08:00 on Saturdays or 09:00 on Sundays.
22. That no waste or glass shall be deposited into external waste receptacles, nor shall refuse bins be moved, outside the hours of 07:00 to 23:00 Monday to Friday, 08:00 to 23:00 on Saturdays and 09:00 to 23:00 on Sundays.
23. That deliveries to and waste collections from the pier by road and water shall not take place outside the hours of 08:00 to 19:00 from Monday to Friday, 08:00 to 17:00 on Saturday and 10:00 to 17:00 on Sundays.
24. That all doors and windows at the premises shall be kept closed when licensed entertainment is taking place, other than for access and egress.

### **Reasons**

The sub-committee had regard to the licensing officer's report and its annexes.

Corrections were made orally in respect of the test for imposition of conditions (paragraphs 32-33 of the report) and the time limit for decisions (paragraph 40).

The sub-committee was presented at the hearing with relevant representations from 16 persons, with video footage, presentation and written materials from persons objecting, and with written material from the applicant.

The sub-committee was advised that the applicant had also provided documentary information in advance of the hearing by email, including two letters of support from local residents to the licensing officer. Its solicitor had erroneously been informed that the council had no discretion to admit this information, as they had been submitted after the deadline for 'relevant representations'.

The sub-committee was directed that it had discretion to admit information provided by the applicant pursuant to regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005, which states so far as is material:

**'In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.'**

Parties objecting to the application who attended the hearing were given copies of the two letters, which included their authors' addresses, and asked to make any comments. They requested that the material not be considered, as it was submitted late.

The sub-committee was advised to consider whether it was fair to admit the material and to consider whether anyone was prejudiced thereby. The letters essentially stated that their authors had not been disturbed by the applicant's operations at their particular addresses. The Sub-Committee considered that persons present would each be able to address their own experiences and, as they were able to deal with the material, they would not be prejudiced by its consideration.

One of the persons objecting stated that they knew one of the authors of the letters and was able to make criticisms of that person's alleged links to the applicant, casting doubt upon their motives, and commenting on their ability to hear the applicant's activities by reason of physical deafness and from the locations of the addresses. Neither resident appeared to give evidence in person or answer the criticisms made. The sub-committee is not in a position to determine whether it was fair to impugn these residents' motives or physical capabilities. However, it was noted that activities might significantly disturb some residents and amount to a nuisance without being noticed by others. Whilst the letters were admitted, they were not considered to bear any significant weight in support of the application.

The sub-committee was told by some of the persons objecting at the hearing that they believed other residents had submitted letters of objection after the expiry of the deadline for 'relevant representations' and asked why those letters were not being taken into account.

It was explained by the sub-committee's legal adviser that the Licensing Act 2003 draws a distinction between applications on the one hand, and 'relevant representations' by 'responsible authorities and other persons' on the other (see sections 17(5)(c), 18(3)(a) 18(6)(b) and 18(7)(a)).

The statutory scheme prescribes a period within which such 'relevant representations' must be made (s.17(5)(c) and reg.22 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005). If 'relevant representations' against an application are not made within time, the licensing authority is required to grant the application by s.18(2) of the Act and case law establishes that it has no discretion to consider late representations against the application (*Corporation of the Hall of Arts and Sciences v Albert Court Residents' Association* [2011] EWCA Civ 430). An 'other person' objecting to the application after the statutory deadline will not qualify as a 'party' for the purpose of regulation 18 of the Hearings Regulations (by virtue of regs 2(1) and 6(1) of, and Schedule 2 to those regulations, read with sections 18(6)(b) and (7)(a) of the Act). By contrast, regulation 18 provides that a person who is a party to the hearing may adduce late documentary information which may be considered at the discretion of the sub-committee.

It was accordingly explained to the persons objecting that if they had the letters with them, then with the consent of the applicant the sub-committee could consider whether to admit the information pursuant to regulation 18. The objectors in attendance did not adduce copies, so they could not be taken into account.

The sub-committee heard from the applicant that the Erasmus had been purchased from Thames Luxury Charters, and the vessel had been operating as a charter vessel. The vessel was said to be one of the best and most prestigious vessels on the Thames for luxury functions. The applicant intended to operate the vessel for a prestigious individual and corporate clientele. A number of names of public limited companies were mentioned orally and in the applicant's written materials.

The applicant's representative stated that they would not be a 24 hour outdoor nightclub or 'party boat'. It was said that a smaller sight-seeing vessel would be moved to Dorset, and that the Erasmus was already operating on the Thames. It was said that the company tried to work with neighbours and provided a dedicated email address. It was anticipated that there would be a minimum of three crew, and about six staff serving food and beverages.

It was asserted that matters relating to rubbish were not relevant to the licensing objectives and that only noise was relevant. Members asked questions relating to rubbish collection. In response to questioning, it was said that there were two rubbish collections daily, including on weekends, with about 14 bins moved up a steep brow of land to the collection point. Skips were used at low-water as a temporary overflow. The applicant's representative advised that had employed a new facilities manager who had reduced the number of skips to a single one, and had now ensured that the skip was covered to protect it from seagulls. Bottles were kept on board at night, then bagged and removed. The applicant's director and representative stated that they were confident that whilst the Erasmus was larger than their current vessel, there would not need to be additional waste facilities or increased numbers of waste collections and that the same truck would continue to come.

The applicant and their representative advised that the vessel was not expected to be used at capacity and they would expect about 100 to 150 passengers to be a realistic average number. Not many corporate hires would be for larger numbers.

Questions were asked about engagement with residents and their claims not to have received replies to emails. The applicant's representatives stated that they had only

received three emails in 2018 and believed they had replied to these. The applicant's representative informed the sub-committee that they had been in dialogue with two particular neighbours and agreed to install a screen to hide the skip area from view. The applicant's representative stated that it had no difficulty with providing a telephone number as well as an e-mail address for contact with residents.

Questions were asked about deliveries and it was stated that all deliveries were recorded, and there were five or six deliveries to the wharf per day this October, of which about 70% took place between 11.00 and 13.00, and 6% took place after 20.00. Some were small amounts of perishable items that had to be kept fresh, but the applicants could not dictate the size of delivery vehicle that the suppliers used, when they themselves only ordered small amounts. The applicant was asked why they had applied for a 24 hour licence if the vessel was not intended to be used for 24 hours. They replied that the licensed hours were linked to the purchase price of the boat, and they had applied for commercial reasons. It was not anticipated that their events would last 'much beyond 02.00' and it would not operate 24 hours a day.

Residents said that they had seen people embarking and disembarking at the pier, and the evidence was that this had taken place in connection with Indian-style funerals or 'ashes cruises' where ashes were sprinkled in the river. It was established that the applicant had in its application proposed a condition prohibiting all embarkation or disembarkation at Cherry Garden Pier except in emergencies.

The sub-committee then heard from persons objecting to the application. In particular, it heard oral representations from Parties 1, 11 and 12 referred to in the committee papers.

Representations were made that the applicant is a large company which had failed to engage with residents in advance of the instant application. It had asked residents for a donation towards making a waste management strategy possible, when it should have a sense of responsibility towards the community.

It was said that the applicant's chief engineer had misinformed residents that the Erasmus would not be moored at Cherry Garden Pier and as a result, that had deterred some who otherwise would have objected. Residents had made eight complaints to the company since October 2017 about nuisance. It had taken until very recently to put covers on the skips, and residents felt that they had to struggle to achieve even this. They advised that the skips might look empty now but that was because it is quiet season and the busy season is the summer. They had caused an overpowering smell and attracted vermin, namely seagulls.

It was submitted that the Erasmus would amount to a significant extension of the Applicant's operations as it was a three storey boat whereas its current boats were two storey boats. Two video clips were played. One vessel, said to be the Erasmus, was shown in daylight hours with commentary audible over the public address system. Another vessel was shown making a noise and silhouetted at night, at a time said to be in the summer. It was accepted by the person showing the video that he could not be sure whether that vessel was the Erasmus or was operated by the applicant.

In respect of deliveries, concerns were raised that there had been 12 broken or damaged kerbstones, and it was alleged that most had been attributable to lorries arising from the applicant's operations. Testimony was given that a cyclist was nearly run over by a drinks lorry. Lorries were said to endanger cyclists, and cause air pollution and noise. The engines of refrigerated lorries had to run for refrigeration purposes. Some were said to

park on double yellow lines. The daughter of one resident works nights and sleeps during the day, and is disturbed by noises particularly when noise of vessels is amplified by the surface of the water. The applicants' entrance gate was said to clang. It was represented that residents were disturbed by loud music at night from 10 premises in the vicinity.

Party 12 raised the issue of boat signage and illumination. It was said that the applicant was currently breaching an illumination condition in respect of another vessel. It was said that illumination of a 3 storey boat would have an impact right outside bedrooms. They had written to the applicant about this and it had taken two months to respond. It was also said that noise would be made on deck, as smokers would congregate on the decks. Questions were asked about the variance of the objecting residents and the account given by the residents in the letters of support. Party 1 stated that one of the letters in support was by a person whom he knew very well, had associations with one of the founders of the applicant, had received a charitable donation from the applicant, and was 'very deaf'. It was also represented that the other supporter lived at an address set further back from the river than the objectors.

In response, the applicant's representative stated that the Applicant no longer used the supplier whose lorry had allegedly acted dangerously. In respect of lights at night, it was said that another vessel had required emergency rudder repairs,

In reaching this decision the sub-committee had regard to all the material evidence and representations before it, and to the four licensing objectives.

The sub-committee has to consider the application on its own merits against the licensing objectives. It is not relevant whether or not the vessel could equally well operate from a different location, whether there are considerations of pure planning policy for or against the activity, or whether the Applicant wishes to operate other vessels elsewhere. The Applicant is not held to a different standard because it is a sizeable public limited company or has made charitable donations. Many of the submissions made at the hearing were accordingly irrelevant and unhelpful.

The sub-committee has given careful consideration to the conditions proposed by the applicant and by other persons, and to whether they would be appropriate in the light of the evidence. It found that some of the conditions offered by the applicant were unnecessary, too imprecise, inconsistent or duplicated each other.

In relation to protection of children from harm, the sub-committee considered it appropriate to impose conditions to prevent unaccompanied children being present on board, in order that they can be properly supervised. Children may be impulsive, and the River Thames can be dangerous. Supply of alcohol to children should be prevented by conditions, including by applying the successful 'Challenge 25' policy used across the borough. For these reasons, the sub-committee imposed conditions 3-7 and 16.

In relation to the public safety and crime and disorder objectives, the sub-committee noted the evidence that the applicant is an experienced operator with a substantial sized fleet. The police and Port of London Authority have not objected to this application. Condition 11 would ensure that the police could be liaised with in the event of difficulties. There was no evidence before the sub-committee that the applicant's current operations posed such a risk of crime and disorder, or risk to public safety, as to make it appropriate to reject this application. Condition 1 should ensure that the vessel does not take on an intrinsically unsafe number of passengers having regard to its capacity.

The main evidence bearing on public safety related to alleged hazards posed by large lorries. Although lorries may pose a hazard to unwary cyclists or pedestrians, and may cause problems if driven dangerously, the sub-committee does not consider that the applicant can be held generally responsible for unsafe driving on local streets by third parties. Such driving is not directly within the applicant's control, and there is no intrinsic reason to believe that delivery or refuse-collection drivers servicing this business would drive more dangerously than those serving any other business. The vessel is only expected to have an average of 100 to 150 passengers per event. The evidence was that the majority of deliveries occur outside of the peak rush hours, between 11.00 and 13.00 when roads will generally be less congested. The sub-committee is not satisfied in the absence of any expert evidence that as a result of granting this licence, there would be such a substantial increase in the overall number of delivery vehicles visiting the Cherry Garden Pier as to pose an unacceptable highway safety risk.

The sub-committee does consider it to be warranted in respect of late night entertainment events to employ at least one member of security staff whose job would be to manage any conflicts that could arise and to manage the safe and orderly disembarkation and dispersal of passengers. It is to be expected that patrons will have had more to drink and be more tired later on into the night, with a correspondingly higher risk of rowdiness, altercations, disorder or accidents. To prevent this, conditions 19 and 20 have been imposed.

The sub-committee does not consider that the operation of the MV Erasmus in accordance with the operating schedule would amount to a public nuisance, provided that it was adequately controlled by conditions. It is noted in this regard that there has been no objection by the council's environmental health officers.

The sub-committee has had regard to the character of the neighbourhood, and to what would constitute a nuisance. It considers that it is not reasonable for residents to expect absolute silence from, or darkness on, the pier, river and local streets. It is particularly unreasonable to expect silence during the daytime. Nor is it a public nuisance for large vehicles to ply the streets in the middle of London to make deliveries or collect refuse, so long as they are not causing unreasonable obstruction of traffic having regard to all the circumstances. However, it is not reasonable for waste deposition, collections or deliveries to take place at all hours and residents are entitled to expect at least eight hours without such activities. Conditions 21-23 were imposed to appropriately control the hours of vehicular deliveries and collections.

The sub-committee considers that so long as activities are controlled by conditions, the vessel should not cause a nuisance by reason of noise. It was considered particularly appropriate to control noise late at night and in the early hours of the morning, particularly from amplified sound. This should include some control of noise from address systems as well as music and similar entertainment. The applicant had itself proposed various onerous conditions to control noise whilst the vessel is cruising, including that no noise from entertainment should be audible in any residential premises in Southwark. Conditions 13, 14 and 24 should appropriately regulate amplified and unamplified music, as well as announcements and other crowd noise from within the cabin. It was noted that the applicant has stated that it does not intend the vessel to be operated as a static venue at Cherry Garden Pier, and volunteered a condition prohibiting passengers boarding or alight there. Conditions 10, 12 and 17 should ensure that this is the case, and thereby prevent disturbance of residents near Cherry Garden Pier. Condition 8 will control the clientele. Conditions 2, 9, 15 and 19 should help to prevent disembarking passengers causing a nuisance at other piers.

As regards lighting, it was not considered that there was sufficiently clear or cogent evidence presented at the hearing that lighting on the MV Erasmus was likely to amount to a public nuisance justifying the imposition of any condition. There was no credible evidence that this particular vessel was intended to be used as a mobile advertising platform or would for instance, display unduly bright, garish or flashing illuminated signs. That would not accord with the applicant's uncontested evidence that she was a luxury charter vessel intended for prestigious events. The applicant had indeed proposed a condition that no lit-up boat signage be permitted to be turned on whilst moored at Cherry Garden Pier, indicating that use for such advertising or signs was not intended. The sub-committee considered whether it would be appropriate to restrict the cabin lighting or require blinds to be fitted to the panoramic windows and drawn at particular times, but it did not consider this prescriptive approach to be justified by the available evidence presented at the hearing. If lighting proved to cause a nuisance once the vessel was in operation by the applicant, this issue could be reviewed on a more solid evidential basis.

The sub-committee considered it to have been unacceptable for skips containing food waste not to have been properly sealed, so as to cause odours or attract seagulls. Residents' written evidence suggested that waste was being thrown into the water by trespassers in the past. The sub-committee notes that companies producing waste owe a duty of care to ensure the security of their waste under separate legislation, which could be enforced if necessary. The evidence on behalf of the applicant was that procedures had changed and that the skip was now covered. However, this appears to have only been done after a long period of complaints from residents. Condition 18 is considered appropriate to ensure that if residents have any complaints relating to the applicant's licensable activities on the vessel, including as to waste management, they can be communicated, heeded and any incipient issues resolved before they amount to a public nuisance. The sub-committee would encourage the applicant to proactively consider whether its activities can be adapted to prevent nuisance being caused to the local community. All parties are expected to work in partnership to ensure that the licensing objectives are promoted collectively.

In reaching this decision the sub-committee had regard to all the relevant considerations and the four licensing objectives and considered that this decision was appropriate and proportionate.

### **Appeal rights**

The applicant may appeal against any decision:

- a) To impose conditions on the licence
- b) To exclude a licensable activity or refuse to specify a person as premises supervisor.

Any person who made relevant representations in relation to the application who desire to contend that:

- a) The licence ought not to be granted; or
- b) That on granting the licence, the licensing authority ought to have imposed different or additional conditions to the licence, or ought to have modified them in a different way

may appeal against the decision.

Any appeal must be made to the Magistrates' Court for the area in which the premises are

situated. Any appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the Magistrates' Court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

The meeting ended at 2.00 pm.

**CHAIR:**

**DATED:**