

MINUTES OF THE LICENSING (HEARING) SUB-COMMITTEE

HELD ON MONDAY 23 JULY AT 12.30 PM

APPLICANT: Dion Ltd
PREMISES: Dion, Unit 6, Paternoster Square, E1 7AW

Sub-Committee:

Deputy Jamie Ingham Clark (Chairman)
Deputy Keith Bottomley
Mr James Tumbridge

Officers:

Town Clerk – George Fraser
Comptroller and City Solicitor – Paul Chadha
Markets and Consumer Protection – Steve Aznar
Markets and Consumer Protection – Rachel Pye

Given Notice of Attendance:

Applicant:

Ms Joanne Chalker – Owner, Dion Ltd.
Mr Marco Denti – Manager, Dion Ltd.
Mr Robert Wormald – Applicant’s Counsel
Ms Lisa Inzagi – Applicant’s Instructing Solicitor

Making representations:

Mr Philip Kolvin QC – Counsel, St. Paul’s Cathedral School
Mr Edward Stevenson – St. Paul’s Cathedral School

Licensing Act 2003 (Hearings) Regulations 2005

A public Hearing was held at 12.30PM in Committee Room 1, Guildhall, London, EC2, to consider the representations submitted in respect of an application for a variation of license in respect of Dion, Unit 6, Paternoster Square, E1 7AW, the applicant being Dion Ltd.

The Sub-Committee had before them the following documents:-

Hearing Procedure
Report of the Director of Markets & Consumer Protection
Appendix 1: Copy of Variation Application
Appendix 2: Conditions consistent with the operating schedule
Appendix 3: Current premises licence including conditions
Appendix 4: Representation from St Paul’s Cathedral School

Appendix 5: Map of subject premises together with other licensed premises in the area and their latest terminal time for alcohol sales

a) Dion licensable activity times

Appendix 6: Plan of Premises

The Sub-Committee comprised of Deputy Jamie Ingham Clark (Chairman), Deputy Keith Bottomley and Mr James Tumbridge.

Mr Philip Kolvin QC and Mr Edward Stevenson (speaking on behalf of St. Paul's Cathedral School) were present and made representations against the application.

Mr Richard Wormald (speaking on behalf of Dion Ltd.), Ms Joanne Chalker (Dion Ltd.) and Mr Marco Denti (Dion Ltd.) were present and made submissions in support of the application. Lisa Inzagi, the instructing solicitor for Dion Ltd., was also present.

This decision relates to an application made by **Dion Ltd., 8th Floor, Becket House, 36 Old Jewry, London EC2R 8DD**. The application sought to provide the following activities:

Activity	Current Licence	Proposed
Supply of Alcohol	Mon, Tue & Sat 11:00 – 00:00 Wed, Thu & Fri 11:00 – 02:00 Sunday 12:00 – 23:30	Mon–Sun 10:00 – 02:00
Live Music, Recorded Music, Performance of Dance and anything similar to the above *	Mon, Tue & Sat 11:00 – 00:00 Wed, Thu & Fri 11:00 – 02:00 Sunday 12:00 – 23:30	Mon–Sun 10:00 – 02:00
Late Night Refreshment	Mon, Tue & Sat 11:00 – 00:00 Wed, Thu & Fri 11:00 – 02:00 Sunday	Mon–Sun 23:00 – 02:00

	12:00 – 23:30	
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*The description of particular types of public entertainment that were previously licensable but are now de-regulated will be removed from the licence with the variation.

Following receipt of the Hearing agenda pack, an application for an adjournment of the hearing was submitted on behalf of the body making representations, St Paul's Cathedral School. The application referenced the fact that certain senior members of the body making representations were unable to attend on the date of the hearing. All parties were informed of the application and were subsequently notified that the Sub-Committee would hear any case made for adjournment at the commencement of the hearing on Monday, 23 July 2018. It was confirmed that no decision to adjourn would be made prior to this.

Before the commencement of the Hearing, all parties had received a supplementary pack from the applicant that included numerous images of the premises, customer testimonials as well as menus and drinks lists for their information.

At the commencement of the Hearing, all those present introduced themselves. The Chairman summarised the terms set out by the application for a variation in the premises licence and asked for confirmation that everyone agreed with what was being proposed.

Philip Kolvin QC, counsel speaking on behalf of St Paul's Cathedral School, explained that he would like to submit an application for the Hearing to be adjourned to a later date in which either the headmaster, Mr Simon Larter-Evans, or bursar, Mr Martin Kiddle, of the school would be able to attend to make representations personally. Mr Kolvin QC commented that it was at the Sub-Committee's discretion to adjourn the Hearing to a later date if they felt that it was necessary in order to hear the representations made. He also noted that he had been in contact with the applicant directly and they had previously agreed to accept an adjournment to a later date. The Chairman noted that the Hearing was bound by statutory regulation to commence on the agreed date, regardless of any subsequent decision made with regards to adjournment.

Philip Kolvin QC explained that without certain individuals from his client present he would be disadvantaged by an inability to take further instruction or to answer more detailed questions about the premises. He suggested that it would be unfortunate to proceed in light of this and requested that the Sub-Committee exercise their discretion to adjourn the Hearing.

A Member of the Sub-Committee sought clarification as to who was Mr Kolvin QC's client; St Paul's Cathedral School, or Mr Simon Larter-Evans. Mr Kolvin QC was initially unclear in his response, but eventually confirmed that he represented the school. The Sub-Committee noted that the School could be represented by a number of people and Mr Edward Stevenson, a resident teacher did appear with him. Mr Wormald commented that due notice of the

Hearing was provided to all parties and suggested that those making representation should make themselves available. Mr Kolvin QC explained that it had been expected that the matter could have been agreed administratively between all parties, noting that he had sought and obtained agreement from the applicant to adjourn prior to the Hearing.

The Chairman noted that, having opened the Hearing, the same panel would need to be available to reconvene. Mr Kolvin QC disputed this, commenting that there was no provision that stipulated this within The Licensing Act 2003. It was explained that it was the City of London Corporation's standard procedure to retain the same panel membership to conduct a hearing previously adjourned.

In absence of any further questions from the panel for those making representations, the Chairman invited the applicant to provide a response in light of the application for adjournment. Richard Wormald, counsel speaking on behalf of the applicant, noted that whilst his client had shown willingness to adjourn prior to the hearing, they argued that the significant cost of attending with legal representation only to adjourn until a later date was a significantly unfavourable option. Mr Wormald argued that Dion's application had been submitted accordingly, and with no evidence of complaint from Environmental Health, the City of London Police or any member of the public besides St Paul's Cathedral School, and with previous efforts by licensing officer Stephen Aznar to arrange a meeting with the school's headmaster, Mr Simon Larter-Evans, declined, it was unclear why there was any reason to adjourn. They noted that they had received notice of the hearing on 4 July, had subsequently prepared to present their case, and thus requested to the panel that the hearing proceed as planned.

In reference to the representations made, Mr Wormald argued that the points of objection raised by Mr Larter-Evans in his email of 1 June to the City of London Licensing team, included at Appendix 4, were general complaints of noise relating to New Change that should not be attributed to Dion.

A Member of the panel sought confirmation from both the applicant and those making representations around the dates that information had been submitted and received. All parties agreed that the application had been submitted by Dion Ltd. to the City of London Licensing team on 30 May 2018, an objection to the variation application was submitted by Mr Simon Larter-Evans on behalf of St. Paul's Cathedral School on 1 June 2018 and notice of the hearing date was provided to both parties on 4 July 2018. Mr Simon Larter-Evans had contacted the Town Clerk on 9 July 2018 to inform them that neither himself nor Mr Kiddle were able to attend the hearing date provided and submitted a formal application for adjournment on 11 July 2018.

A Member of the panel queried the contradiction between the applicant's statement objecting to the application for adjournment, and the apparent agreement that had taken place to accept adjournment prior to the meeting. Mr Wormald clarified that this agreement was made prior to attendance and, given the cost of attending multiple dates, this was no longer an agreeable option.

The Chairman asked Edward Stevenson what his qualification was for making representation on behalf of St Paul's Cathedral School in this regard. Mr Stevenson explained that he was until recently employed as a sports teacher at the school, and remains living on the site with his family, as he has done for a period of 17 years. Mr Stevenson confirmed the noise disturbances experienced late at night on the school site.

At 12:55, the Chairman thanked both parties and adjourned the hearing temporarily whilst the Sub-Committee deliberated the arguments made for and against adjournment to a later date.

At 13:10, the hearing reconvened and the Chairman explained that, upon deliberation of the evidence available and the statements heard by both parties, the panel had found no compelling argument in favour of adjournment and that to do so would not be prejudicial to either party's case. The Sub-Committee were content that the objectors had been given sufficient opportunity to present their objections in writing and in person and Mr. Stevenson was present to do this, and accordingly, the hearing would proceed as planned.

The Chairman invited those making representations to set out their objections to the application. Mr Kolvin QC, counsel for St Paul's Cathedral School, explained that the pupils attending the school rise early in the morning and go to bed around 21:00 each day. He noted that there was no air conditioning available, and as a result they would sleep with windows opened during warmer weather. He explained that Mr Stevenson also lived on site, as did the Headmaster of the school, two other families, two gap year students and two nurses. He explained that Mr Stevenson had emphasised the increase in noise late at night in recent years, predominantly caused by customers leaving bars. He explained that this occurred at any time, including as late as 3am. He emphasised concerns over the provision of tables and chairs outside the Dion premises, citing this as a cause for increased noise. He explained that St Paul's Cathedral School had yet to challenge the current situation with regards to increased noise created in the area and this should be noted when considering its current objection.

Mr Kolvin QC explained that the application submitted by Dion Ltd. was not in compliance with the City of London Corporation guidance and alleged that it was seeking to become a late-night drinking establishment. He proceeded to question aspects of the application with regards to live music, noting that such allowances, if granted, would offer substantial latitude for potentially disturbing noise. He also questioned the application for sale of alcohol for consumption both on and off the premises from 10:00.

Mr Kolvin QC questioned the request to remove existing conditions, arguing that this had been submitted without sufficient justification. In reference to paragraphs 27, 28, 35, 38, 39 and 41 of the City of London's *Statement of Licensing Policy 2017*, Mr Kolvin QC commented that there had been no attempt for Dion to adhere to the guidelines set out. Mr Kolvin QC claimed that, if approved, the variation in the terms of the license would grant Dion full

authority to conduct its business without restriction, noting also that such a license would prove to be a very valuable asset for onwards sale of the business.

Mr Kolvin QC argued that his client had already made significant sacrifices in tolerating the existing level of disturbance and asked, in reference to paragraph 77 of the *Statement of Licensing Policy 2017*, whether acoustic controls should be imposed on the site. He also argued that provision of door supervisors should be imposed, in accordance with paragraph 80(e) of the policy document. Mr Kolvin QC also argued that a capacity limit within the licence should be imposed. Mr. Kolvin QC took the Sub-Committee through the application and observed a number of points he said made it deficient or troubling including Box L regarding the opening times. He reviewed the existing conditions which he argued should be retained. In particular, he highlighted out the ancillary requirement with regards to alcohol sales, limits on audibility to be no more than 1 metre from the premises and the capacity limits. He also took the Sub-Committee through its licensing policy and discussed 13 different paragraphs of it, and various parts of the model conditions.

Mr Kolvin QC requested that, on the grounds that the insubstantial detail provided within Dion's application for a license variation renders the imposition of suitable conditions unfeasible, the variation be refused in its entirety. Mr Kolvin argued that the intentions of the applicant were not clearly obvious and suggested that there was a contrast between the promotional statements on their website that positioned the business as a late-night drinking establishment.

Mr Kolvin QC noted that the current requirement for Dion to apply for temporary event licenses limited them to 21 events per year and suggested that the reduction of paperwork was not a sufficient reason for approval of a variation of a premises licence.

The Chairman thanked Mr Kolvin QC for his statements and asked if Mr Stevenson had anything he would like to add to this. Mr Stevenson explained that there was significant noise at night and that the disturbances made it very difficult to sleep for him and his family. The Chairman asked if he had submitted any complaints, and he explained that he had not, but had only vocalised issues to his employer.

A Member of the panel asked whether there were conditions that the School wished to see imposed.. Mr Kolvin QC argued that there was insufficient information contained within the application to conceive of appropriate conditions without going through all the options, but suggested he could propose in the order of 30 conditions, so the preferable course was to reject the application.

The Chairman invited the applicant to make any statements in support of their application. Mr Wormald explained that Dion had an excellent record with not a single complaint ever submitted for disturbances. He argued that it was wholly unreasonable to request an exhaustive list of conditions to address every

possible eventuality, given that Dion has proved itself to be a responsible business. He argued that the intention of the licensing authority was not to create limitless regulation, but to achieve the licensing objectives in collaboration with business owners in the most efficient manner possible.

Mr Wormald responded to the claims of Mr Kolvin QC that the application was not insufficiently detailed by arguing that it was expected of applicants to address the main concerns in as concise a manner as necessary, allowing for responsible business owners to conduct their business in collaboration with the licensing authority rather than under the threat from the policing of innumerable conditions.

Mr Wormald suggested that if there had been serious identifiable concerns with Dion, then those making representations should exercise the opportunity to contact the business owners directly to make these apparent. Mr Wormald cited Dion's owner, Ms Joanne Chalker's previous employment as an accountant as he noted her dedication to conscientious management of her business. He commented also that Dion's general manager, Mr Marco Denti, was of a similar disposition.

Mr Wormald reiterated that there had been zero complaints received citing Dion and noted that the rate of crimes recorded at the site was just 6 per year, all of them petty theft. He noted that petty theft was almost impossible to eradicate and that these figures were very low for any venue containing a bar serving alcohol.

Mr Wormald stated that Dion was not a late-night drinking establishment as it had been portrayed by Mr Kolvin QC, noting that it was generally closed to the public at weekends. He explained that the venue experienced a significant drop in trade beyond 21:00 and was almost empty by 00:00. He argued that there was no live music, no promoted events and no shots at the venue, but rather a wine bar operating at a reasonably high price-point. He noted that staff had never experienced issues with troublesome customers or neighbours. He confirmed that their variation application had received no objection from Environmental Health or the City of London Police.

Mr Wormald cited another venue, Madison, and noted that it had been the subject of numerous restrictions placed on its licence. He argued that Dion was operating in a different manner to this and should not be considered an appropriate comparison. He noted that Dion received a large number of booking requests, many of which were rejected if they were deemed to be potentially large crowds heavily drinking.

Mr Wormald noted that Dion was currently Ms Chalker's principle business and as such she had no intention of selling it.

The Chairman thanked Mr Wormald for his statements and asked for confirmation that the intent was to remove all previous conditions imposed on the license and replace them with those proposed at Appendix 2. Mr Wormald confirmed this.

A Member of the panel asked if the sale of alcohol for consumption to the tables and chairs outside would stop at 23:00. Mr Wormald confirmed that this was the case. The panel member asked if they were prepared to accept further conditions beyond those proposed at Appendix 2. Mr Wormald confirmed this, noting that they would have been prepared to discuss these prior to the hearing taking place.

Mr Kolvin QC asked what the applicant's approaches were to live music and to capacity at the venue. Mr Wormald explained that there was no requirement for live music and explained that there was limited capacity for the bookable downstairs area used for private events. Mr Kolvin QC asked how they were able to measure and control the noise produced by the venue. Mr Denti explained that after 23:00 the door was kept closed and all customers were asked to be quiet when leaving the venue. He explained that they employed an individual to look after the security of the venue who would check on any issues in this regard. Mr Denti noted that the only music playing would be background music.

The Chairman asked the applicant what time they would usually expect to close on a Monday or Tuesday. Ms Chalker explained that they rarely took bookings on a Monday or a Tuesday and so would be content to use Temporary Event Notice applications in these cases.

At 14:18 the Chairman thanked all parties for their statements and adjourned the hearing so that the applicant could consider its position with regards to additional conditions.

At 14:31 the hearing resumed and the Chairman invited the applicant to consider four of the conditions that had previously been imposed, as referenced within Appendix 3, Annex 2 of the agenda, namely:

1(v) - The sale of alcohol must be ancillary to the use of the premises for music and dancing and substantial refreshment.

7 – No noise from any entertainment which takes place at the premises as a result of the exercise of this licence, shall be audible at a distance of one metre external to the nearest noise sensitive property.

8 – Where door supervisors are employed at the premises a register shall be maintained in which the name, SIA registration number and signature of all door supervisors employed shall be entered on a daily basis. Each entry must be verified by signature of the manager or such other person authorised by the management to do so. The register shall be available at all times for inspection by an officer of the Corporation or Police Officer.

9 – The total number of persons accommodated at any one time shall not exceed: Ground Floor – 160 persons, Basement – 110 persons.

Mr Wormald confirmed that there was no explicit requirement to apply for a variation in licensed hours on Mondays or Tuesdays, nor to abandon the restrictions placed by conditions 1(v) and 7. In reference to condition 8, he noted that there were no SIA staff employed by Dion, and requested that this condition be restricted to Thursdays, Fridays and Saturdays only. He also confirmed that they would be happy to submit a dispersal policy if necessary.

The Chairman asked if the applicant would be willing to provide a telephone number that will enable residents to contact the venue should they be subjected to unacceptable disturbances. Mr Wormald confirmed that this would not be an issue.

Mr Kolvin QC argued, in reference to the Police Reform and Social Responsibility Act 2011, that there were no explicit rules demanding evidence in support of a reasonable and justifiable objection. He iterated that the intent of the Licensing Act 2003 was first and foremost to encourage the prevention of disturbances and disputes, rather than simply to resolve them. He noted, in reference to Mr Wormald's comments regarding an exhaustive list of conditions, that it was for the licensing authority to set out how they wish applicants to submit their applications.

Mr Kolvin QC claimed that Dion's application had flouted the policy documentation, though accepted that Mr Wormald had made some significant concessions during the hearing, leaving the question of Saturdays open for discussion. He suggested that if there would be no provision for live music, no licensable activity beyond midnight besides private parties then this would be acceptable. He noted however, that this would be in contrast to what was presented on Dion's website. He suggested that the capacity condition should be retained, querying why there would be a requirement to license the premises for numbers greater than 270. He asked why condition 7 should be removed and suggested that if it was then an appropriate acoustic policy should be put in place so that noise was not audible by residents. He also suggested that the policy should not be limited to the servicing of tables and chairs, but to anyone on the exterior of the premises. He argued that the exterior of the premises required supervision during night time operation for the sake of nearby residents.

Mr Wormald claimed that a responsible business operator has earned the right to be given responsibility for the considerate and appropriate management of his/her business. He claimed that no evidence had been put forward supported the argument that this was not applicable to the applicant.

Mr Wormald questioned Mr Kolvin QC's statements about live music, arguing that they were requesting a degree of flexibility in order to cater for their private functions appropriately.

At 14:50 the Chairman thanked both parties for their submissions and adjourned the hearing to consider their view on the application.

At 15:17 the hearing reconvened and the Sub-Committee concluded that, with the imposition of suitable conditions and an amendment to the terminal hours for licensable activities, it would be possible for the applicant to operate the premises in accordance with the licensing objectives with the proposed variation to their current license. The Sub-Committee sought to strike a balance for residents and business.

In reaching its decision, the Sub-Committee took into account the submissions made both in writing and verbally by those opposing the application. The Sub-Committee also took into account the fact that there had been no recorded complaints relating to the premises, nor any representations made by other responsible authorities. It was noted that, although representations were made regarding noise disturbance suffered by pupils and others resident at the school, there was no evidence directly linking such noise and disturbance to activities associated with Dion's operations. The Sub-Committee considered the concessions made by the applicant during the hearing, particularly with regards to operating hours on Mondays and Tuesdays. The Sub-Committee also took into consideration the applicant's proposal to adhere to the conditions referenced at Appendix 2 relating to CCTV, promoted events and the implementation of a dispersal policy.

It was the Sub-Committee's decision to grant the premises licence variation as follows:

Activity	Previous Licence	Variation to Licensed Hours
Supply of Alcohol	Mon, Tue & Sat 11:00 – 00:00 Wed, Thu & Fri 11:00 – 02:00 Sunday 12:00 – 23:30	Mon & Tue 10:00 – 00:00 Wed, Thu & Fri 10:00 – 02:00 Saturday 10:00 – 01:00 Sunday 10:00 – 23:30
Live Music, Recorded Music, Performance of Dance and anything similar to the above *	Mon, Tue & Sat 11:00 – 00:00 Wed, Thu & Fri 11:00 – 02:00 Sunday 12:00 – 23:30	Mon & Tue 10:00 – 00:00 Wed, Thu & Fri 10:00 – 02:00 Saturday 10:00 – 01:00

		Sunday 10:00 – 23:30
Late Night Refreshment	Mon, Tue & Sat 11:00 – 00:00 Wed, Thu & Fri 11:00 – 02:00 Sunday 12:00 – 23:30	Mon & Tue 10:00 – 00:00 Wed, Thu & Fri 10:00 – 02:00 Saturday 10:00 – 01:00 Sunday 10:00 – 23:30

*The description of particular types of public entertainment that were previously licensable but are now de-regulated will be removed from the licence with the variation.

The Sub-Committee then considered the issue of conditions and concluded that, whilst it was acceptable to remove previously imposed conditions on the basis that they bore little relevance to the current licensing legislation, it was necessary, proportionate and appropriate to impose certain conditions upon the licence so as to address the concerns relating to the prevention of crime and disorder and the prevention of public nuisance:

1. The premises shall install and maintain a comprehensive digital colour CCTV system. All public areas of the licensed premises, including all public entry and exit points and the street environment, will be covered enabling facial identification of every person entering in any light condition. The CCTV cameras shall continually record whilst the premises are open to the public and recordings shall be kept available for a minimum of 31 days with date and time stamping. A staff member who is conversant with the operation of the CCTV system shall be present on the premises at all times when they are open to the public. This staff member shall be able to show the police or the Licensing Authority recordings of the preceding two days immediately when requested. (MC01)
2. There shall be no promoted events on the premises. A promoted event is an event involving music and dancing where the musical entertainment is provided at any time between 23:00 and 07:00 by a disc jockey or disc jockeys one or some of whom are not employees of the premises licence holder and the event is promoted to the general public. (MC02)
3. When the premises is carrying on licensable activities after 23:00 hours, at least 1 registered door supervisor(s) is(are) to be on duty at each door used for entry or exit. (MC07)

4. All doors and windows shall remain closed at all times after 23:00 hours during the provision of regulated entertainment save for entry or exit, or in the event of an emergency. (MC13)
5. A written dispersal policy shall be in place and implemented at the premises to move customers from the premises and the immediate vicinity in such a way as to cause minimum disturbance or nuisance to neighbours. (MC15)
6. Prominent signage shall be displayed at all exits from the premises requesting that customers leave quietly. (MC16)
7. There shall be no sale of alcohol in unsealed containers for consumption off the premises after 23:00. (MC18)
8. The Licence holder shall make available a contact telephone number to nearby residents and the City of London Licensing Team to be used in the event of complaints arising. (MC19)

The Sub-Committee recommends that the applicant liaise with Environmental Health to satisfy its conditions and prepare a full and effective dispersal policy as a matter of urgency.

The Sub-Committee confirm that the decision is based on their assessment of the risks and the licensing objectives, and the focus of the Sub-Committee was on what was appropriate, in reaching their determination.

The meeting ended at 15.20 pm

Chairman

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