MINUTES OF THE LICENSING (HEARING) SUB-COMMITTEE

HELD ON FRIDAY 10 APRIL 2024

Sub Committee:

Deputy John Fletcher (Chair) Ceri Wilkins Brendan Barns

Officers:

Raquel Pinto– Town Clerk's DepartmentAggie Minas – Licensing Manager, Environment DepartmentRobert Breese– Licensing Officer, Environment DepartmentJennifer Phillips- City Solicitor

Applicant:

Piers Warne (TLT LLP, Applicant's Representative) Jon Dalton (Applicant)

Making representations:

Claire Callan-Day (Environmental Health Department) Alderwoman Martha Grekos Henrika Priest CC Michael Hudson CC Mr Toby Brown Mr Jeremy Simmons Ms Andreea Irimia

Licensing Act 2003 (Hearings) Regulations 2005

A Public Hearing was held at 10:00am to consider representations submitted in respect of an Application for a Premises Licence by Bloomsbury Leisure Holdings Limited, Basement of Tavistock Hotel, Bedford Way, London,WC1H 9EU, for Tokyo Hit, Ground Floor & Basement, 165 Fleet Street, EC4A 2AE.

The Sub-Committee had before it the following documents:

- Hearing Procedure
- Report of the Executive Director Environment
- Appendix 1: Copy of Application
- Appendix 2: Representations from Other Persons

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- Appendix 3: Conditions consistent with the operating schedule
- Appendix 4: Map of subject premises together with other licensed premises in the area and their latest terminal time for alcohol sales

• Appendix 5: Plan of Premises

The Hearing commenced at 10am. The Chair introduced himself before asking the Sub Committee, the City of London Corporation officers and other parties present to introduce themselves.

The Chair confirmed the nature of the application which was to facilitate a premises licence to allow the sale of alcohol on and off the premises, and various entertainment and late-night refreshment, as part of their operation. The Chair also explained the order of proceedings, as set out in the agenda pack circulated to all parties.

The Chair asked that given the number of people present who had made representations. It was asked that those who were making representations took a few minutes to confer to keep arguments concise and to avoid repetition. It was also asked that when Members of the Court of Common Council made their representatives to state the capacity in which they were doing so.

Finally, the Chair wanted to make clear that the decision made by the Sub-Committee would be based on the licensing objectives alone.

The Chair opened the discussion by inviting the Applicant to address the Hearing.

During the presentation from the applicant, the following points were noted:

- An email from the Applicant's Representative had been circulated to all parties prior to the hearing. This contained proposals to amend the operating hours (within these hours the ceasing of hours of alcohol would be determined) and offering further conditions, which would strike a balance between the commercial needs and protecting residents, whilst considering the concerns raised.
- The additional conditions contained the drawing up of a noise management plan and a risk assessment plan, having a dispersal plan in place with door supervision, the exit from the premises to St Dunstan's Court to only be used in an emergency, and finally a complaints log to be in place (available to officers) and for a contact number to be made available to nearby residents.
- The Applicant was happy to remove the provision of off-sales from the application.
- Conversations were had with the Responsible Authority (Environmental Health) prior to the hearing and further conditions were being offered relating fumes, steam and odours, and noise generated on the premises, to assure the responsible authority that that action was being taken to ensure the licensing objectives would be upheld.
- It was highlighted that there were no representations from the Police which evidenced that the conditions proposed in the application would not undermine the promotion of the licensing objectives, particularly the prevention of crime and disorder.
- There were ongoing discussions with planning regarding a planning application, but it was not relevant to today's hearing.
- The Applicant was an experienced license holder who had other businesses and fully understood the resident's right to having a quiet environment. They

were confident that the application put forward to the Sub-Committee would not undermine the licensing objectives.

- Other nearby premises had similar later hours to those they were applying for.
- Most of the residents lived to the north of Fleet Street, and came from Bolt Court, which was not immediately adjacent to the building.
- The ground floor of the premise was mostly underground with windows partiality visible to the building. There were wide seals which would assist with noise attenuating measures to soundproof which would be part of the planning application when it was submitted, and a way to prevent noise outbreak.
- The plan of the premises showed that there was space inside to accommodate any queues if they were to happen.
- During peak and busy periods, pre-booking was the system which patrons would use and therefore this would mean that people would arrive for their slots, which would allow for a steady entrance.
- Smokers would be managed at the front entrance on the Fleet Street which would be covered in the risk management plan.
- It was also highlighted that the nature of the people attending the premise was different to that of a pub. This was done via booking a slot, in which you partook on the activity and eat and drank in this time. It was done on a timed schedule, meaning that there would not be a mass of people on the pavements.
- The pre-booking nature of the premise meant that there would not be a mass dispersal but rather a gradual dispersal linked to the slots booked, and having the risk assessment which included door staff, would assist with the dispersal.
- There were also good transport links in the area running later into the evening which too would further assist with dispersal.
- The capacity of the premises at the peak of trading would be 250 people plus staff.
- The business model for the premise was for corporate business, predominantly during the week and families and parties in the weekend, which allowed for flexibility and would cater to all.
- Walk-ins would be permissible where members of the public could come into the premises to partake in activities and the bar if slots were available.
- This remained a 90% pre-booked system with occasional walk-ins.
- Assurances were made with regards to concerns of enabling drinking further via the walk-in function, as the Applicant was experienced in this, and it was noted that servicing people whilst intoxicated was against the law and there was training for the team to be able to spot this and vet members of the public at the entrance.
- The Applicant was confident the application with the amended hours and additional conditions would ensure that the licensable objectives would be held.
- The door exiting to the street which faced resident had a condition attached so that it would only be used during an emergency.
- Dispersals would be done away from the residential area and would not affect residents north of the premise, and although the paragraph 2.27 of the Revised guidance issued under section 182 of Licensing Act 2003, states that once people are away from the premise, they are responsible for their own behaviour, if staff were to see this behaviour, they would take action.
- It was noted that determination was evidence based and proportional, and considered risks, so long as they are appropriate and proportionate.

- The review mechanism was a mechanism in which to keep the Applicant held to account.
- The Applicant welcomed and extended the invitation for Environmental Health to input into the management documents once they were done and subject to the application being granted.
- The revised hours were made as a genuine attempt to collaborate with residents whilst considering the nature of the operation.
- With regards to egress and means of access it was noted this would all be done from Fleet Street.
- The Good Code of Practice has been adopted by this application and by the Applicant who has a run several premises in the City and is aware of how to adopt this, therefore, on this basis, it was asked that the application be granted as per the amendments.

The Sub-Committee then noted a representation in favour of granting the premise license.

During their presentation the following points were noted:

- The premises was intended for well-behaved individuals who worked around the area that wanted to enjoy themselves or celebrate milestones.
- Drawing from their experience of managing a business in the area, it showed overall that customers were respectful and had amended their behaviours.
- There had not been any instances where they had dealt with drunken or violent behaviour.
- The area had once been vibrant, there had been proof that balance between residents and businesses working together on keeping area vibrant was once achieved and they believed this could once again be brought back, and that a new sense of community could be created.
- They believed that Tokyo Hit would make all the arrangements to ensure that licensing objectives were met.

During questions, the following points were noted:

- Capacity was clarified was noted that this would be 250 people plus staff.
- When asked about their business model and who they would be attracting at 2am on a Saturday, particularly from the corporate world, the Applicant clarified the business was not solely for corporate businesses. The offer tended to lend to groups going out to celebrate. Like other experimental premises, the business would benefit from others coming to the area and would use transports links into the area.
- The pre-booking facility meant that people coming to the premise would prebook in advance and if they were full, they would be unable to go in.
- It would look to have families and parties in the weekend and during the week it would be more corporate groups and businesses. They were trying to put something in place to encourage a return to the office.
- When asked about patrons and the use of transportation to exit the premise, clarification was sought as to the applicant's response on the management of this dispersal, on what was narrow pavements. Particularly on the lack of transport at 2am, dispersal of people and sheltering from the weather, and pick up points for Ubers or Taxis.

- It was noted that there were four bus tops on Fleet Street, and in proximity. With regards to Ubers and Taxis, there were mechanisms like geo-tags where the premise could communicate, and coordinate pick up points to help with dispersal. Finally, there was ample space inside for patrons to wait until their transport arrived, and the applicant has experience with this from managing other premises.
- Further on dispersal it was noted that the premise would implement the City's code of good practice and that by having a presence outside it would mitigate risks. Furthermore, given that there would be gradual dispersal given the booking nature of the premise, only a small group would be leaving the premise at terminal hour, and they would be supervised.
- On the issue of smokers and the risk of the usage of alleyways and the courts nearby to do this, it was noted smokers would be directed to the front of the premise on Fleet Street, and if they were to use the sides, there would be a risk management plan which would monitor patrons. However, it was highlighted that the nature of the venue was not like a pub where people stand outside partaking in this behaviour for long periods of time.
- On the issue of the late operating hours, it was explained that the business had pulled back their hours to midnight on Sunday and that the later hours were to cater for a later marker. This was so that people could join, particularly given that it takes a significant length of time to play golf and to not feel rushed. The Applicant added that the Sub-Committee if they were minded could do a last entry time to mitigate any risks.
- Walk-ins would be possible, as they did not want to restrict business, however 90% of the business was mainly done via bookings online. Concerns were raised over walk-ins booking the experience to continue partaking in drinking. It was noted that this was geared towards the experience of playing golf rather than drinking, and they could in theory continue to drink after. But practically patrons would be more comfortable elsewhere, as there would not be a lot of space to do this.
- Concerns were raised in reference to an incident which happened in Camden. The Applicant explained that Camden in particular had a later license which was geared towards bowling then a live band afterwards. The incident happened outside the premises, which was recognised by other authorities and under different circumstances. The business had since evolved.
- Finally, it was noted that the earlier opening times were a small part of the business which aimed to be flexible and cater to all, in particular families.

The Chair then invited those making representation to address the Hearing.

During the presentation from Environmental Health, the following points were noted:

- Concerns were raised over the granting of the license as it was presented would risk giving rise to public nuisance.
- It was argued that the character of the area was due consideration. The area was comprised of pedestrian areas which were extremely quiet, particularly at nighttime. People noise like talking or shouting would stand out and be detrimental to the area.
- It was acknowledged that whilst the dispersal was mainly on Fleet Street, it was reasonable that some dispersal could happen into the residential courts.

- The late terminal hour was a risk again ambient hours, as noise from staff would impact those who would likely be sleeping at this time. It was acknowledged that conditions were offered so that the door to St Dunstan's Court was used in emergencies only.
- Concerns remained as they had no sight of noise management plan, there were no guarantees that the noise attenuation measures would be put in place, just the Applicant's intention.
- Further, there was no information on shutters or noise insulation, or information regarding fumes from the kitchen as to whether they would constitute a nuisance or not. It was overall argued that all the risks above would be harmful to the wellbeing, with later hours disturbing neighbours.
- By having an earlier terminal hour of midnight, this would be preferable to mitigate public nuisance.

During the presentation from Other representatives, the following points were noted:

- Concerns were raised over the lack of communication between the applicant and the residents and the slight reductions to operating hours which did not consider residents' concerns.
- The Applicant supplied limited information, and missed vital information which was required under the City's Statement of Policy to be accompanied with all applications. It was felt that the Applicant did not follow the Code of good practice as their operating schedule did not present them as being good neighbours, given the late terminal hours. It was also noted that there was no risk assessment, no plan to mitigate and manage public nuisance.
- The main concern remained crime and public nuisance. The City's Statement of Policy refers to the reasonable expectation that their sleep will not be unduly disturbed between the hours of 23.00 and 07:00. By having the late terminal hours this would be impacted.
- Other concerns raised were the obstruction of alleyways with people using the alleyways to smoke/vape or as shortcut into nearby streets to obtain public transport. The noise emanating from drunken patrons leaving the premises would disturb residents sleep, and other risks such as public urination which was a key concern that residents faced in the alleyways and courts and the overall safety of the area were raised.
- Although the applicant provided additional conditions which sought to try to mitigate nuisance, no amount of noise management plan can truly help mitigate nuisance. Given the context of the area, the smallest of groups of people can make noise which and once they are out of the premises it was difficult to control.
- The conditions offered by the applicant would not mitigate public nuisance and crime. There were no other testimonials to given from other venues to support they were a responsible business.
- There were minimal mitigations offered such as CCTV and on dispersal, which would not reduce the risk of nuisance.
- The concern remained the operating hours, although they were shown other premises with the same hours none were to the scale of this premise, and although amendments were proposed this was not enough to stop any public nuisance.

- The conditions and amendment to the operating hours supplied by the applicant prior to the hearing, did not consider the concerns raised by residents and the responsible authority.
- It was also added that not only residents deserved to have their area respected, but local businesses too.
- The Sub-Committee was encouraged to be mindful of the community present at the hearing when making their decision and to continue to create a better place for residents and businesses. The aim was not to prevent businesses from coming and investing into the area, but to encourage businesses which fit into the context of the area and comply with the licensing objectives.
- The surrounding area was a conservation area although not listed, this meant that residents who lived here were not able to have double glazing in their properties to shield from exterior noise. These properties were also unable to have air conditioning which meant that during the summer periods, residents have their windows open and are therefore susceptible to noise. It was therefore asked that this risk was taken into consideration.
- Overall, given the risks posed by those making representations, the issue of the usage of alleyways, the noise emanating from patrons leaving late in the evenings which would impact residents' ability to sleep it was asked that the application was not granted.
- If the application was to be granted, then it was asked that mitigations surrounding the operating hours be made to an earlier closing time of 10:30pm, as none of the other premises with later hours were to the scale of this premise.
- It was also asked that further conditions be imposed such as model condition 14 and 26.

During questions, the following points were noted:

- On the issue raised of having more people in the area and this providing safety, it was noted that from those who lived in the City for a long period of time, that more people did not mean better behaviour. It was also explained that from a business perspective, whether there was high or low footfall, antisocial behaviour still persisted.
- It was asked whether there had been discussions with the police, considering there was no objections place by them. It was noted that there had been engagement which stated having the proposed premise would be problematic, however, there was no formal comment.

The Chair invited parties to sum up.

The Applicant's Counsel took this opportunity to answer to some of the points raised by the objectors and to summed up as follows:

- The Applicant was confident the application with the amended hours and additional conditions would ensure that the licensable objectives would be held.
- The door exiting to the street which faced resident had a condition attached so that it would only be used during an emergency.
- Dispersals would be done away from the residential area and would not affect residents north of the premise, and although the paragraph 2.27 of the Revised guidance issued under section 182 of Licensing Act 2003, states that once people are away from the premise, they are responsible for their own behaviour, if staff were to see this behaviour, they would take action.

- It was noted that determination was evidence based and proportional, and considered risks, so long as they are appropriate and proportionate.
- The review mechanism was a mechanism in which to keep the Applicant held to account.
- The Applicant welcomed and extended the invitation for Environmental Health to input into the management documents once they were done and subject to the application being granted.
- The revised hours were made as a genuine attempt to collaborate with residents whilst considering the nature of the operation.
- With regards to egress and means of access it was noted this would all be done from Fleet Street.
- The Good Code of Practice has been adopted by this application and by the Applicant who has a run several premises in the City and is aware of how to adopt this, therefore, on this basis, it was asked that the application be granted as per the amendments.

Those making representations for the granting of the license advocated for hospitality and for flexibility in order to bring life back into the area.

The Objectors summed up by highlighting the issues surrounding the alleyways and court yards, as patrons would use these to facilitate their exit from the premises. Although many concerns were highlighted, noise remained the main issue which concerned residents the most, and particularly their ability to sleep, and which under the City's statement of policy these hours were to be protected. Finally, it was argued that whatever mitigations would be put in place, given the nature of the squares there would inevitably be severe nuisance, as noise was amplified. This would also be particularly amplified during summer where windows would be open and would therefore gravely impact residents. It was for these reasons they wished the application would be refused. However, if the Sub-Committee were mindful to approve it, then it was suggested that they strongly follow the suggestion of a 10:30pm closure.

The Chair explained that the Sub Committee would retire to make a decision and all parties would be advised of the outcome within 5 clear working days. The Chair thanked all those present and closed the Hearing at 12:10.

Deliberation

The Sub-Committee retired to carefully consider the application, on the representations submitted in writing and orally at the hearing by those making representations and the applicant. It was evident that the most relevant licensing objectives requiring the Sub-Committee's consideration was the prevention of public nuisance.

The Sub-Committee wanted to ensure that a balancing act was taken into consideration, one where it encouraged business whilst balancing the context of the area and the residents within it. The main consideration that the Sub-Committee debated was public nuisance, particularly noise, as they were satisfied that the other licensing objectives were not threatened. The Sub-Committee took into consideration that the City's Licensing Policy accepts that there is some degree of impact as the *"policy of the City Corporation to strike a fair balance between the benefits to a community of a licensed venue, and the risk of disturbance to local residents and*

workers", which is also reflect in the Licensing Act 2003. The Sub-Committee deliberated as to what evidence was there to show that the granting of the license would not adversely impact the licensing objectives.

The Sub-Committee accepted that for those who smoked, there would be a designated area at the front of the premise which would be staffed, and staff could therefore point people to this and assist in their dispersal. The Sub-Committee also accepted the Applicant's assurances that the primary activity of the premise was golf and bowling, and that drinking and eating was ancillary to that, and that this was not primarily a drinking establishment. The Sub-Committee agreed the premises' booking system would allow for a gradual flow of patrons and although the capacity was around 250 people it was unlikely that at any given time, they would be outside the premise. Considering the premises plans and the evidence at the hearing, the Sub-Committee was also satisfied that the space in the premises could accommodate patrons inside, therefore mitigating any noise nuisance outside.

The Sub-Committee noted that the distance between the premise and the residential areas and noted residents' concerns over the use of the alleyways. The Sub-Committee was persuaded by the claims of the Applicant that it was unlikely that customers that would attend the venue, would behave in the anti-social ways that concerns the objectors. There was only speculation, but no hard evidence submitted, that suggested otherwise. The Sub-Committee also noted that on the issues raised surrounding crime, there were no police representations.

The Sub-Committee had extreme sympathy and agreed with residents regarding the expectation that their sleep will not be unduly disturbed between the hours of 23:00-07:00. The Panel noted that the amended hours proposed by the Applicant. However, the Sub-Committee felt that to safeguard residents' wellbeing and their sleep, a further amendment to the terminal licensable hours was needed, as per the table shown below. The Panel also felt that further conditions were necessary in order to ensure that the licensable objectives were met. The Sub-Committee agreed that the supply of alcohol off the premises would be detrimental to residents and therefore agreed this would not be permitted. Further conditions regarding walk-ins were also added to the decision below. The Sub-Committee also agreed to the conditions offered by the Applicant at the hearing pertaining to noise and odours, and those conditions offered via email.

The Sub-Committee had confidence in the City of London Corporation's robust licensing oversight. It was felt that the additional conditions attached to the application alongside the amended operating hours, that a fair balance has been achieved. Furthermore, there was also a robust review mechanism in place which would ensure that the Applicant follows the conditions of the license awarded to them, whilst providing residents with means to hold the Applicant to account.

Overall, the Sub-Committee saw no evidence which suggested that the opening of this premise to 01:30 would further exacerbate nuisance. Given the number of other outlets in area with similar operating hours, the nature of the premise which had drinking ancillary to golf and bowling and given the conditions already attached to the application by the Applicant, the police and by the Sub-Committee itself, therefore it could not justify the refusal of the application.

In reaching its decision, the Sub-Committee was mindful of the provisions of the Licensing Act 2003 ('the Act'), in particular the statutory licensing objectives, together with the guidance issued by the Secretary of State in pursuance of the Act and the City of London's own Statement of Licensing Policy dated 2022.

In determining what constituted a public nuisance, the Sub-Committee relied upon the common law definition of 'public nuisance' as: 'one which inflicts damage, injury or inconvenience on all the King's subjects or on all members of a class who come within the sphere or neighbourhood of its operation. The character of the neighbourhood is relevant to determination of the question of whether a particular activity constitutes a "public nuisance".

DECISION

<u>Activity</u>	Proposed licence hours
Supply of alcohol for	Mon – Wed
consumption on the	10:00-00:00
premises only	Thurse Cat
	Thurs – Sat 10:00-01:00
	Sun
	10:00-23:00
Films, Live Music (e),	Mon-Wed
Recorded Music (f),	10:00-00:00
Similar to (e) (f) (g)	Thurs – Sat
	10:00-01:00
	Sun
	10:00-23:00
Late Night Refreshment	Mon – Wed
	23:00-00:00
	Thurs – Sat
	23:00-01:00
Opening Hours	Mon – Wed
	10:00-00:30
	Thurs $-$ Sat
	10:00-01:30
	Sun
	10:00-23:30

The Sub-Committee determined that the license should be granted as set out below:

The Sub-Committee had regard to the conditions that parties had agreed upon in advance of the hearing. The Committee however felt that further conditions were necessary to ensure that the licensing objectives were met.

The Sub-Committee therefore agreed that the following conditions should be attached to the premises licence:

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, 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 always be present on the premises when they are open to the public. This staff member shall be able to show the police or Licensing Authority recordings of the preceding two days immediately when requested. **(MC1)**

2. Promoted events will not be held at the premises. A promoted event is an event where the musical entertainment is provided at any time by a person or persons other than the licence holder, and one or some of them are not an employee of the licence holder, and the event is promoted to the general public independent of the licensee. **(MC2)**

3. An incident log shall be kept at the premises and made available on request to the Police or an authorised officer of the City of London Corporation. The log shall record the following with the date and time of the incident/refusal:

(a) all crimes reported to the venue

(b) all ejections of customers

(c) all refusals of entry

(d) all refused sales of alcohol to persons under the age of 18, or appearing under the age of 25 without valid ID

(e) any incidents of disorder (disturbance caused either by one person or a group of people)

(f) any seizures of drugs or offensive weapons. (MC4)

4. Prominent signage shall be displayed at all exits from the premises requesting that customers leave quietly **(MC18)**

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. A copy of the policy shall be retained on the premises and made available for inspection by a police officer and/or authorised officer of the licensing authority on request. **(MC17)**

6. Loudspeakers shall not be located in the entrance lobby or outside the premises. (MC21)

7. A Challenge 25 Scheme shall operate to ensure that any person attempting to purchase alcohol who appears to be under the age of 25 shall provide documented proof that he/she is over 18 years of age. Proof of age ID must bear a photograph, date of birth and a holographic mark or an ultraviolet feature, or be in any other form specified by the Home Office as being acceptable for age verification of sales of alcohol. (MC31)

8. A noise management plan ('The Plan') will be drawn up and implemented to ensure that there is no noise escape from the premises that would likely cause a public nuisance. The Plan will include details of noise attenuation measures in place to prevent noise escape, in particular into the Johnson Court. The Plan will also include details of any noise dampening measures built into the design to direct and/ or limit music levels at the premises to ensure music is unlikely to cause a public nuisance. The Plan will be made available to the Responsible Authorities on request.

9. A risk assessment will be drawn up and implemented. Where required by the risk assessment door supervisors will be provided at the time and in the numbers required by the risk assessment.

10. Prominent signage shall be displayed at all exits from the premises advising customers that no drinks are permitted outside at any time.

11. The exit from the premises on St Dunstan's Court will be used in an emergency only and will not be used as general entrances or exits from the Premises.

12. 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.

13. A complaints log ('The Log') will be maintained at the premises and all complaints from local residents recorded therein. The Log will record the following: a. Date and time of complaint

b. Name of person dealing with the complaint and if known the name of the complainant

c. Nature of the complaint

d. Any action taken following the complaint

A copy of The Log will be made available to the Responsible authorities on request.

14. No fumes, steam or odours shall be emitted from the licensed premises so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated.

15. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.

16. All windows and external doors shall be kept closed at any given time when regulated entertainment takes place, expect for the immediate access and egress of persons.

17. There shall be no new walk-ins permitted an hour prior to the latest terminal hour for licensable activities.

18. Customers permitted to temporarily leave and then re-enter the premises e.g., to smoke, shall not be permitted to take drinks or glass containers with them. **MC14**

The meeting ended at 12:10

Chairman