#### Supplementary evidence submitted from Applicant for both HERE and Lower Third applications

- 1. Supporting Licensing Submission;
- 2. Brochure with photographs of the premises for HERE;
- 3. Brochure with photographs of the premises for The Lower Third;
- 4. Ingress / Egress / Dispersal Brochure;
- 5. Elevation Drawings to demonstrate the location of HERE and The Lower Third relative to other buildings within the development; and
- 6. A copy of the Novus Leisure Decision.
- 7. Additional Conditions Proposed to the Police for HERE, St Giles Square, Denmark Place variation application

#### **APPLICANT 'S ADDITIONAL SUBMISSION**

#### (1) THE LOWER THIRD, 26 Denmark Street & (2) HERE, St Giles Circus Site, Denmark Place

#### Supporting Licensing Submission

The development subsumed 10 Premises Licences (including Sin Nightclub) with alcohol hours outside of framework being 136.5 per week. These were replaced with licences with alcohol hours outside of framework of 31.5 – 41 per week (depending upon whether non-standard timings used).

HERE was part of that redevelopment and applied for framework hours plus 104 occasions until 02:00.

Closure of Astoria 1 and 2 (3,000 capacity) was mentioned in terms of loss of amenity, but it did not factor into the calculation of alcohol hours beyond framework as those premises were not part of this development. However, they remain relevant today. The applicant will expand upon this during their evidence.

#### The Lower Third and HERE

The Lower Third is a state of the art grass music venue which trades to a capacity of 350. Its sister venue, HERE, which has a capacity of 2,000 (but operates to 1,800) is a purpose built multi-purpose live events venue.

Both venues have lost out on bookings to other venues in London who can offer later hours, such as Koko, Camden Palace; Heaven Nightclub, Westminster; Ministry of Sound, Southwark; E1, Tower Hamlets and Fabric, Islington.

#### **Overall Site Security**

In addition to the steps taken by the applicants, Outernet as a development has a central security office located below the hotel. It is manned 24 hours per day and there are over 200+ security cameras across the site. The security guards employed by Outernet are linked to the control room via radio and body worn video. Currently, 70% of those guards are FREC (First Responder Emergency Care) trained, which qualifies them to deliver pre-hospital care treatment to individuals. They are working towards 100% of the guards receiving this training. The course has been made available to the security team working at both The Lower Third and HERE, with a number of them having received the training.

#### Cumulative Impact – Location

Due to the location of the premises, the conditions proposed together with the operating policies and practices have been tailored. The development itself (in terms of construction and operation) has replaced late hours venues, and has taken steps to promote and address safety, crime and disorder and public nuisance, acknowledging always that Cross Rail has changed the locality in terms of volume of people coming to and leaving the area, or being attracted to the area.

Prior to these applications being submitted the applicants engaged with the responsible authorities and CGCA. At that stage, there were no known issues or complaints regarding the operation of the

premises. Concerns have since been raised regarding noise from queues, smokers, customer dispersal and increased levels of crime and disorder. The applicants have worked closely with the Police, who have withdrawn their objections to the application for The Lower Third, and on HERE, have agreed additional conditions and amendments to the hours. (See below).

There is a very strong and effective security team linked to both premises with enhanced training working under the leadership of Robbie Naish. Events are risked assessed in advance and shared with the authorities. Security outnumber what is required under the Premises Licences, and the HERE premises benefits from its own central CCTV control room with a licensed CCTV operative monitoring the cameras when the premises are operating. There is often an on site medic working within HERE during events.

A number of specific issues have been raised by the residents:

• Smoking.

Amendments to the conditions in relation to smokers have been proposed following discussions with the Police. In the main smokers are directed to the designed smoking areas unless our risk assessment directs an alternative system dependant upon the event. Denmark Place is surrounded by buildings contained within the development. The Outernet security team carry out noise readings every 30 minutes up until midnight. At midnight responsibility is handed over to the security team at HERE who complete readings and log them every 30 minutes. In the Ingress brochure at page 12 the location of the smoking areas for both venues has been indicated.

• Queues.

Queuing is very closely monitored and controlled at three points. Queuing is not simply controlled close to the point of entry. As part of the applications, last admissions conditions were discussed with Environmental Health and proposed within the application. They were further amended following discussion with the Police. See the <u>Ingress brochure</u> for details of ingress and egress.

• Parking.

The applicants have negotiated 20% discount with three Q-Park car parks. This information will be promoted on ticketing information and on their website. To address the parking situation on Denmark Street the applicant, working in conjunction with the Outernet security team, monitor and discourage patrons from parking illegally. If cars have parked illegally then security have in the past contacted Camden Council who have come and ticketed the vehicles. The operators are currently in discussion with the Council regarding the use of cones.

Following a request for further information made by the CGCA, and to support this statement, the applicants enclose the following –

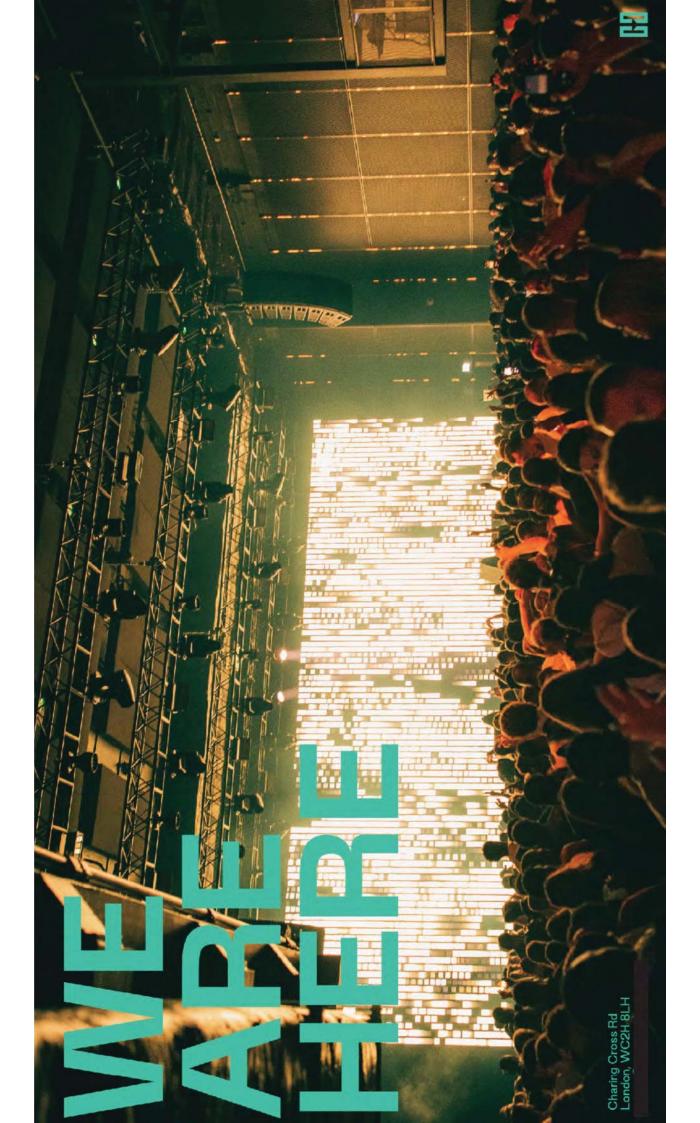
- Brochure with photographs of the premises for HERE.
- Brochure with photographs of the premises for The Lower Third.
- Ingress / Egress / Dispersal brochure.
- Elevation drawings to demonstrate the location of HERE and The Lower Third relative to other buildings within the development.

#### Proposed Amendments to the variation application for HERE

Following further consultation with the Police, the applicants have agreed to (and wish to request) an amendment the current application.

Instead of seeking 154 occasions until 4am, the applicants wish to apply for -

- a static 4am extension of licensable activities on Fridays and Saturdays.
- 10 occasions per year until 4am upon the basis of the Police being notified 14 days prior to the event (or such shorter period as agreed with the Police).
- 40 occasions per year licensable activities to operate until 2am.



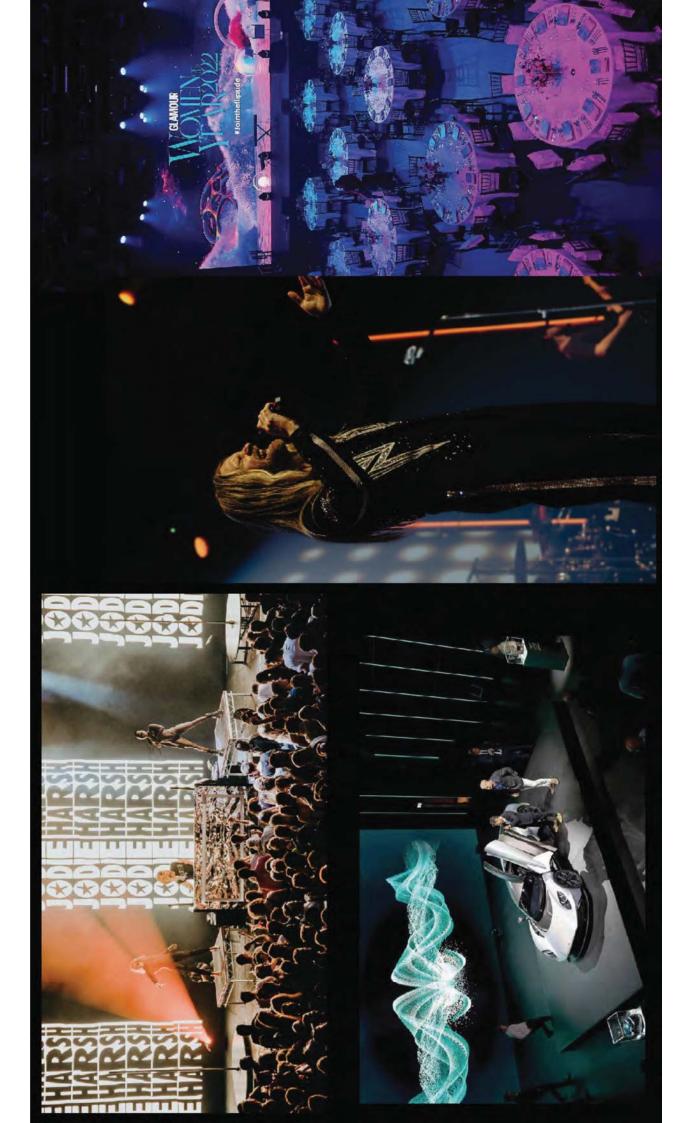
# THE FUTURE OF LIVE EVENTS

HERE is a feat of modern engineering, painstakingly crafted over a three year construction period. Every detail has been thought out. From the custom acoustic treatment, to the length and utility of the bars, everything has been designed with quality of experience in mind.

)

At 25,000 square feet we are a blank canvas suitable for a broad spectrum of concepts. Our venue features unparalleled in-house technical equipment, from our 13.5 meter wide 6k upstage screen to our pioneering, bespoke sound system.

All this, situated right at the heart of Central London, HERE is accessible from Tottenham Court Road station, less than 30 seconds walk to our front doors.



# Culture : Community : Charity

By investing in opening brand new venues, we are able to mitigate the substantial losses of London's cultural amenities, and support diversity in the Arts by providing more spaces for them to flourish.

We are committed to adding to the area culturally by programming a diverse range of events from Music to Comedy to Drag; and using our position to support the local community through various charities and initiatives

that connects us. This could be one-off donations or regular support for rough sleepers, addiction and Our guest list donations and fundraising for local organisations will become part of the 'social glue' mental health causes and supporting musical and artistic talent.

## CULTURE

## **PRIDE @ HERE 2023**

Pride in London is our city's volunteer-powered LGBT+ force that *unites* our voice, *amplifies* our diversity and *protests* against inequality.

HERE & The Lower Third hosted a fantastic multi-venue Pride with 2000 people across 3 rooms until 4am.







# PLANNED FOR 2024

# 

... A REVIVAL FOR NEW AND OLD AUDIENCES

to confirm a 30 week run of a new production of the West End In 2024 - If the venue is granted a later license, it will be able theatre hit Priscilla.

This will be an iconic, high profile event that will dominate the theatre press and drive a diversity agenda positively portraying Drag, Queer and Transgender communities.



## CHARITY



Raising money to support children affected by war

Beabadoobee

FRIDAY 3RD FEBRUARY LAFAYETTE, LONDON

EASY LIFE

SNUTS



KOJEY RADICAL FRIDAY 3RD FEBRUARY XDYCL LONDON

ATURDAY 4TH REBRUARY CMEARA LONDON



FRANK TURNER THURSDAY 9TH FEBRUARY OT SHEPHERDS BUSH EMPIRE LONDON OTH ANNUE RECORDINGS



FRIDAY 10TH FEBRUARY CAMEARA LONDON





HERE & LOWER THIRD Donated £1.25 from each

CALM - Suicide Prevention Charity

drink served across each venue to CALM

(ACOUSTIC SHOW) FRIDAY 10TH FEBRUARY LAYETTE, LONDON



**O** ShowerBox

shower space for the street and hidden homeless in London. Providing free and secure

OVL contributed Donations from tickets sold in HERE To support SHOWERBOX in St Giles Churchyard SHOWERBOX – Showers for the Homeless

# The BRITS - WARCHILD

War Child protects, educates and stands up for the and AEG – where big artists play small venues for a around the BRIT Awards in partnership with the BPI Since 2009, War Child has been staging shows rights of children caught up in conflict. great cause every February.





## COMMUNITY



SOHO MDEIA CLUB BE YOU FESTIVAL is a 1-day Festival in Soho, designed to spark honest conversation about the whole slate of film and TV culture, including the visible & hidden challenges of diversity, inclusion, belonging & wellbeing in film & TV, as well inspiring and nurturing the next-gen of talent.



Other initiatives we have hosted at HERE

- Human Rights Watch Dinner 12 June hosted by HERE.
- Impact HERE Award for sustainability focused start ups. £400k prize. www.hereimpactaward.com
  - Attitude is Everything Charter Member connecting disabled people with music and live event industries to improve accessibility.
    - Breaking Barriers Charity sourcing meaningful employment for refugees.
- Donation of £3k to London Trans Pride from Pride event.
- Auction item for Kaleidoscope Trust is a UK-based charity focused on fighting for the human rights of LGBTI+ people across the Commonwealth and beyond.



## MAIN SPACE



## **MEZZANINE BAR**



## **COCKTAIL LOUNGE\***



### MEZZANINE

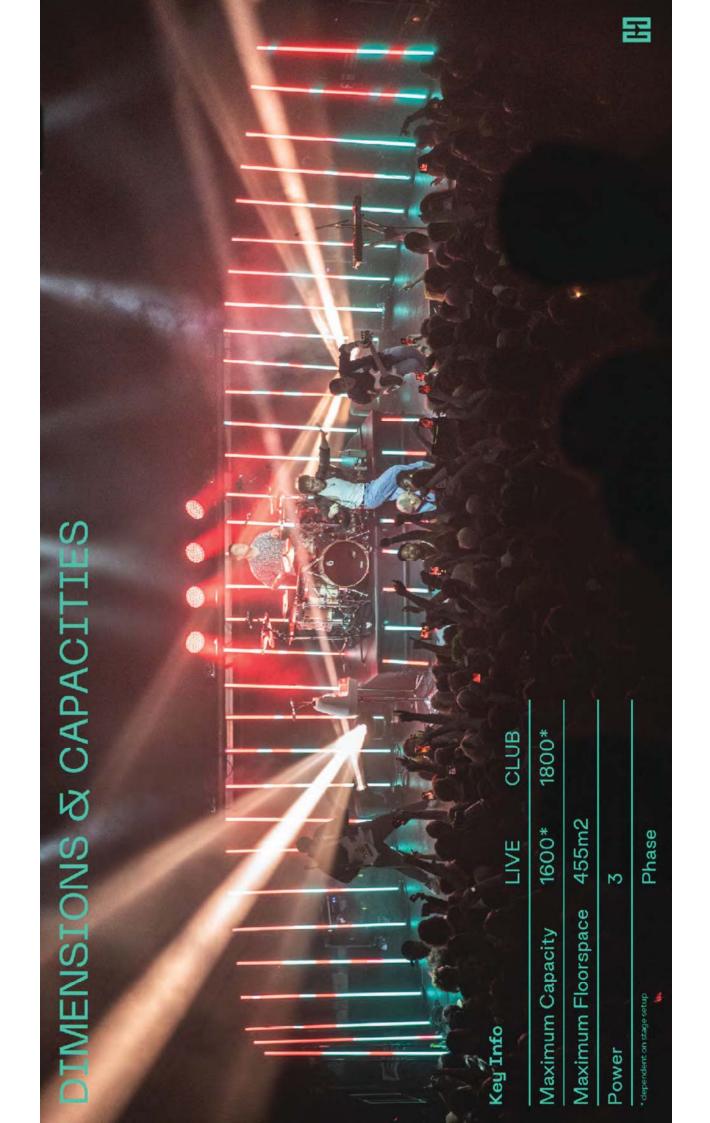


### FACILITIES



# MAIN FLOOR GREEN ROOM 1





# **EXPLORE HERE**

#### Level 1

- The Lower Third Club Room
   Main Staircase (C)
   Lift Lobby

#### 12. Mezzanine Stair (D) Lift Lobby 10. WC DW 'H Mezzanine Flex Space 2A Mezzanine Flex Space 2B Mezzanine Cloakroom Cocktail Lounge Mezzanine Bar Mezzanine Void

- 14. Freight Lift 13. Refuse
- 15. Control 16. Production Stare Mezzanine Green Room 2 Main Staircase (C)

#### Main Floor Stage

9. Main Floor Green Room 1

10. WC

Th. WC

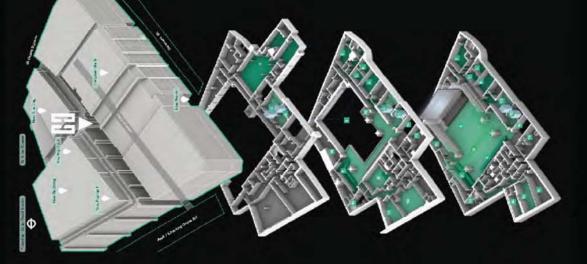
- Kage Bar
- Catering Prep Space Mezzanine Overhang Light Bar
- 14. Mezzanine Staircase 13. Main Staircase (C) Main Floor Cloakroom

12. Lift Lobby

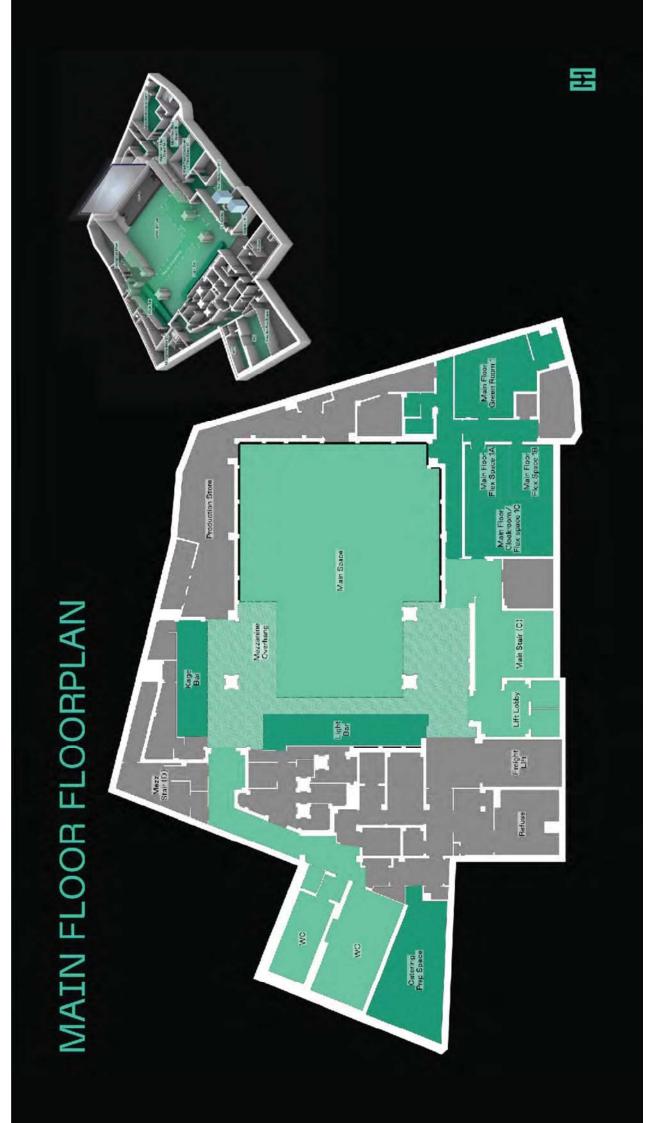
- 15. Refuse
- 17. Production Store 16. Freight Lift

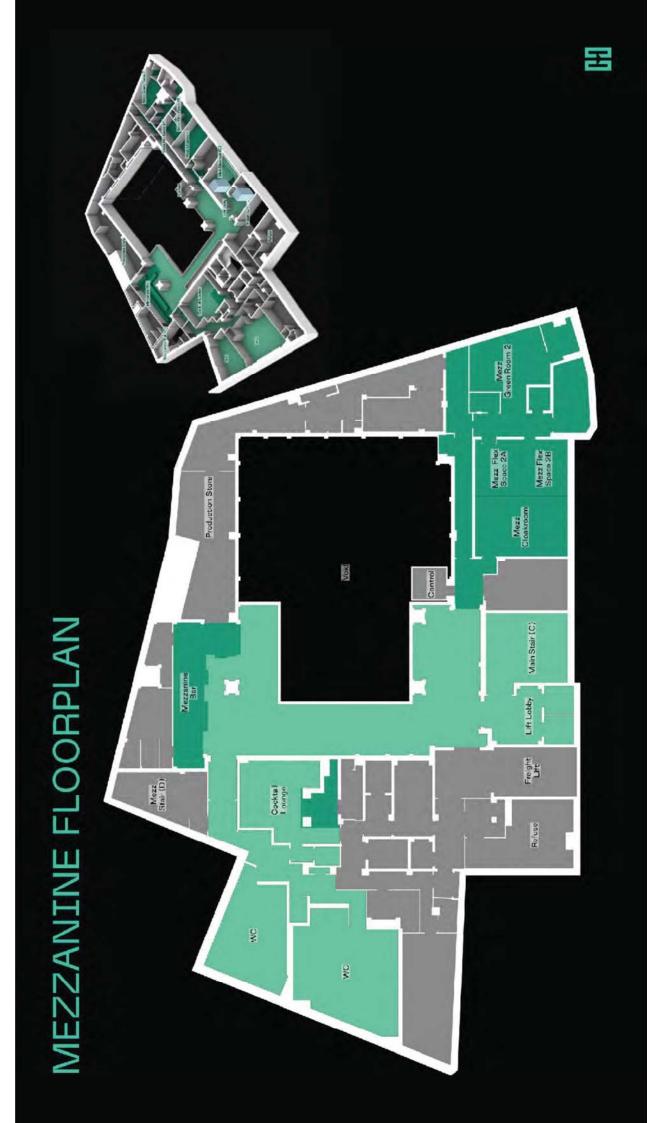
Main Floor Flex Space 1A Main Floor Flex Space 1B

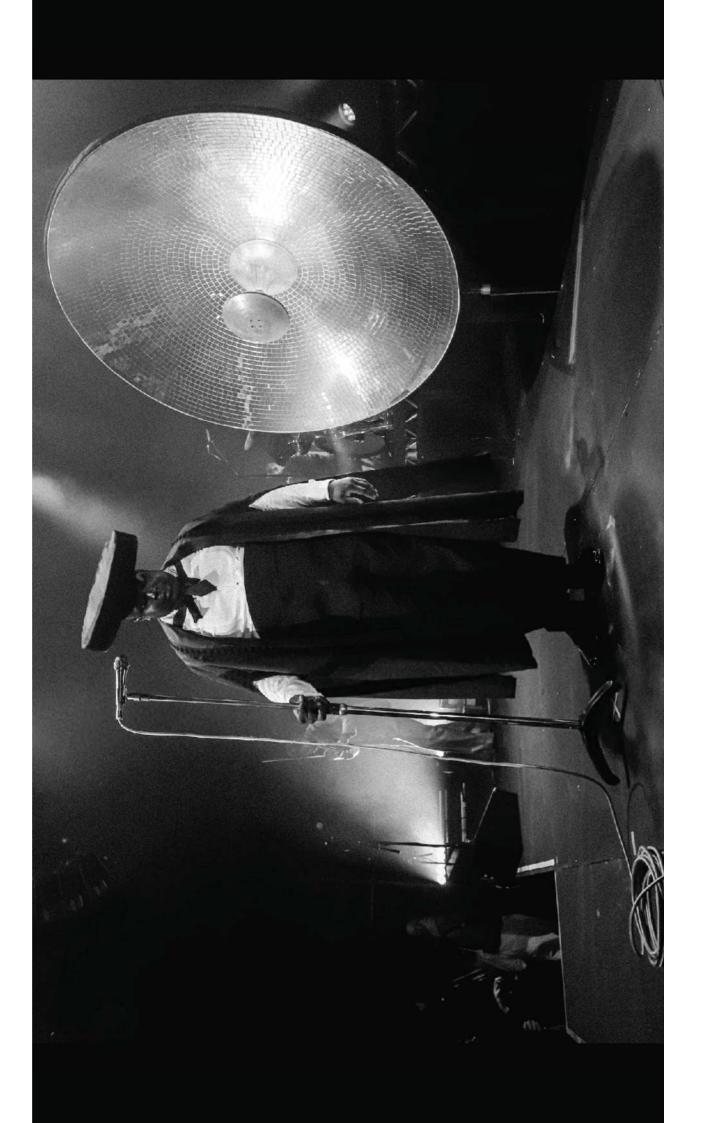
Ŧ



unique areas which can all be activated Court Road our space comprises three The Mezzanine, and The Lower Third. Hidden four stories under Tottenham for events. These are the Main Floor,







### HONGE AND AND

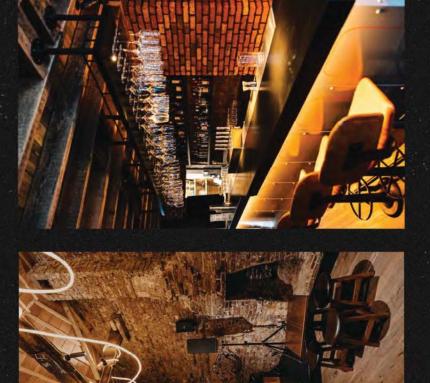
# PRIVATE EVENTS & CORPORATE HIRE

# OVERVIEW

CLUBROOM CAPACITY: 240

THE FORCE CAPACITY: 40-50

COCKTAIL BAR CAPACITY: 40



The Lower Third is steeped in rich musical and cultural history, an iconic hub celebrating community and creativity in all its forms. Purposefully designed and meticulously finished, The Lower Third offers the best-in-class cocktails in an elevated, yet relaxed environment.

Three individual spaces are available to hire: the beautiful and iconic Forge, our modern cocktail bar and the Clubroom. The Lower Third has played host to multiple formats including showcases, parties, panel discussions, photoshoots and much more. All of our spaces can be hired individually or as one venue takeover.

# THE FORCE & COCKTAIL BAR

The Lower Third is a unique setting catering to a multitude of events from casual affairs to formal industry events.

Located on the former site of the 12 Bar Club, which played host to some of the world's most famous musicians before they reached their wider audience, such as Adele, Jeff Buckley, The Libertines, and many more. At The Lower Third, we nurture a vibrant community, paying homage to our rich musical heritage, all while embracing new artists and innovative creative concepts on Denmark Street, giving us our unique character and personality. Our venue is an intriguing space, serving as a captivating focal point for your event.

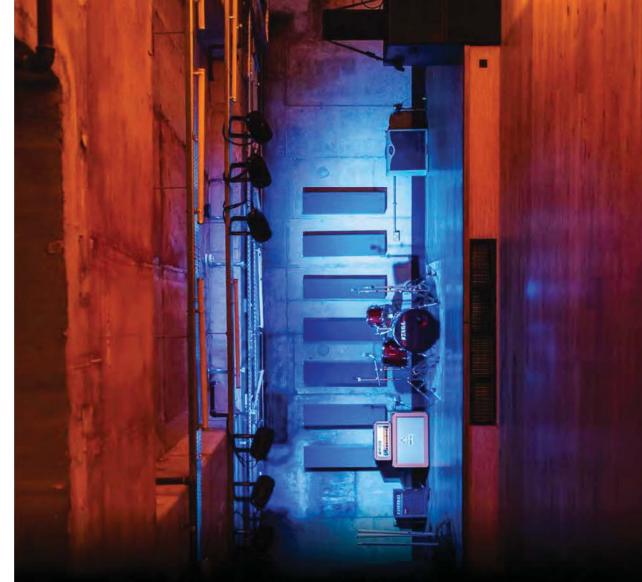
Our cocktail bar is not only a hotspot for after-work drinks, cocktail enthusiasts, restaurant-goers, and visitors to the Outernet district, but it is also available for private hire.

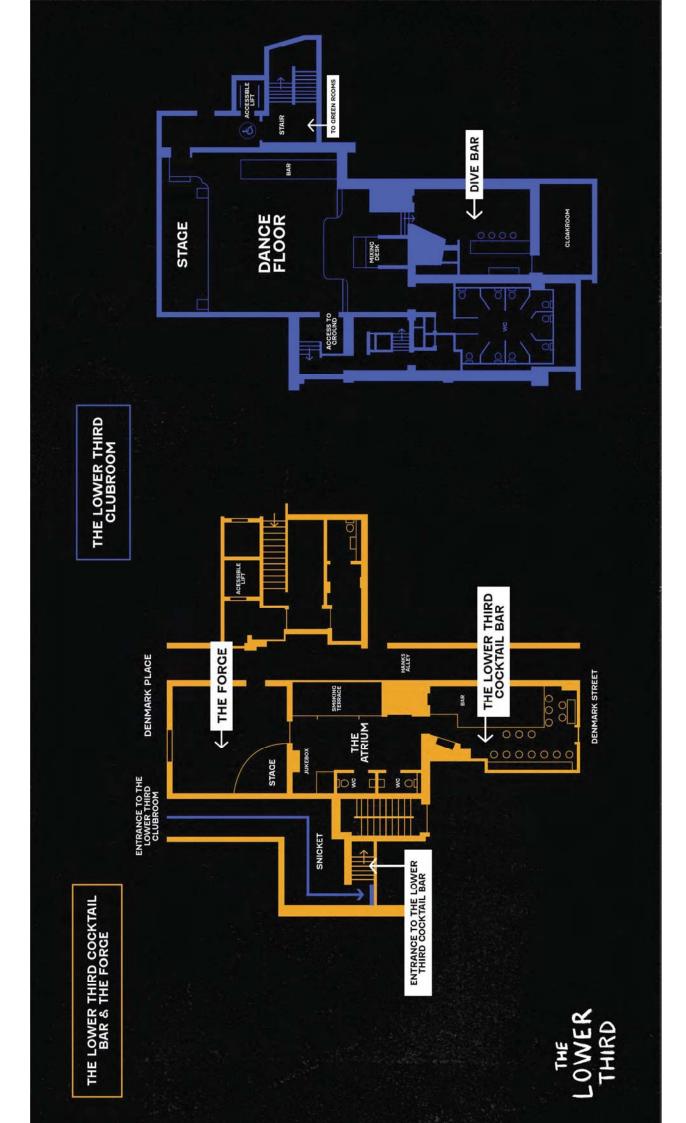
With its preserved history and exposed interior, our venue provides a relaxed and charming backdrop for your event. This delightful ambiance, combined with our thoughtfully curated beverage programme, diverse catering options, high-spec technical capabilities, and dedicated support from our in-house events team, ensures a seamless end-to-end experience for you and your guests.

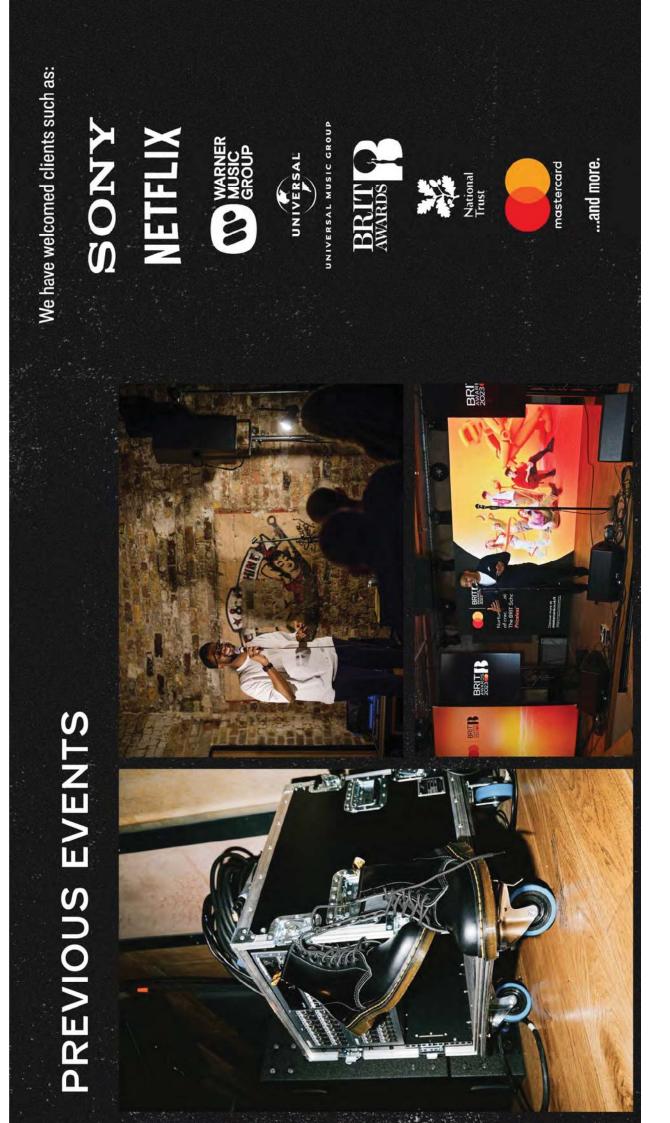
# CLUBROOM

The Lower Third Clubroom is a grassroots venue committed to offering diverse programming to cater to a wide range of audiences all year round, with a special focus on cultural events and live music performances. While our Central London stage is popular for up and coming acts and promoters, this hidden gem is perfect for private events.

The Clubroom's interior design is meticulously crafted to evoke the chic ambiance reminiscent of 'New York Loft-style.' Its laid-back and inviting atmosphere offers guests a chance to fully immerse themselves in the venue's unique setting. With its array of amenities, including two bars, green rooms, and flexible spaces, the clubroom ensures both convenience and comfort for all guests. Our built-in stage, premium lighting, and high-quality sound systems create a captivating atmosphere. Furthermore, the venue's versatility allows for seamless adaptation to accommodate various types of events, guaranteeing a tailored experience for our clients. To deliver exceptional events we collaborate with a selection of preferred suppliers and caterers. From decor specialists to culinary experts, our trusted partners offer a wide array of options and customisable solutions. Our events and production teams will be on hand throughout the entire event process, offering support and assistance from the initial enquiry stage all the way to post-event.









# COCKTAIL MENU

# Chile Peach Margarita

Altos Blanco Tequila, Peach, Lime, Thai Chile

## Lychee Martini

Gordon's Gin, Lillet Rose, Lychee, Peychaud's Bitters

# Cucumber Mint Gimlet

Smirnoff Vodka, Cucumber, Mint, Lime

# **Spiced Banana Old Fashioned**

Jack Daniel's, Banana, Cinnamon, Brown Sugar, Angostura Bitters

# Passion Fruit Dark & Stormy

Captain Morgan Spiced Rum, Lime, Passion Fruit, Ginger Beer

## Cafe Manhattan

Johnny Walker Black, Lillet Rouge, Mr. Black Coffee Liqueur, Chocolate Bitters

## NA Martini

Seedlip Grove, Verjus, Celery Bitters, Olive

## NA Bitter Spritz

Lyre's Italian Spritz Aperitif, Vanilla, Double Dutch Cucumber & Watermelon Soda

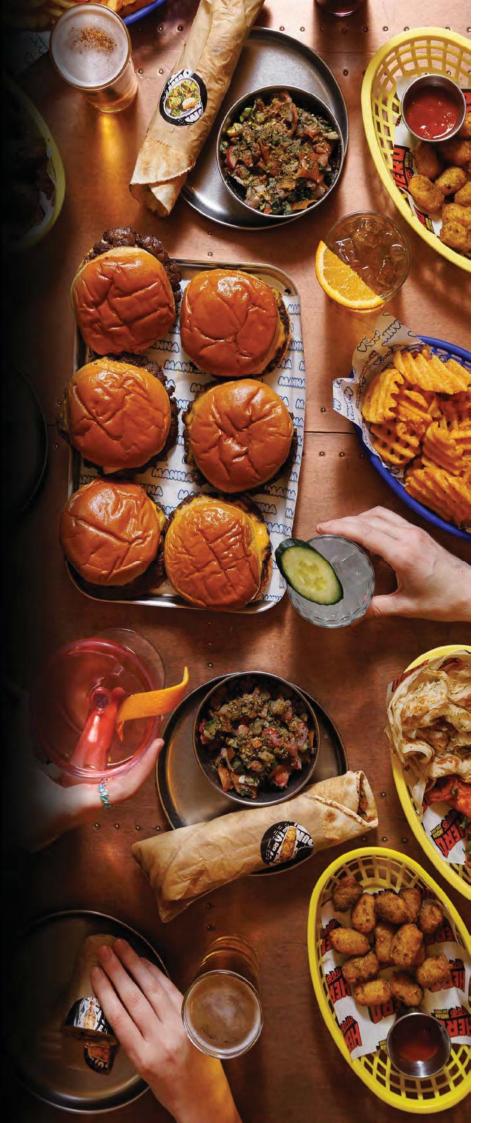
## NA Coconut Gimlet

Seedlip Garden, Pandan, Coconut Water, Lime

#### Festive Fizz Ketel One Vodka, Cranberry, Cointreau, Cinnamon, Lemon, Champagne

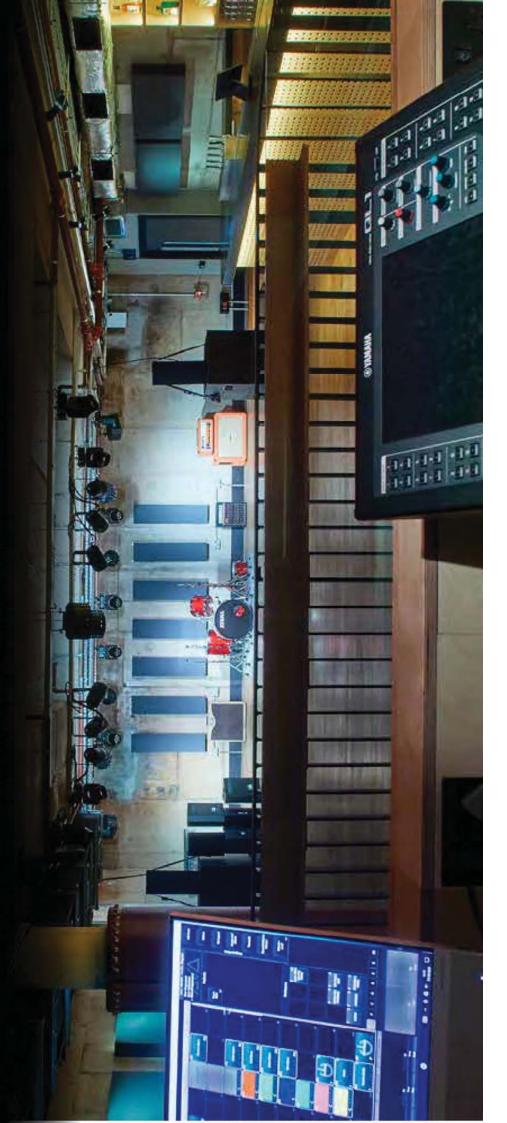
# CATERING

We work with a list of preferred caterers and local businesses to provide a range of creative and delicious catering concepts that can be tailored to any event.

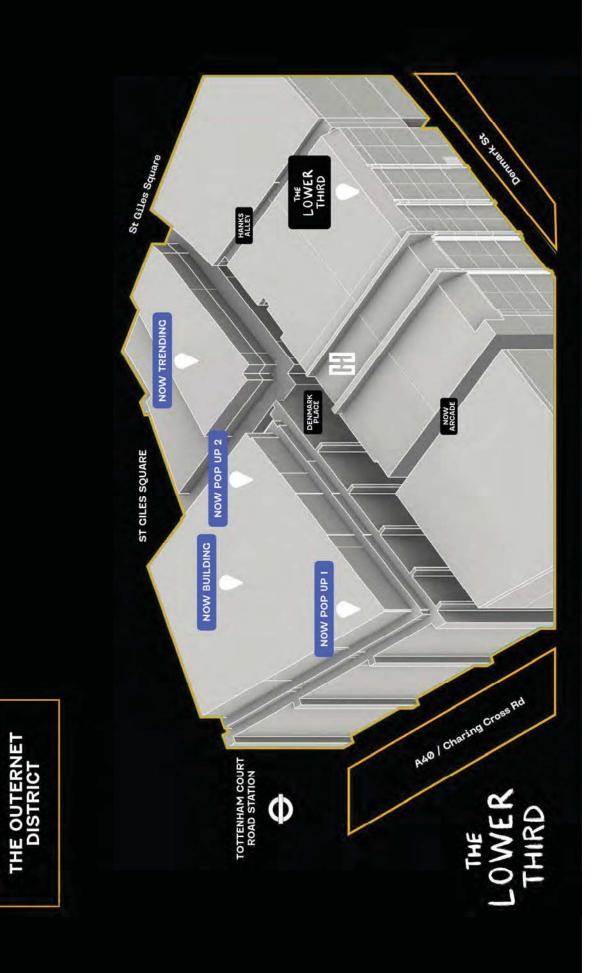


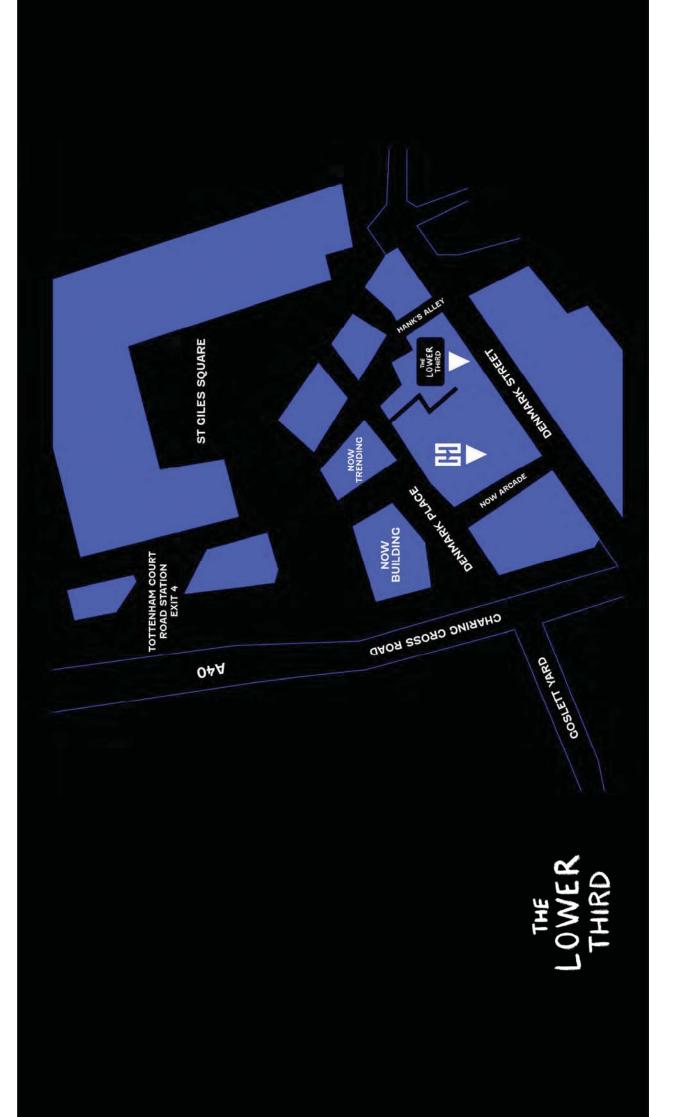
# PRODUCTION

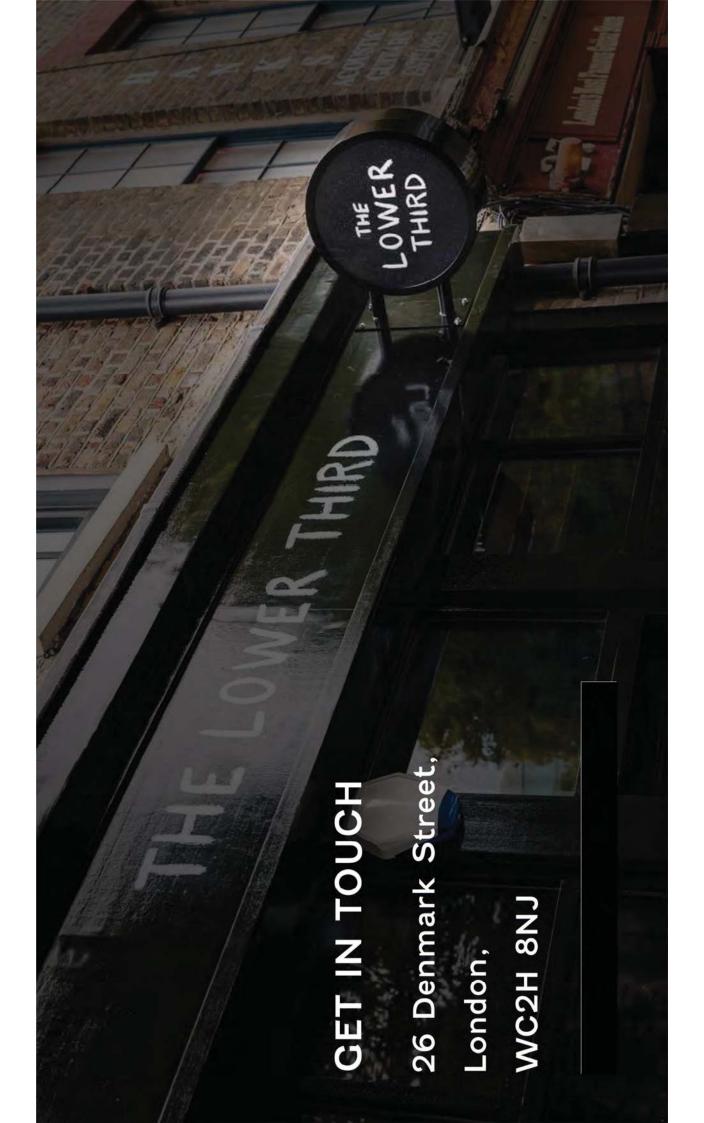
Both The Forge and the Clubroom have built in stages and high quality d&b sound systems. The Clubroom has a dynamic lighting rig and both spaces within the venue are supported by our technical and production teams.



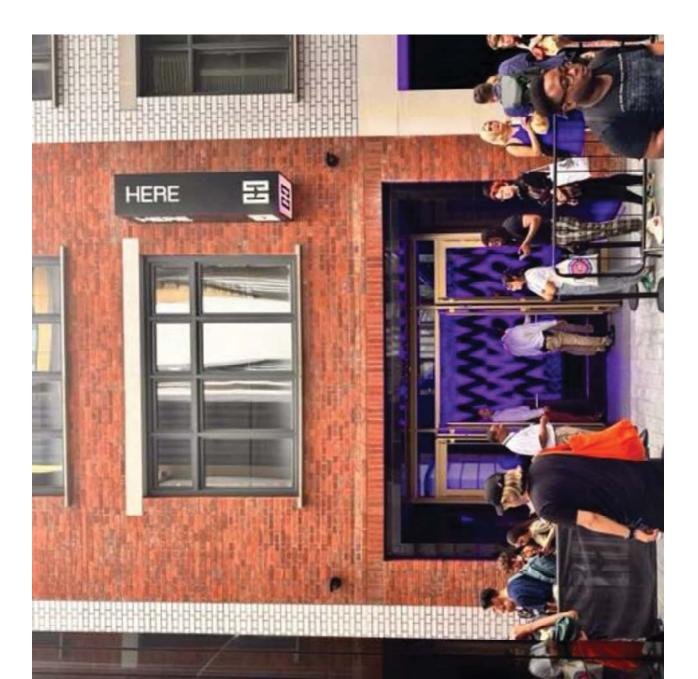
AUDIO	VISUALS	STAGE	MICS & DI
PA: • D&B V SERIES	LICHTINC: • 4 X ADJ ACCRESSOR • 10 X ROBE ROBIN LED	DIMENSIONS: 。8.5M X 3M	AKG: • 1 X DI12 AUDIX·
MAIN PA • 2 × VIOP	BEAMI50 • 4 X LED PAR • 4 X ADJ ELECTRO SWARM	KEYBOARD STANDS: • 2 X TWO-TIERED STANDS	∘1 X ADX51 SENNHEISER:
FILLS	CONTROL: • AVOLITES TITAN MOBILE	ΓQ	∘1 X e109 ∘1 X e902 ∘1 X e604 ∘5 X e904
° 2 X DAB IUS MONITORS: ∘ 6 x M6 WEDGES	FX: WE DO NOT HAVE A PROJECTOR	EQUIPMENT: • 1 X PIONEER DJM-VIO • 2 X PIONEER DJM-900	。2 X e6l4 。3 X e609 。3 X e945 SHURF
FOH CONTROL: • YAMAHA OLI DICITAL	IF YOU WISH TO BRING YOUR OWN, WE NEED TO BE NOTIFIED	<ul> <li>4 X CDJ-3000</li> <li>4 X CDJ-2000</li> <li>2 X TECHNIC 1210 MK2</li> </ul>	∘ 1 X beta52a ∘ 4 X sm57 ∘ 4 X sm58
<ul> <li>MIXING DESK</li> <li>YAMAHA RIO DICITAL</li> <li>I/O BOX</li> <li>(32 INPUT/I6 OUTPUT)</li> </ul>	IN ADVANCE AND YOU WILL NEED TO PROVIDE PAT TEST CERTIFICATES FOR ANY ELECTRICAL ITEMS PYRO IS NOT PERMITTED	These are shared with our other venues. Please request in Advance.	ACTIVE DIs: • 1 X BSS • 6 X ORCHID • 1 X STUDIOSPARES







#### <u>Ingress</u> Here & The Lower Third Venues



- LATE-NIGHT EVENT SECURITY OPERATIONS: LICENCE EXTENSION
- Current: Mon-Thu 11:30pm, Fri-Sat 00:00, Sun 10pm + 2am extension x 104 / year
- Variation: 4am extension x 154 / year

 HERE is a 1500-1800 capacity venue which hosts a broad programme of Live Entertainment such as concerts, club nights and comedy shows and Private / Corporate events such as fashion shows, product launches, conferences and film premiers.

 On 104 occasions a year, events can run until 2am. The venue has applied for a variation to extend these late hours from 2am to 4am on 154 occasions a year.

commercially viable - with an increased programme of events such as Music, Comedy, Theatre, Charity, and Film screenings followed by late night music events to offset lower revenue generating This will enable the venue to curate a broader range of cultural programming whilst remaining cultural programming.

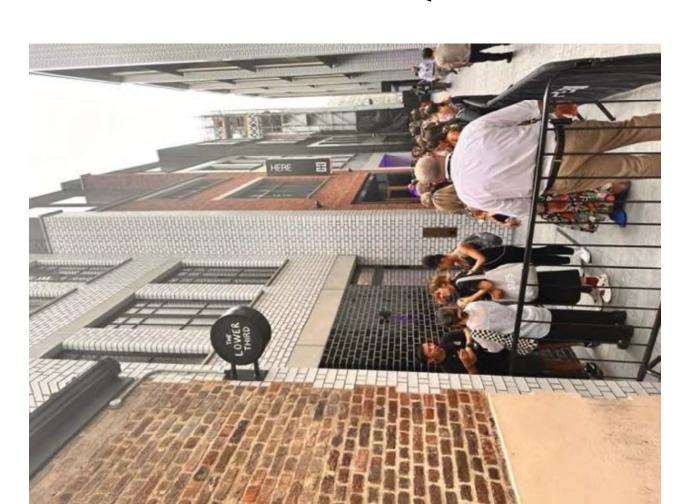
 The anticipated impact to the local area is minimal with the only material change being extending the crowd egress from 2am to 4am on two or three nights per week.  The venue intends to manage egress at these later hours with enhanced security and proactive noise marshalling; working with the private district security team to ensure a swift and controlled egress.



## Response Team Staff

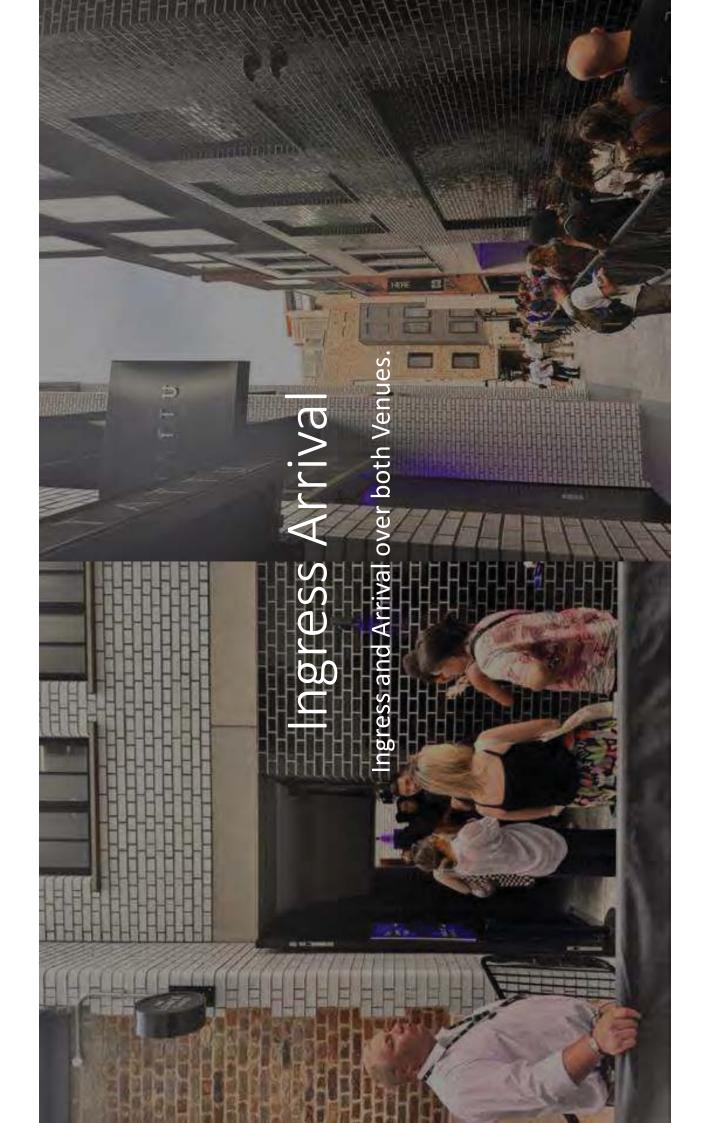
- First aid training and include FPOS trained Response staff wear Body Worn Cameras (BWC) as standard, the team are a mix of Male and Female staff who all have basic operatives.
- issues that may arise during venue opening respond across the venues to deal with any Response Team staff are dedicated to times.

## The Security Director is responsible for the advance planning of each event and the coordination operation of the site and coordinate where necessary with emergency services, local authorities, in Crowd dynamics who trains teams for festivals including Glastonbury and lectures around the terrorism. Robbie is a specialist in the music and entertainment industry with specific expertise The venues Security team is supplemented by the district Landlords private security team, who are on site 24/7, supported by extensive high specification CCTV and their own District Security attend various conferences and meetings in the interest of community Engagement and Public During operation, both Venue and District teams work together to ensure the safe and smooth The venue operates a dedicated Security Operation Control centre (SOC) with a licensed CCTV and neighbouring tenants. Both security Directors are actively involved in the community and operator to monitor event crowd flows, crowd activity, identify flashpoints and to field radio The venue has directly employed Robbie Naish as Director of Security, a highly experienced Operations Control centre (SOC). The district security team is led by Tom Lish, previously security professional and qualified licensed teacher in physical intervention and counter traffic to ensure pro-active communications between ground teams, district, venue country on crowd control, security management, crowd profiling and motivation Director of Security at the O2 Arena, Westfield Stratford and Harrods management and emergency teams where necessary. and training of all operational security teams. Safety. Management Security



## HERE & The Lower Third Venues

Arrival into The Lower Third Club Venue





# Event Ingress

- managed by a team of security operatives. A supervisor monitors the length and movement of The venues standard ingress route is along Denmark Street, running through the 'Arcade' and along Denmark Place to the front doors of the venue. It is demarked by PED barrier and the queue, deploying staff where necessary to ensure an organised and swift ingress.
- In addition to the ground teams, both the Venue and the district security CCTV operators monitor the crowd dynamics from independent SOC rooms.
- All guests are physically engaged at three separate points before entering the venue:
- 1. Screening
- 2. Accreditation
- . 3. Search

## Screening

verification checks, and suitability checks are Guests are 'screened' at the entrance to the present themselves in a way not conducive performed. Guests that are intoxicated or to the standards of the venue will not be Arcade on Denmark St where age admitted.

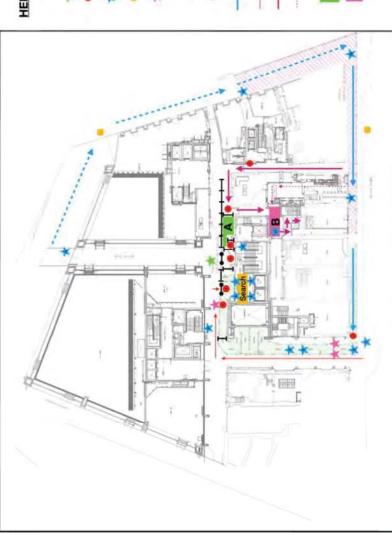
## Accreditation

arcade to the front doors, which is patrolled Once completing the initial screening, guest secure section of the queue through the by Venue and District security to assess tickets are scanned before entering the crowd dynamics in the queue.



as standard, and a personal search process is followed depending on the risk assessment security search, where all bags are checked At doors, guests are processed through a of the crowd

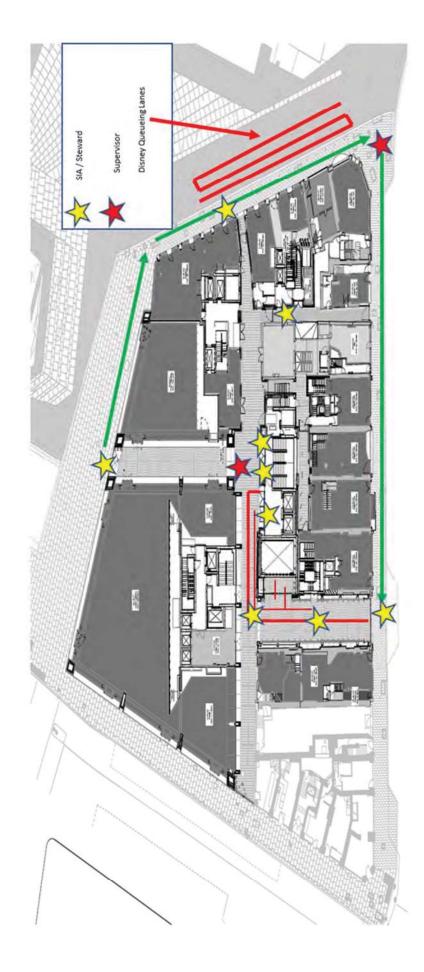
# Detailed Ingress plan HERE & Lower Third



HERE X LOWER THIRD COMBINED GROUND FLOOR INGRESS

- SIA HOS / ROAM
  - SIA FIXED
- SIA RE-DEPLOY
- TICKETS / GUESTLIST STEWARDS / NOISE
- - Tensabarrier
- H PED Barrier
  - HERE GA
- **HERE Guestilst**
- Lower Third
- Lower Third Guestlist / Early entry
- **HERE Smoking** A
- -
- Lower Third Smoking

# Pic 3. Ingress Arcade & Main Entrance.







## Queueing

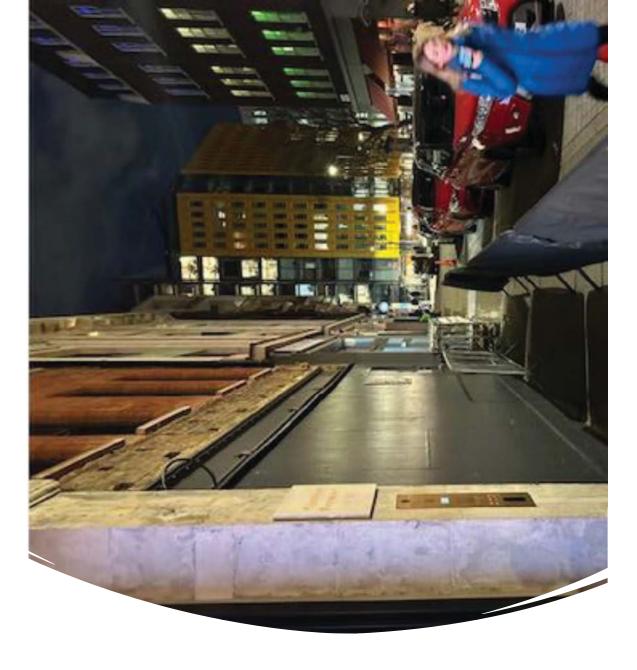
- Customers are managed into Disney/ Snake lanes in St Giles Square. In most cases this can be operated with two Security staff.
- This operation has been deployed several times successfully. Security staff will be positioned along the Last Mile route ensuring local stakeholders access is not disrupted.

# Pic 2. Last Mile Route

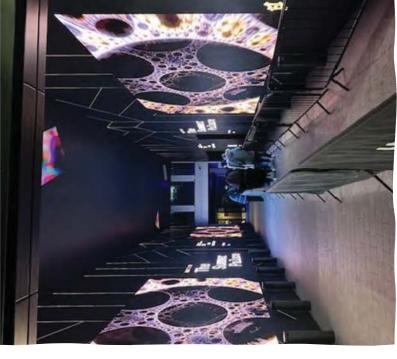


## Last Mile

Barriers are set up on Denmark Street at the entrance of the Outernet Arcade. Security staff will manage this entrance, ticket checks, Cleaners are on standby to ensure any garbage is collected.









## Last Mile Barrier Set up

Barriers are Set up inside the Outernet Arcade. This ensures that access to other businesses are kept clear.

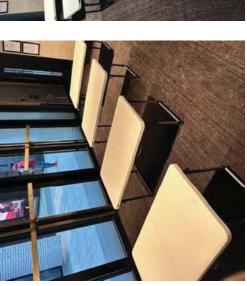
## Last Mile

 Once customers have passed through the Arcade, they are then processed with ID Checks before entering the ingress/ search phase of the system.



# Ingress Search

 Ingress is through the Main Lift Lobby Doors. Search tables set up which are manned by Security Staff. Customers then turn left and enter the Venue down the main Stairs.







# Egress Phase

- The Main Venue doors are opened. Barriers are set up to prevent customers turning left or right out of the Main Venue.
- A gap in the ped barrier is opened to allow egress from the Lower Third Club. All customers are directed by security staff to exit left out of The Lower Third club and then right into the runway up towards Tottenham Road Tube station.



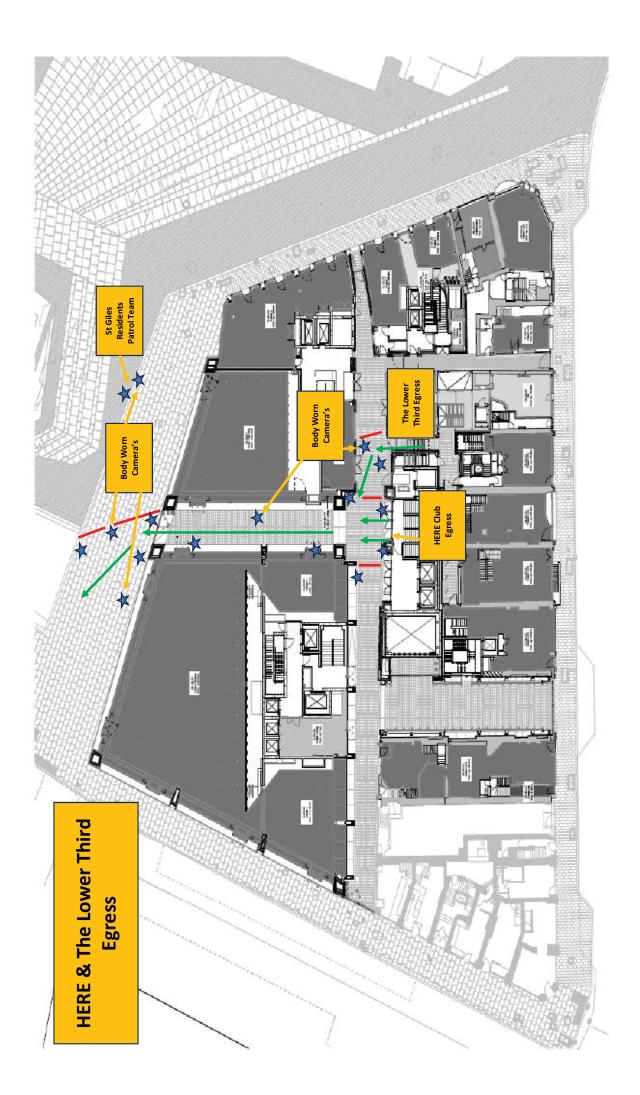


# Event Egress

- Standard event egress and disperse a crowd towards Tottenham Court Road Tube Station and Oxford Street between 11-11:30 pm
- Late Night events currently disperse a crowd on egress towards Tottenham Court Road Tube Station and Oxford Street between 2am-2.30.am.
- Extended Late-Night events will disperse a crowd on egress towards Tottenham Court Road and Oxford Street between 4am- 4.30am.

## Event Egress cont.

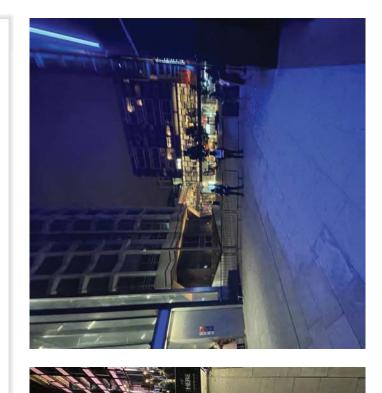
- Prior to the event finish time, a series of Pedestrian Barriers (PED) are placed at the Tottenham Court Road Tube and Oxford St, away from the residences in St Giles Northern end of Denmark Place, creating a directional crowd flow towards Square comprising Centre Point and Centre Point House.
- direct the crowd towards the Tube station or towards Oxford Street for night buses Denmark Place and around the PED barrier outside of the station, to proactively A team of operatives are deployed from the front doors of the venue, along and the Elizabeth Line.
- neighbouring residents, to ensure where possible that patrons of the venue are not In addition, a roaming team is deployed to patrol St Giles Square where there are congregating by politely asking them to move on or keep noise to a minimum.
- Centre Point to minimise public nuisance and engaging with local authorities where coordinating with the venue team and the night manager from local residences at The District Security team also aid in encouraging the dispersal of guests, necessary

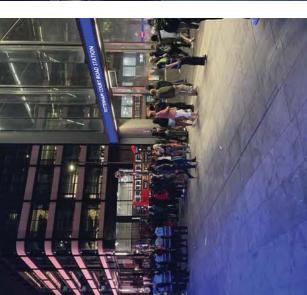




Barriers are set up and manned on St Giles Square









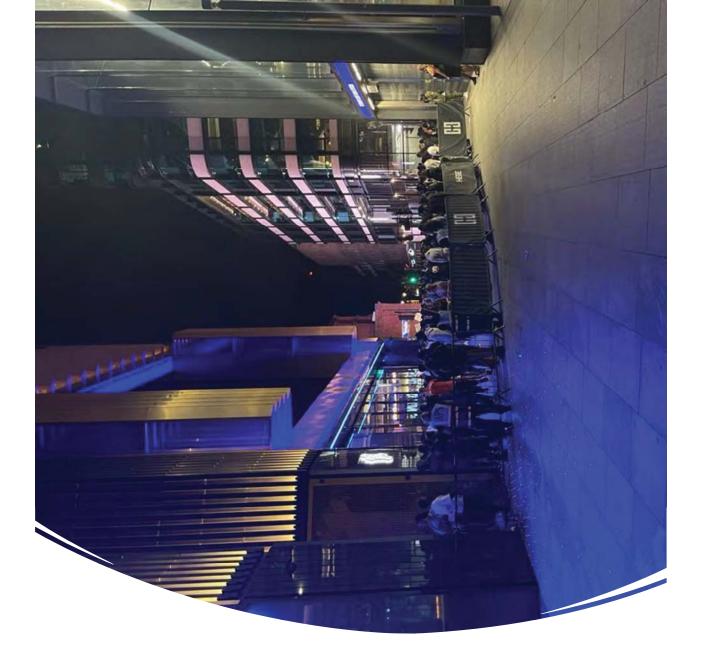


## Egress/ Dispersal Phase

 Security Staff slowly move the customers away from the Venues. This process takes around 30 mins from Show down to end of dispersal.

## Egress/ Dispersal

- If the Tube Station doors are closed, the Barrier system is moved along to help encourage customers to not disperse into the St Giles Square areas.
- Security staff are deployed to ask customers to keep the noise down.

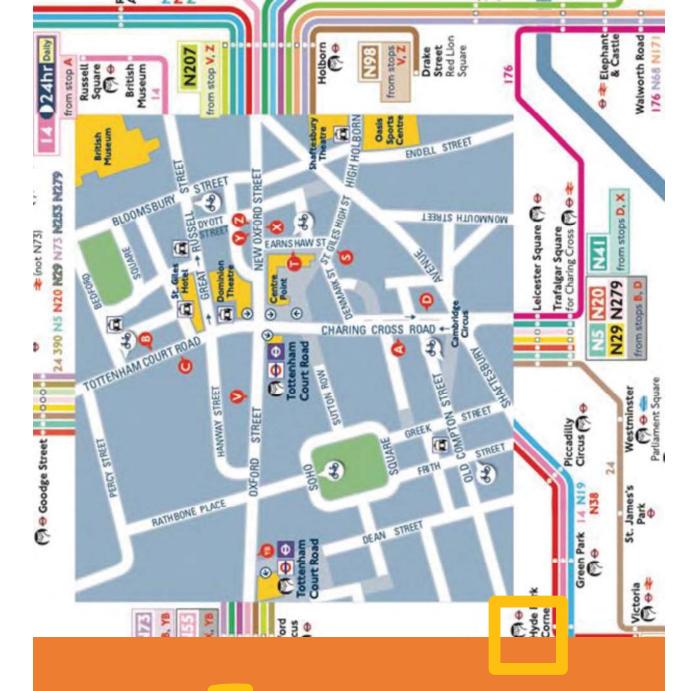


# Dispersal Tube travel

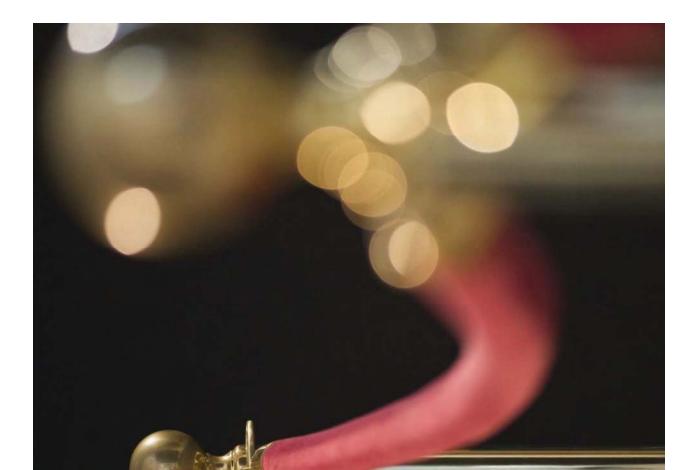
- The venue is well placed for late night travel to and from events via Tottenham Court Road Tube and Oxford Street.
- On Friday and Saturday's guests will use the 24hr Night tube / Night bus.
- On Thursdays, guests can travel on multiple bus routes from Oxford Street.



## Dispersal Buses A good Bus service is available to customers leaving the Venues



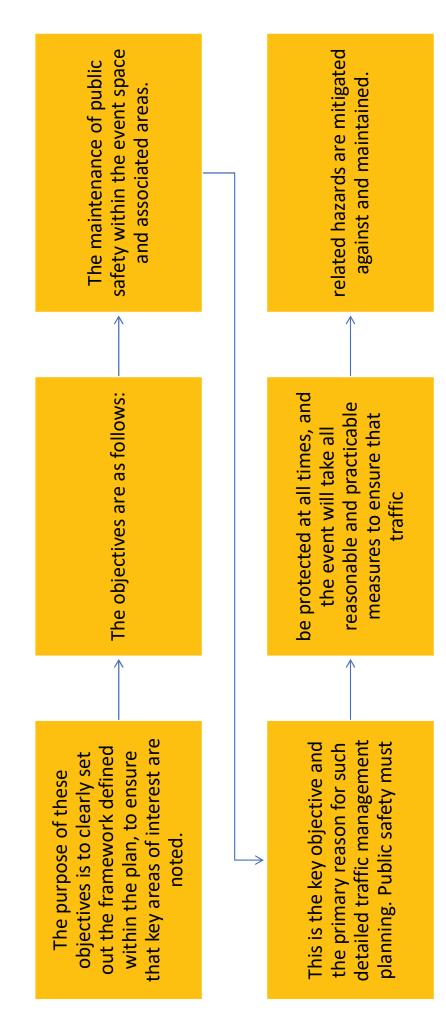
## Buses. On occasion where guests arrive by taxi they are mainly dropped off and picked up on Denmark Street and Charing Cross road. parking illegally will be looked at with appropriate mitigation put in place to try and prevent customers from parking on Pavements etc.. 95% of guests travel to and from Any events that are assessed to have issues with customers the venue using the Tube and Vehicle Access



## ANOMOLIES

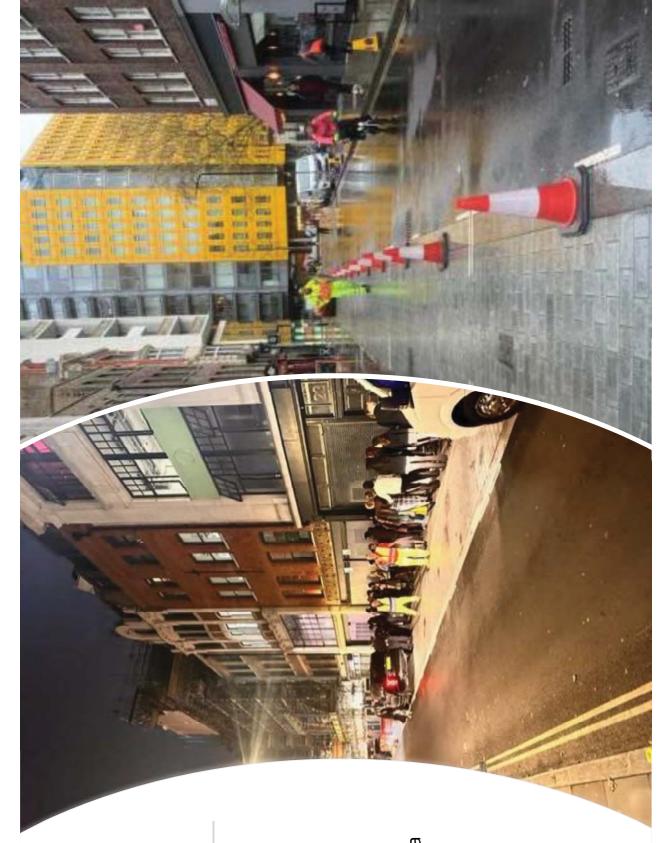
 Private events such as Fashion Shows, Product Launches or Film Premiers will have bespoke ingress and egress processes, often supported by private ground transportation on Denmark Street in coordination with relevant local authorities.

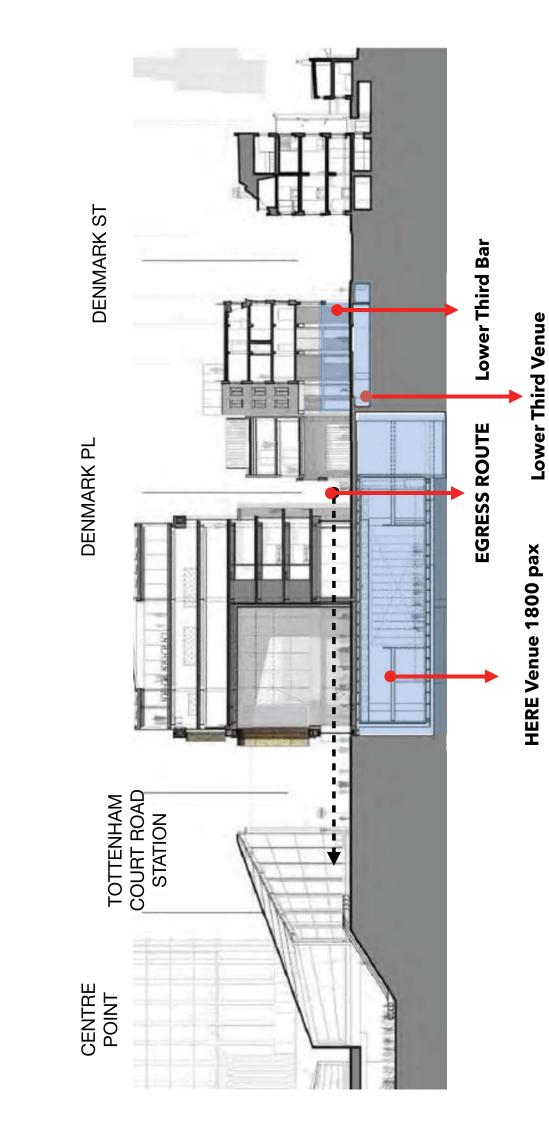
# Traffic Management



## Traffic Management cont.

- It is important that any event seeks to minimise its impact upon the local community and in particular District users.
- These events will introduce a series of measures as detailed in a TMP that will seek to mitigate any adverse effects on the community.





**OUTERNET VENUES ELEVATION** 

Page 1

Judgments

QBD, ADMINISTRATIVE COURT

CO/1975/2010

## Neutral Citation Number: [2011] EWHC 1045 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

THE ADMINISTRATIVE COURT

Royal Courts of Justice

Strand

London WC2A 2LL

Monday, 11 April 2011

### Before:

## MR JUSTICE CRANSTON

### Between:

## THE QUEEN ON THE APPLICATION OF A3D2 LIMITED (t/a NOVUS LEISURE)

Claimant

٧

### (1) WESTMINSTER MAGISTRATES' COURT

(2) WESTMINSTER CITY COUNCIL

Page 2

## Defendants

Computer- Aided Transcript of the Stenograph Notes of

WordWave International Limited

A Merrill Communications Company

165 Fleet Street London EC4A 2DY

Tel No: 020 7404 1400 Fax No: 0207 404 1424

(Official Shorthand Writers to the Court)

Mr G Gouriet QC and Mr A Booth (instructed by Walker Morris) appeared on behalf of the Claimant

Mr David Matthlas QC (instructed by Westminster City Council, Legal Department) appeared on behalf of the 2nd Defendant

### JUDGMENT

(As Approved by the Court)

Crown copyright©

MR JUSTICE CRANSTON:

Introduction

1. This is a judicial review of a decision of District Judge Roscoe sitting at the Westminster Magistrates' Court in December 2009. The judge dismissed an appeal by the claimant against the refusal by Westminster City Council ("the Council") to grant an application for a premises licence under the Licensing Act 2003 in respect of premises situated at 4- 6 Glasshouse Street, London.

2. The case raises a general issue about when courts should answer questions posed to them by the parties. There is also the specific issue about the value to be attached to a premises licence under the Li-

censing Act 2003 covering premises which are closed and about to be demolished when that licence is surrendered as part of an application for a new premises licence elsewhere.

### The licence application and its refusal

3. The claimant is A3D2 Limited, trading as Novus Leisure ("Novus"). It has two premises licences at 4 - 6 Glasshouse Street, which runs between Regent Street and Piccadilly in central London. These licences are for two nightclubs called Jewel Piccadilly ("Jewel") and the Velvet Rooms ("Velvet"). The licences permit the sale of alcohol until 1am Monday to Saturday and 12.30am on Sunday; regulated entertainment, including music and dancing until 1am Monday to Saturday, 12.30 on Sunday; and the provision of late night refreshment until between 1am and 1.30am, varying across the week.

4. In April 2008 Novus also acquired premises at a different nearby location, 72 Regent Street, for the Cheers Bar and Grill ("Cheers"). That address in Regent Street is within the site of the famous Cafe Royal. The premises licence for Cheers permitted licensable activities until 3am. Cheers closed permanently on 1 January 2009 and the Cafe Royal building was demolished in mid- 2009. Since the closure of Cheers, Novus has continued to pay a fee of some £350 per annum for the continuation of the licence.

5. On 6 January 2009 Novus applied for a premises licence under the Licensing Act 2003 to use 4- 6 Glasshouse Street, from the basement to the fifth floor, as a single nightclub to be known as Jewel Piccadilly. In the relevant form, Novus proposed to surrender the three existing licences, including that for Cheers, if granted a new premises licence for the Glasshouse Street premises. The application was for longer hours than permitted under the licences for Jewel and Velvet, including permission to sell alcohol until 3am seven days a week, for regulated entertainment, including the provision of facilities for music and dancing, until 3am seven days a week, and to provide late night refreshment until 3.30am seven days a week. At this point the demolition of the Cafe Royal building had not yet occurred.

6. The Novus application provoked a number of representations from the Metropolitan Police, Westminster's Environmental Health Department, and two local residents' associations, all opposed to its grant. Consequently, Westminster's Licensing Sub- Committee considered the application on 21 May 2009. The sub- committee was chaired by Councillor Bradley, with Councillor Evans and Councillor Marshall as the other members. For Novus it was said that the surrender of the three licences, if the application was granted on the terms sought, would reduce the overall capacity of licensed premises significantly; the number of people in the area would fall; and the total length of time licensable activities were permitted would also be substantially cut, since the Cheers licence would end. The application did not seek to remove the 600 person 3am capacity of the Cheers licence somewhere else, but merely to utilise the extra two hours that Cheers had in Glasshouse Street. The new licences would effectively reduce licensable activities in a "Stress Area".

7. The Sub- Committee considered the matter in the ordinary way, and at the end of the hearing Councillor Bradley announced that the application would be refused. First, he said, the Committee rejected the argument that there was a finite and ideal level of cumulative activity in the area so that a reduction in one part should be made good in another. It was possible to argue that stress in this area was such that any reduction ought to be accepted. Secondly, explained Councillor Bradley, Cheers was a hole in the ground, the Cafe Royal building being demolished, to be replaced by a six star hotel, which would no doubt have licensed premises as part of its activities. So it was not necessarily the case that Cheers would be replaced elsewhere, and not on its own site. Finally, said councillor Bradley, the impact on nuisance and local residents was greater at Glasshouse Street. Having a 3am licence there was different from having the one which existed at the Cafe Royal address.

Novus appealed. In anticipation of the appeal, various materials were prepared, including two statements by Inspector Neil Acheson, of the Metropolitan Police. In these statements, the Inspector said that Cheers had been a problematic venue for his unit. That was due to the high number of thefts and violent incidents associated with the premises. By contrast, he said, on a visit to Velvet there were no signs of drunkenness, unruly behaviour or underage drinking. On the whole, the clientele were good natured, in their mid 20s to late 30s and wearing smart casual attire. From his observations at Jewel, he was satisfied that it was a comparatively well- run establishment, and at that time catered for a customer base who used it as a "destination venue". However, Inspector Acheson was fearful that should the premises be granted later hours until 3am, the type of clientele would change, since it would then have the potential to become a premises where people would visit after previously attending other bars and clubs in the locality. In his experience this type of venue generated problems since many of the customers would have consumed alcohol before entering, and were consequently more likely to become involved in crime and disorder.

### The judge's decision

8.

Novus's appeal was listed before District Judge Roscoe at the City of Westminster Magistrates' Court . 9 for four days between 14 and 16 December 2009. By that date, although the Cheers licence was extant, the club was closed and the premises demolished. At the hearing Novus was represented by Mr Andrew Woods, a solicitor; Westminster by Mr Matthias QC. At the very outset of the hearing, the judge said that she had read the papers and skeleton arguments, and wanted to raise an issue about her decision in the Billionaire case, referred to in those papers. That was a case where an applicant said that it would surrender a premises licence for a club called Paper, if granted a new premises licence for a club called Billionaire. in the Billionaire case, Westminster accepted that planning permission had been granted for the new premises, but submitted that the surrender of the licence for Paper held little weight, since the building was due to be re- developed and Paper was due to close down in the foreseeable future.

The judge said that, in the Billionaire case, there had already been many days of hearing and she 10. was not prepared for it to be delayed further. Her responsibility was to deal with the position at the time of the appeal, and at that time Paper was still operational:

"In my view, a court should consider such a case at the time of the hearing. That does not mean that the court cannot consider future matters. There can be exceptions to anything, for example if they guarantee that there will not be a new premises licence on that site and give it whatever weight appropriate. But in this case the premises licence for Cheers Bar and Grill is offered for surrender, but that licence has no effect because there is no premises for it to operate."

The judge then continued that, in her view, the surrender of the Cheers licence would have no effect 11 under the Licensing Act 2003 or on cumulative impact. Therefore, in considering the hearing, that would be the basis on which she would view the licence. It would be considering any effect in the increase in permitted hours at Glasshouse Street. That was her preliminary view at that stage, having read the papers.

Mr Woods replied that that was not very helpful, but it was kind of the judge to raise the matter at that 12 stage. It would have been unlikely that his clients would have made an application to Westminster without the Cheers licence. It seemed a bit pointless to go through with the hearing if that was the judge's view. He did not know whether it would be appropriate for him to make submissions.

The judge responded that the Billionaire case had been raised by Mr Woods in support of his client's 13. application before the Licensing Sub- Committee, and in the papers she had received for the current hearing. She had hoped that her comments at that stage would be helpful. She then asked Mr Woods whether he wanted to take instructions. Mr Woods agreed that he did, and after a short adjournment, he addressed the judge on the value of the Cheers licence. In particular, he said that there was Westminster's contention

that where premises are re- developed or change their use, the intention of the policy was to reduce the number of the premises within the Stress Area through natural wastage.

14. The judge then said that all she was saying was that one looked at the premises as they existed at the time. She was not saying that in every single case there was no value to such a surrendered licence:

"There can be an effect on the picture as a whole by the non- operation of one premises that can affect the view of the situation as a whole. What I am saying is that I have some difficulties in seeing that by surrendering this licence there will be 600 people less coming into the West End Stress Area and therefore there has been a reduction because of the fact of those 600 people not coming into the West End to go to Cheers."

15. Mr Woods responded that the practical effect of the judge's view was that each licence was lost. He took the judge to the Guidance. The dialogue between Mr Woods and the judge continued. At one point the judge said that she did not think there was any reason why Mr Woods could not argue the circumstances of a particular case. The judge was not saying that he would not succeed or that he would be unsuccessful. It was a matter of fact and degree. It can be better to have premises moving, but if it was moving out of a residential area and into a quiet area, one was entitled to raise that fact.

16. Mr Woods then outlined two issues he wanted the judge to address: the general issue of cumulative impact zones and whether natural wastage meant that a licence was lost to the operation; and what was the effect of a non- operating licence. The judge said that she could understand the questions he had raised. It was whether a licence in these circumstances had any value. She thought that this may well be of interest and importance, but she would like some agreement between the parties as to the questions she was being asked to answer.

17. She then adjourned for the questions to be drafted by the parties. The hearing resumed. Before answering the questions, the judge asked what would happen when she answered them. Did she then hear evidence and proceed to the end of the hearing? Mr Woods replied that he would be happy to be guided by the judge and by Mr Matthias QC. Mr Woods' initial view was that if the judge was against Novus on that point, there did not seem to be much point in continuing with the appeal. It may be that the judge would then be asked to state a case.

18. The judge asked what Mr Woods was saying: that if her answers to those questions were not what Novus wanted to hear, the appeal would be abandoned? Mr Woods said that he was not sure whether the judge would dismiss the appeal or whether Mr Woods would withdraw it.

19. The judge handed down written answers to the two questions on the afternoon of the first day of the hearing. There then followed discussions as to the meaning of question 2, as a result of which the judge adjourned the appeal to the following morning. On the following morning, the judge varied her answer to question 2. Mr Woods then said that, having considered the points which had been canvassed the previous day, and the judge now having answered those two questions, he almost needed to ask one further question which was specific to the case of those instructing him "and I therefore need to ask you for a ruling on a third question on this particular case".

20. He handed a copy of the question to the clerk. The Judge said that it was difficult because that was the answer to the hearing as a whole "which I have not had and I would want because I know this can go further, and I would want a little time to make sure the answer I give is in the appropriate terms". Mr Woods confirmed that in all probability the matter would be appealed. Mr Matthias QC then suggested a slight change of wording to question 3.

21. Mr Woods said that the principle of the appeal was the surrender of the Cheers hours. The judge asked whether Mr Woods was content for her to answer question 3. He replied that if she maintained her approach, in his view that was dismissing the appeal because she could not find exceptional circumstances. The judge then enquired again whether both parties were content for her to answer question 3. Mr Woods replied that he could see no alternative. After an adjournment, the judge answered question 3. After doing so, the judge asked whether she had answered the question. She added that she was not sure that she could answer it in global terms. Here, in the particular application, it was not capable of being an exceptional circumstance because it was a non- operating licence. She had to rule on what was before her in that case. In her view a single fact was unlikely to be an exceptional circumstance. It was very different for a court to say that it could never be an exceptional circumstance, but Cheers was a non- operating licence, and in the circumstances she could only say what she had said without hearing the evidence, "I am quite happy to say this non- operational licence cannot amount to exceptional circumstances".

22. Subsequent to the hearing, the judge incorporated her answers to the three questions in a formal decision. Question 1 was as follows:

"Is it lawful for a Cumulative Impact Policy to operate so as to reduce the number of premises licences when premises licences become unable to continue to operate because of redevelopment, loss of property interest or any other similar matter?"

The judge answered "yes". She said that a premises licence was indefinite in duration unless otherwise stated, thus it could be surrendered as part of an application for different premises, and the licensing authority would have to take the surrender into account. However, section 17(3) of the Licensing Act 2003 provided that an application for a premises licence had to be accompanied by a plan of the premises to which the application related. That being the case, it would be difficult for a holder of a premises licence to show that premises are operating in accordance with the premises licence if there had been re- development which substantially changed the premises.

23. That did not terminate the licence itself, she added, and the operator could apply to vary it, or argue that the surrender of the licence was an exceptional circumstance. A licensing authority could, as a result, allow an exception to their policy, as Westminster had provided for in section 2.4.5 of the Statement of Licensing Policy. Given the way in which the statute was drafted, the judge said that she had no doubt that a premises licence was not transferable between premises. A surrender of one licence was a circumstance to be considered by a licensing authority when deciding whether or not to grant a new premises licence.

24. Question 2 was in the following terms:

"If a premises licence has been issued by a Local Authority under the Licensing Act 2003 and the Premises Licence Holder becomes unable to operate the licence at those premises are the benefits of that licence (occupancy levels and licensable activities) lost?"

The judge answered "yes". However, she explained that did not prevent the loss of those occupancy levels or indeed licensable activities being raised in any application for a new premises licence or application to vary an existing premises licence. It could be part or all of an exceptional circumstance as a result of what a licensing authority should grant on such an application.

25. Then there was question 3:

"The application for a new licence at Jewel, Glasshouse Street (which in practice would extend the terminal hour from 1.00am Monday to Saturday to 3.00am Monday to Saturday) which is made on the basis that the

premises licence dated 27 April 2009 at Cheers, 72 Regent Street (which includes an occupancy level of 600 at 114.5 licensable hours) will be surrendered is not capable of itself of being exceptional circumstances under 2.4.5 Westminster City Council Licensing Policy because the Cheers licence can no longer operate at 72 Regent Street due to redevelopment and the premises are no longer operating."

In her view, and regardless of any Statement of Licensing Policy, the judge said that a simple surrender of a premises licence could not be an exception to any Statement of Licensing Policy unless it promoted the licensing objectives set out in the legislation. Accordingly, any tribunal had to consider any application in the round, and the question it had to answer was: did the application promote the licensing objectives? Single factors were unlikely ever to comply with that requirement. A Statement of Licensing Policy was only ever a guide. A simple surrender of a licensing premises was not of itself a guarantee that exceptional circumstances existed which would entitle a deviation from a licensing authority Statement of Licensing Policy.

26. In paragraphs 2 and 3 of her answer to question 3, the judge said this:

"In this case, the Licensing Authority argue that despite the de facto closure of licensed premises on the Cafe Royal site, the area is still subject to cumulative stress, and the Council's policy relating to cumulative stress is still valid and necessary. The licence offered in surrender here is for the premises that used to operate under the name of Cheers which closed on 1 January 2009. The building which it operated is demolished. There are witness statements relating to other objections to the application made by the appellant.

In these particular circumstances, the surrender of the premises licence at Cheers is not capable of itself of being an exceptional circumstance under paragraph 2.4.5 of the Respondent's Statement of Licensing Policy sufficient to require this application to be granted."

She therefore dismissed the appeal:

### Legal framework and policy

27. Licensable activities are set out in section 1 of the Licensing Act 2003. These are the sale by retail of alcohol, the supply of alcohol in a club, the provision of regulated entertainment and the provision of late night refreshments (section 1(1)). Section 4 of the Act provides that a licensing authority must carry out its licensing functions with a view to promoting the licensing objectives. Those objectives are listed in section 4(2) as the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

28. Under section 11, "premises licence" is defined as a licence granted in respect of any premises which authorised the premises to be used for one or more licensable activities. Section 17 deals with applications for a premises licence. Under section 17(3)(b), an application for a premises licence must be accompanied by a plan of the premises to which the application relates in the prescribed form. An application made in accordance with the requirements of section 17, and advertised in accordance with that section, must be considered by the licensing authority in accordance with section 18. As far as is relevant, that section provides as follows:

"(2) Subject to subsection (3), the authority must grant the licence in accordance with the application subject only to--

(a) such conditions as are consistent with the operating schedule accompanying the application, and

(b) any conditions which must under section 19, 20 or 21 be included in the licence.

(3) Where relevant representations are made, the authority must--

(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and

(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

(4) The steps are--

(a) to grant the licence subject to--

(i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and

(ii) any condition which must under section 19, 20 or 21 be included in the licence;

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application.

(5) For the purposes of subsection (4)(a)(i) the conditions mentioned in subsection (2)(a) are modified if any of them is altered or omitted or any new condition is added.

29. Under section 24(1), a premises licence has to be in the prescribed form. Regulations under that sub-section must, in particular, provide for the licence to include a plan of the premises to which the licence relates. Section 26 provides that the duration of a premises licence is until it is revoked or, if granted for a limited period, that period expires. Licences can be surrendered pursuant to section 28 of the Act. Within 28 days of a licence lapsing through surrender, section 50 enables persons to apply for its transfer to them so that, in effect, it is reinstated.

30. Sections 34 to 36 of the Act concern applications to vary premises licences. Section 36(6)(b) provides that a licence may not be varied under section 35 so as to vary substantially the premises to which it relates.

31. The Act provides for policy and guidance to assist its application. Section 5(1) demands that each licensing authority must, in respect of each three- year period, determine its policy with respect to the exercise of its licensing functions and publish a statement of that policy. Section 182 provides for the Secretary of State to issue guidance to the licensing authorities on the discharge of their functions under the Act. In carrying out its licensing functions, section 4(3) obliges a licensing authority to have regard to its licensing statement under section 5 and any guidance issued by the Secretary of State under section 182. On appeal, a Magistrates' Court must have regard to the licensing authority's published statement: R(Westminster City Council) v Middlesex Crown Court and Chorion Pic [2002] EWHC 1104 (Admin).

32. As to the machinery of the Act, section 3 constitutes Councils as licensing authorities, and section 6 obliges each licensing authority to establish a licensing committee of at least ten members. The licensing committee may arrange for the discharge of its functions of determining an application for a premises licence by a sub- committee (section 10(4)). Appeals against decisions of licensing authorities are to the Magistrates' Court on questions of both law and fact (section 181 and Schedule 5).

33. In <u>RiHope and Glory Public House Limited</u>) v City of Westminster [2011] EWCA Civ 31; [201] 175 JPL 77, the Court of Appeal held that a Magistrates' Court should only allow an appeal if persuaded that the licensing authority is wrong. In delivering the judgment of the court, Toulson LJ said that it made good sense that a licensee bore the burden on appeal of persuading the Magistrates' Court that the licensing committee should have exercised its discretion differently, rather than the court being required to exercise that discretion afresh (paragraphs 47- 49).

## Guidance and policy

34. The Secretary of State has issued guidance under section 182 of the Licensing Act 2003. Chapter 13 of the Guidance requires that there should be an evidential basis for the decision to include a special policy within a licensing authority's Statement of Licensing Policy. For example, a local authority may be satisfied as to the cumulative impact of crime or anti- social behaviour, or as to the concentration of noise disturbance. Paragraph 13.29 of the Guidance provides that the effect of adopting a special policy is to create a rebuttable presumption. Applications for a new premises licence, or club premises certificates or variations which are likely to add to the existing cumulative impact will normally be refused following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

35. The Guidance states in paragraph 13.34 that a special policy should never be absolute. Statements of Licensing Policy should always allow for the circumstances of each application to be considered properly, and for licences and certificates that are unlikely to add to the cumulative impact on the licensing objectives to be granted. If a licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one of the licensing objectives, and that necessary conditions would be ineffective in preventing the problems involved.

36. Pursuant to section 5 of the Act, Westminster has adopted a Statement of Licensing Policy. The 2008 version of the statement was current when the application in this case came before its Licensing Sub-Committee and went on appeal to the judge. Paragraph 2.3.2 of the statement states that it is the intention generally to grant licences or variations to licences where the hours proposed are within the core hours. The core hours are 10am to 11.30am Mondays to Thursdays inclusive; 10am to midnight on Fridays and Saturdays; and midday to 10.30pm on Sundays. Paragraph 2.3.2 continues that it is not the policy to refuse applications for hours longer than the core hours. Where a proposal is made to operate outside those core hours, each application will be considered on its merits against the criteria set out.

37. The statement also contains the so- called "Stress Policy". It identifies three Stress Areas, including the West End Stress Area, which includes the premises at issue in this case. The policy explains that the Stress Areas amount to less than 6 per cent of the total area of the City of Westminster, although they contain 36 per cent of the licensed premises, including 64 per cent of the nightclubs, 35 per cent of the pubs and pub restaurants, and 49 per cent of the restaurants:

"2.4.1 These areas have been identified as under stress because the cumulative effect of the concentration of late night and drink led entertainment premises and/or night cafés has led to serious problems of disorder and/or public nuisance affecting residents, visitors and other businesses."

38. The reference to cumulative impact in this passage echoes the Guidance issued by the Secretary of State, in which the cumulative impact of licensed premises on the promotion of the licensing objectives is stated to be a proper matter for a licensing authority to consider (paragraph 13.24).

39. Paragraph 2.4.2 of the Statement of Licensing Policy then sets out the Stress Area Policy: that within the Stress Areas, licensing applications should be refused in respect of pubs and bars, takeaway hot food and drink establishments, and establishments providing facilities for music and dancing, other than applications to vary the hours of such premises within the core hours. The rationale is because the problems in the Stress Areas are generally later at night than during the core hours.

40. The statement then continues that the Stress Area Policy will not be applied inflexibly and that the individual circumstances of each application will always be considered. However, it is "intended to be strict, and will only be overridden in genuinely exceptional circumstances" (paragraph 2.4.2).

41. At paragraph 2.4.3 the statement says that it is not possible to give a full list of examples of when Westminster will treat an application as an exception. However, in considering whether a particular case is exceptional, it will consider the reasons underlying the Stress Area Special Policy on Cumulative Impact.

42. The statement explains at paragraph 2.4.5 that the Stress Areas Policy is directed at the global and cumulative effects of licences on the areas as a whole, and that a case is most unlikely to be considered exceptional unless it is directed at the underlying reason for having the policy. Examples of the type of proposal which might constitute an exception are set out in that paragraph, although it is stated that any list of such examples cannot be definitive. One example given is of a proposal to transfer an operation from one premises to another, where the size and location of the second premises is likely to cause less detrimental impact and will promote the licensing objectives.

43. Paragraph 2.4.12 and Appendix 14 set out the reasons for the Stress Area Policy. Reference is made to Westminster considering it necessary to propose special policies on cumulative impact "which aim to limit growth of licensed premises in certain areas".

### Issue 1. Posing questions to a court

44. In attractive and cogent submissions on behalf of Novus, Mr Gouriet QC contended, first, that the judge should not have answered the three questions posed to her before hearing evidence. The matter was unsuitable for determination in the abstract, apart from the substantial body of evidence in the case. No rational decision could be made otherwise than on the evidence as a whole, which the judge did not consider. The decision to dismiss the appeal was predicated on the rulings on a preliminary issue, adverse to Novus, which should not and could not rationally have been made at that stage in the proceedings. The decision to dismiss the appeal was therefore unlawful.

45. To the obvious retort that Novus's solicitor, Mr Woods, agreed, even instigated the judge's approach, Mr Gouriet QC submitted that Mr Woods was on the back foot from the outset, fighting for the life of his client's case. The judge should never have permitted what happened. Following her preliminary view, a momentum built up which meant that the central issue of whether rejection of the application was necessary to the licensing objectives were never addressed. Only after all the evidence was considered, including what had happened with other licensed premises in the period between the Cheers closure and the hearing, could it be said that Westminster's Statement of Licensing Policy applied at all. But the judge made a pre-liminary ruling that the non- operational licence, since Cheers had closed, could not amount to exceptional circumstances within the framework of the policy. The judge should not have placed Mr Woods in a position where she answered questions in the abstract without the evidence being explored. These were not questions which the judge should have contemplated answering. It was a matter of overall impression, said Mr

Gouriet, but it was preposterous to suggest that Mr Woods had initiated the procedure, as a result of which his client's case was dismissed before being properly considered.

46. In my view, this aspect of Novus's case is without any factual or legal foundation. At the outset of the hearing, having pre- read the papers and the skeleton arguments of the parties, the judge gave a reasoned explanation of what she called a preliminary view regarding one aspect of Novus's case, namely, the significance of its offer to surrender the premises licence for the Cheers premises, which by that time had been demolished. She distinguished what she had held in the <u>Billionaire</u> case from the situation in the appeal before her. By no stretch of the Imagination could it be suggested that it was wrong for the judge to do this. It is not uncommon for judges to share with the parties a preliminary view of the case, having read the papers. That form of openness promotes the Overriding Objective of the Civil Procedure Rules of dealing with cases justly, in particular by saving expense, dealing with cases proportionately, and allotting to them the appropriate share of the court's resources. So long as a judge has not closed his or her mind to a matter, it is also consistent with dealing with a case fairly, for it enables the parties to present their cases to the best effect.

47. As outlined earlier in the judgment, the dialogue between Mr Woods and the judge continued, with the judge underlining that it was a preliminary view. Mr Woods opined that his client was unlikely to have brought the case if the Cheers licence had no significance. The judge did not invite argument from the parties on the point, but Mr Woods asked the question whether it would be appropriate for him to make submissions. The judge did not answer that question, but gave Mr Woods the opportunity to take instructions, which he did, and he then asked whether he could address the judge on the value of the Cheers licence. Mr Woods then made submissions, and having done so, it was Mr Woods who inquired of the judge whether she would rule on what became questions 1 and 2.

48. As I read the detailed note of the hearing, in no sense did the judge invite Mr Woods to ask for the rulings on these questions. Certainly Westminster took no initiative in that regard. As described earlier, the judge specifically asked about the consequences of her answering the questions adversely to Novus's interests. Would Novus abandon the appeal? Mr Woods replied that he was not sure whether the appeal should be withdrawn or dismissed. The first two questions were answered.

49. On the second day Mr Woods almost immediately said that he needed to ask for a ruling on a third question on the particular case. The judge's response on seeing the question was to say that it was difficult because it was an answer to the hearing as a whole, which she had not had. Mr Woods made it clear to the judge that the principle of the case was the surrender of the Cheers hours. If she adhered to her preliminary view regarding the significance of the surrender of the premises licence of Cheers, he effectively had no case. Having confirmed that Mr Woods was content for her to answer the third question, she did so.

50. This brief reiteration of what happened at the hearing makes clear that it was at the instigation of Novus, not the judge, that the questions were posed and answered. In no way can it be suggested that Novus was forced into the course which the judge adopted. The judge had expressed a preliminary view on one aspect of the case, but that in no sense precluded Mr Woods from advancing Novus's appeal, although it might have identified features which would not be considered strong points.

51. It cannot be said to be an error of law for a judge to agree to rule on a question where a party, particularly a legally represented party, asks the judge to do so. That is subject to this caveat: the common law method is intensely empirical. It proceeds by the accretion of cases decided in particular factual contexts. It eschews addressing issues in the abstract, or rendering advisory opinions. It avoids pronouncing on matters where there is no dispute to be resolved. That is no doubt because common law courts see their role as primarily resolvers of disputes, rather than as law- making bodies. There are also concerns about the difficulties which might arise should they answer abstract questions. One side of the coin is whether the parties will have the incentive fully to explore the issues; the other is whether the court itself can do the issues full justice, without having some idea how they might play out in the real world.

52. In this case the judge was not answering questions in the abstract. Novus obviously considered that if the judge was against it regarding the significance of its offer to surrender the Cheers licence, its appeal was bound to fail. Mr Woods, acting on behalf of Novus, seemed plainly of the view that there were no other features of the appeal which offered any prospect of it succeeding. That was the derivation of the three questions posed to the judge, and why he suggested that the judge might dismiss his client's appeal if she decided the Cheers' point against him.

### Issue 2: The judge's answers

53. Novus's pleaded objection is to the answer the judge gave to question 3. Although in the course of his oral submissions Mr Gouriet QC expressed disquiet about the questions as a whole being asked, no particular passage was identified in the answers to question 1 and 2 as being defective. Nor, in my view, could they be.

54. As to the answer to question 3, the focus of Mr Gouriet QC's attack was on the second and third paragraphs. There the judge concluded that, in the particular circumstances, the surrender of the premises licence at Cheers was not capable of itself of being an exceptional circumstance under Westminster's Statement of Licensing Policy to require the application to be granted. The particular circumstances the judge identified were that the area was suffering from cumulative stress, Westminster's Stress Area Policies were applicable, the Cheers licence offered in surrender was in respect of premises that had been closed for a year, the building in which Cheers operated had been demolished, and the statements of witnesses objecting to the application were in the court's papers.

55. In Mr Gouriet QC's submission, that catalogue of particular circumstances amounted to little, if anything, more than a closure of the premises for a year and their demolition. In fact he contended there was an error of fact in that the Cheers premises had not been demolished at the time of the application in February, the demolition occurring later in the year. In his submission, the judge's selection of particular circumstances fell far short of the matters which axiomatically it was necessary to consider to make a rational determination as to the weight to be given to the proposed surrender of the Cheers licence. There were two bundles of evidence and documents lodged on behalf of Novus consisting of some 300 pages.

56. Nowhere in the answer to question 3, Mr Gouriet QC contended, was there any mention of a matter informing the judge's finding that surrender of the Cheers *licence*, of itself, could not amount to exceptional circumstances within Westminster's policy. In Mr Gouriet QC's submission the judge lost sight of the statutory test set out in section 18 of the Act, namely, whether it was necessary to reject the application for a new licence in order to promote the licensing objectives. The weight to be given to the proposed surrender of the Cheers licence and its impact on the proposed licensing objectives could only rationally be assessed in the context of a host of other material considerations. Novus's proposal involved a reduction in the number of licences. Whether or not that reduction had been counterbalanced by other grounds, or was otherwise of no assistance because of what had occurred, and the lapse of time since the Cheers licence had traded, was dependent on the evidence as a whole.

57. In my judgment, there is no reviewable flaw in the judge's analysis of the issues presented to her in question 3. Under sections 18(3) and (4) of the Licensing Act 2003, the test in considering whether to grant or refuse an application for a premises licence is whether it is necessary in order to promote the licensing objectives. Westminster's licensing policy is the background under section 4(3) against which individual licensing decisions should be made, applying that statutory test. Westminster has adopted a policy of refusing applications for new public houses and bars in the so- called Stress Areas - where it is considered

there is already a saturation of such establishments, the cumulative impact of which has led to problems of crime, disorder and public nulsance - other than for a variation of hours within the prescribed core hours. The policy recognises exceptional cases, although it makes clear that a case is most unlikely to be considered exceptional unless it is directed at the underlying reasons for having the policy.

58. In this case, Novus's application for a new premises licence at 4- 6 Glasshouse Street clearly fell foul of the Stress Areas Policy because the later hours sought were outside core hours and related to the sale of alcohol and the provision of facilities for music and dancing. Since the application attracted relevant representations from the Metropolitan Police, Westminster's Environmental Health Department and two local Residents' Associations, a hearing had to be convened to consider the application. It fell to Novus to seek to persuade the licensing sub- committee that its application should be granted as an exception to the Stress Areas Policy. It sought to do this, *inter alla*, by adducing the Cheer's licence and arguing that its surrender, along with that of the two existing premises licence at 4- 6 Glasshouse Street, constituted an exception for the reasons already outlined. The Licensing Sub- Committee rejected the application. Before me, no objection was taken to the manner in which it approached the application. It is difficult to see how there could be.

59. There was then the appeal to the judge. She was posed question 3 in the form described. It was framed in terms of Westminster's statement of licensing policy, with reference to the facts of the case. The question was whether the surrender of the premises licence for Cheers was capable of itself of being an exceptional circumstance, under paragraph 2.4.5 of Westminster's policy, in relation to the application in respect of the Glasshouse Street premises. Far from being wrong, the judge's answer is, in my view, self-evidently correct. The application for the Glasshouse Street premises was to extend the hours during which alcohol could be sold and music and dancing provided to 3am, seven days a week. Since the premises were located in the West End Stress Area, the policy indicated that the application be refused unless the case could be considered exceptional.

The Cheers licence was extant, but the application was for premises elsewhere. Crucially the Cheers premises were closed and, at the time of the application, ear- marked for demolition. The judge sensibly concluded that the surrender of a redundant premises licence relating to such premises, premises which by the time of the hearing were demolished as planned, could not of itself be capable of rendering the application with respect to the Glasshouse Street premises exceptional in policy terms.

60. None of this is inconsistent with the legislation. The Licensing Act 2003 establishes a clear link between a premises licence and the particular premises to which it relates. When premises close because they are to be demolished, the premises licence is effectively a dead letter. The licence may be extant because the holder continues to pay the fee, but the licence is of no practical use because the premises to which it relates cannot be used.

In my view, the surrender of a premises licence in these circumstances cannot, under the Act, promote the licensing objectives with regard to an application for a new premises licence in respect of other premises situated elsewhere. In my judgment, the judge's answer to question 3 was faultless.

61. I dismiss the claim.

62. MR MATTHIAS: My Lord, we are obliged. There is an application for costs. I would ask you to undertake a summary assessment, if you would be prepared to do so. Can I pass up - -

63. MR JUSTICE CRANSTON: Has Mr Booth seen that?

64. MR MATTHIAS: Yes, my Lord, schedules of costs were exchanged on Friday.

65. MR JUSTICE CRANSTON: Mr Booth, what do you say about it?

66. MR BOOTH: My Lord, obviously I cannot resist the principle of costs on this. My learned friend did exchange with my solicitors on Friday this schedule, or a schedule that looked very like this one. I took instructions this morning that we were happy with the quantum on the schedule as provided. However, there are two additions, I am instructed, on this new schedule which you have before you. The first of those is the final entry above counsel's fees, attendance at hearing 11 April. I do not see how I can resist that. That does not seem unreasonable. As regards my learned friend's fees, and I do hesitate to take any point on this, but, in my submission, with the greatest of respect to my learned friend, it was not necessary for Queen's Counsel to attend this hearing.

67. MR JUSTICE CRANSTON: That takes out £1,000. I think I said that there was no need for you to attend.

68. MR MATTHIAS: My Lord, you did.

69. MR JUSTICE CRANSTON: I can appreciate why you might, but I think we might take that out.

70. MR MATTHIAS: There would have been a fee for anyone who did attend, of course.

71. MR JUSTICE CRANSTON: I was assuming your solicitor might attend. She appears to be very competent.

- 72. MR MATTHIAS: She is.
- 73. MR JUSTICE CRANSTON: What would the fee be if someone did attend?
- 74. MR MATTHIAS: If it were a junior, I apprehend it would be half of that.
- 75. MR JUSTICE CRANSTON: £500. Anything else?
- 76. MR MATTHIAS: Is that the entirety of the sum bar £500?
- 77. MR JUSTICE CRANSTON: Yes.
- 78. MR MATTHIAS: We are very obliged.
- 79. MR JUSTICE CRANSTON: Mr Booth?

80. MR BOOTH: My Lord, there is an application for permission to appeal your decision. The first basis on which I would seek leave from your Lordship to appeal is that, on the defendant's own case, the District Judge determined the matter having regard to what we would say is an irrelevant consideration, or alternatively she determined it on an erroneous factual premise, namely that at the relevant date the premises had been demolished, whereas the evidence, such as it was before the court, was not only that the premises had not been demolished at the date of the application, but they had not in fact been demolished at the date of the licensing sub- committee hearing, the evidence being that demolition took place in July, whereas that hearing took place in May 2009.

81. MR JUSTICE CRANSTON: Did you tell me July? You certainly told me that they had not been demolished in February.

82. MR BOOTH: My Lord, it was July. My learned friend and leading counsel, Mr Gouriet - ·

83. MR JUSTICE CRANSTON: I must say I took a note, I know. So that is the first point, yes.

84. MR BOOTH: That is the first point. Secondly, my Lord, we would point to what we say is the unequivocal statement by the District Judge in the transcript to the effect that this non- operational licence cannot amount to exceptional circumstances. We would say that that finding simply was not open to the District Judge given that she had not heard the evidence in the case. I appreciate that is going to the substance of your Lordship's judgment. But, in my submission, with respect that finding was not open to the District Judge.

85. MR JUSTICE CRANSTON: Yes, thank you for those submissions, but I think you will have to go elsewhere.

86. MR BOOTH: I am grateful.

87. MR JUSTICE CRANSTON: Thank you very much.

88. MR MATTHIAS: Just for the avoidance of doubt, the figure for the summary assessment is £24,909.30.

89. MR JUSTICE CRANSTON: Yes. Thank you.

90. MR MATTHIAS: We are very grateful.

## Additional Conditions Proposed to the Police for HERE, St Giles Square, Denmark Place - variation application

- 1. The security team, working in conjunction with the Outernet security team, shall monitor parking along Denmark Street and shall discourage patrons from parking illegally. If cars have parked illegally then security shall inform Camden Council for the purposes of ticketing.
- 2. The premises licence holder shall host, at least every quarter, a meeting inviting local residents and businesses to attend.
- 3. A direct dial telephone number shall be provided to residents that shall be manned during operating hours of the venue. Details of any calls received shall be logged and a note subsequently made of the action taken. Details to be made available upon request to responsible authorities.
- 4. From midnight, when the venue is trading, external sound checks shall be carried out every 30 minutes and logged.
- 5. Where the premises are operating until 4 am, then from 11 pm Club Scan shall be used as a condition of entry for any member of the public (excluding VIP, artists, or manager guest list) attending a public promoted event.