

Committee :	Date	Classification
<b>Licensing Sub Committee</b>	<b>14<sup>th</sup> March 2017</b>	<b>Unrestricted</b>

Report of : <b>David Tolley</b> <b>Head of Environmental Health &amp; Trading Standards</b>	Title: <b>Licensing Act 2003 Application for a Premises Licence for Phoenix Off Licence – Ground Floor, 104 East India Dock Road, London, E14 0BP</b>
Originating Officer: <b>Andrew Heron</b> <b>Licensing Officer</b>	Ward affected: <b>Poplar</b>

## 1.0 **Summary**

Applicant: **Narin Karakus**  
Name and Address of Premises: **Phoenix Off Licence**  
**Ground Floor**  
**104 East India Dock Road**  
**London**  
**E14 0BP**

Licence sought: **Licensing Act 2003**  
**The Sale of Alcohol**

Objectors: **A Local Business**

## 2.0 **Recommendations**

2.1 That the Licensing Committee considers the application and objections then adjudicate accordingly.

**LOCAL GOVERNMENT 2000 (Section 97)**  
**LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT**

Brief description of "background paper"

Tick if copy supplied for register

If not supplied, name and telephone number of holder

File Only

**Andrew Heron**  
**020 7364 2665**

### 3.0 **Background**

3.1 This is an application for a premises licence for Phoenix Off Licence – Ground Floor, 104 East India Dock Road, London, E14 0BP.

3.2 A copy of the application is enclosed as **Appendix 1**.

3.3 The applicant has described the nature of the application as:

- The sale of alcohol

3.4 The hours that have been applied for are as follows:-

#### **Sale of Alcohol (off sales only)**

- Monday to Sunday from 07:00hrs to 23:00hrs

#### **Hours premises is open to the public:**

Monday to Sunday from 07:00hrs to 23:00hrs

### 4.0 **Location and Nature of the premises**

4.1 Photographs of the venue and immediate vicinity will be provided at the hearing.

4.2 The site plan of the venue is included as **Appendix 2**.

4.3 Maps showing the vicinity are included as **Appendix 3**.

4.4 There are no other licensed premises in the immediate vicinity.

### 5.0 **Licensing Policy and Government Advice**

5.1 The Council has adopted a licensing policy and this is available from the Licensing Section, and at the hearing. The revised policy came into effect on 1<sup>st</sup> November 2013.

5.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.

5.3 The Home Secretary has issued Guidance under Section 182 of the Licensing Act 2003. This is available on the Government's website, [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk). It was last revised in March 2015.

5.4 Relevant Sections of this advice are brought to Members attention within the Licensing Officers report. Members should note however, that in some areas Tower Hamlets, after a proper consideration of local circumstances, has not followed the Government's advice, or has developed it further.

## 6.0 Representations

- 6.1 All representations have to meet basic legal and administrative requirements. If they fail to do so they cannot be accepted. When rejected the person sending in the representation must be written to, and an explanation for rejection given in writing
- 6.2 A responsible authority or other person can make a representation. There are two tests for other persons and only one for a responsible authority. The two tests are contained in Section 18 of the Act.
- 6.3 All representations must be “about the likely effect of the grant of the premises licence on the promotion of the licensing objectives.” Likely means something that will probably happen, i.e. on balance more likely than not.
- 6.4 Representations by responsible authorities do not have to meet the second test of not being vexatious and frivolous. Other persons have to meet this test.
- 6.5 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 6.6 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 4**.
- 6.7 All the representations in this report have been considered by the relevant officer (Team Leader Licensing & Safety) and determined to have met the requirements of the Licensing Act 2003.
- 6.8 This hearing is required by the Licensing Act 2003, because relevant representations have been made by Jamir Chowdhury, a local business owner of JTA Convenience Store, an unlicensed shop, please see **Appendices 5**.
- 6.9 Members will note from the lone representation its borderline validity. Members must not take into account complaints of potential competition as this falls out of the scope of the Licensing Objectives. It is noted that Mr Chowdhury states that ‘a number of people’ have approached him with concerns about the new premises, however, no other representations have been received, nor has proof of additional concerned residents been forthcoming. The premises was a public house a number of years ago, however, no complaints have been received about the premises in the last five years.
- 6.10 All of the responsible authorities have been consulted about this application. None have made representation. They are as follows:
- The Licensing Authority
  - The Metropolitan Police
  - The LFEPA (the London Fire and Emergency Planning Authority).
  - Planning
  - Health and Safety
  - Noise (Environmental Health)
  - Trading Standards

- Child Protection
- Primary Care Trust (Public Health England)

6.11 In addition the application was required to be advertised in a local newspaper and by a blue poster. Only objections that relate to the following licensing objectives are relevant:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

6.12 The objections cover allegations of

- Potential anti-social behaviour from patrons leaving the premises
- Close proximity to residential properties

6.13 There are strict time limits to any representations. The time limits are contained in The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.

6.14 The applicant has offered measures in the operating schedule of the application that address the promotion of the Licensing Objectives. If there were no representations, the Licensing Authority would grant the licence, with conditions consistent with the operating schedule, which are relevant, proportionate and enforceable. Members are asked to consider the schedule and incorporate any conditions as necessary to address the licensing objectives.

## 7.0 **Conditions consistent with Operating Schedule**

7.1 The Applicant has proposed a number of potential conditions in the Operating Schedule within the application, namely:

- 1) To look to the Police as main source of advice on crime and disorder;
- 2) CCTV in operation both inside and outside of the premises to prevent criminal behaviour;
- 3) To prevent poor management which could lead to any disorder and risk public safety i.e. not to sell alcohol to someone who is already under influence of alcohol to prevent any disorder from rising;
- 4) Appropriate and frequent waste disposal especially glass bottles if any;
- 5) Ensuring adequate lighting outside to the premises to prevent any crime / disorder to keep area safe;
- 6) Ensuring to keep the fire and safety standards and requirements;
- 7) Prevent litter from building up and smelling, ensuring all waste is disposed of correctly;

- 8) Try to reduce light disturbance from the lights in the shop/sign to the residents around while balancing the need of light to maintain public safety and prevent crime and disorder;
- 9) Address any disturbance caused as customers leave and enter during late hours to prevent residents being disturbed;
- 10) Preventing purchase of alcohol by or on behalf of a child/children;
- 11) Not allowing delivery / sending a child to obtain alcohol;
- 12) Preventing unsupervised sale by a child;
- 13) Prohibiting sale of alcohol to a child/children;
- 14) No sale of alcohol to anyone under the age of 18.

8.0 No additional conditions have been requested by any of the Responsible Authorities.

## 9.0 Licensing Officer Comments

9.1 The following is intended to advise Members of the relevant aspects of the Boroughs Licensing Policy, guidance from the Secretary of State, legislation and good practice. Members may depart from the Council's Licensing Policy and/or Government advice, provide they consider it appropriate to do so, and have clear reasons for their decision.

9.2 Guidance issued under section 182 of the Licensing Act 2003

- ❖ As stated in the guidance it is "provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act." It is a key medium for promoting best practice, ensuring consistent application and promoting fairness equal treatment and proportionality (1.7).
- ❖ Also "as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken." Therefore licensing authorities will need to give full reasons for their actions (1.9).
- ❖ Also Members should note "A Licensing Authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives." (1.12)

- ❖ Also, “The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.” Therefore, conditions may not be imposed for the purpose other than promoting the licensing objectives and in some cases no additional conditions will be appropriate. (10.8)
  - ❖ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.4).
  - ❖ The Guidance states: “Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.” (10.14)
  - ❖ Mandatory conditions must be imposed (10.27) and censorship avoided (10.17).
  - ❖ The Guidance states: “It is still permitted to sell alcohol using promotions (as long as they are compatible with any other licensing condition that may be in force), and the relevant person should ensure that the price of the alcohol is not less than the permitted price. Detailed guidance on the use of promotions is given in the guidance document available on the Gov.uk website.” (10.60) Also, “Licensing authorities should not attach standardised blanket conditions promoting fixed prices for alcoholic drinks to premises licences or club licences or club premises certificates in an area.” (10.21)
- 9.3 The Licensing Act 2003 permits children of any age to be on premises which primarily sell alcohol providing they are accompanied by an adult. It is not necessary to make this a condition.
- 9.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 9.5 In all cases Members should consider whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.
- 9.6 The Government has advised that conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. Conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff and standardised conditions should be avoided where they cannot be shown to be appropriate. (1.16/1.17)

9.7 The Council's Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

9.8 In **Appendices 6-7** Members are given general advice, and also have explanations of the Council's Licensing Policy, Government advice and other legislation relating to the matters previously identified.

## 10.0 **Legal Comments**

10.1 The Council's legal officer will give advice at the hearing.

## 11.0 **Finance Comments**

11.1 There are no financial implications in this report.

## 12.0 **Appendices**

<b>Appendix 1</b>	A copy of the application
<b>Appendix 2</b>	Site Plan
<b>Appendix 3</b>	Maps of the surrounding area
<b>Appendix 4</b>	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
<b>Appendix 5</b>	Representation of Jamir Chowdhury, local business owner of JTA Convenience Store
<b>Appendix 6</b>	Licensing officer comments on anti-social behaviour patrons leaving the premises
<b>Appendix 7</b>	Licensing officer comments on Access and egress problems