

Committee :	Date	Classification
Licensing Sub Committee	14th February 2017	Unrestricted

Report of : David Tolley Head of Environmental Health & Trading Standards	Title: Licensing Act 2003 Application for a New Premises Licence for Poplar Union, 2 Cotall Street, London, E14 6TL
Originating Officer: Andrew Heron Licensing Officer	Ward affected: Lansbury

1.0 Summary

Applicant: **Poplar Housing & Regeneration Community Association Limited**

Name and Address of Premises: **Poplar Union
2 Cotall Street
London E14 6TL**

Licence sought: **Licensing Act 2003
The Sale of Alcohol
Provide regulated entertainment**

Objectors: **Local Residents**

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 new premises licence for Poplar Union, 2 Cotall Street, London, E14 6TL. The premises has not been previously licensed.

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
- Providing regulated entertainment

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

Sale of Alcohol (on sales only)

- Monday to Saturday from 08:00hrs to 22:30hrs
- Sunday from 09:00hrs to 20:30hrs

The Provision of Regulated Entertainment in the form of Live Music, Recorded Music and anything of a similar description (indoors):

- Monday to Saturday from 08:00hrs to 22:30hrs
- Sunday from 09:00hrs to 20:30hrs

Hours premises is open to the public:

- Monday to Saturday from 08:00hrs to 22:30hrs
- Sunday from 09:00hrs to 20:30hrs

3.5 Members should note that the application states that the terminal hour for all licensable activities to be Monday to Saturday at 23:00hrs and Sunday at 21:00hrs. This reduction has been agreed with the Responsible Authorities.

3.6 Please see Appendix 2-4 for copies of emails between the Applicant and the Responsible Authorities, agreeing new timings and additional conditions for the Operating Schedule.

- **Appendix 2** Nicola Cadzow, LBTH Environmental Health (Noise)
- **Appendix 3** PC Alan Cruickshank, Metropolitan Police
- **Appendix 4** James Gilley, LBTH Child Protection

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 5**.

- 4.3 Maps showing the vicinity are included as **Appendix 6**.
- 4.4 There are no other licensed venues in the immediate vicinity. There is however, a convenience store (off licence only) at Dod Street, more than some 170 metres from the premises licenced for alcohol from 08:00hrs to 23:00hrs 7days-a-week.

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 1st 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. 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 7**.
- 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 the following local residents:
- **Appendix 8** Darren Buckingham
 - **Appendix 9** Jimmy Mian Guan Lim
 - **Appendix 10** Roxanna Ong
 - **Appendix 11** Heeten Patel
 - **Appendix 12** Tony Portacio
 - **Appendix 13** Mr F Wymont
 - **Appendix 14** A Petition headed by Mohammed Rashid

Members may wish to note that the petition received from Mr Rashid contains 24 signatories. Members will note that some signatories have not fully completed the sections asking for their name and/or address. In some instances, the details provided by the signatory are wholly illegible. It is not practice for the Licensing Authority administering an application to contact all the signatories on a petition to verify that the objection has been properly sought and understood. Therefore Members may wish to decide how much weight to give to the petition in its current form. Signatories to the petition may attend the Hearing; however it is customary that the lead petitioner (Mr Rashid in this case) will represent any countersigners.

- 6.9 All of the responsible authorities have been consulted about this application. 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)
- 6.10 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

6.11 The objections cover allegations of:

- The potential for anti-social behaviour on the premises
- The potential for anti-social behaviour from patrons leaving the premises
- Noise while the premise is in use
- Disturbance from patrons leaving the premises on foot
- Disturbance from patrons leaving the premises by car
- Lack of adequate car parking facilities
- Close proximity to residential properties
- Excessive licensed hours

6.12 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.

6.13 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 Members will note from the application for that the Operating Schedule is predominately blank. The conditions offered are listed as:

1. Suitable CCTV system will be operational at all times when licensable activities are being carried out and at any other times where member of the public are present on the premises;
2. All staff will receive full training in respect of the Licensing Act 2003;
3. The PLH/DPS staff will ask for proof of age from any person appearing to be under the age of 25 who attempts to purchase alcohol at the premises.

8.0 Conditions Agreed/Requested by Responsible Authorities

8.1 Members may wish to consider applying the following conditions as listed in the emails available in **Annexes 2-4**:

1. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance;
2. Loudspeakers shall not be located in the entrance lobby or outside the premises building;
3. All windows and external doors shall be kept closed after 21:00hrs, or at any time when regulated entertainment takes place, except for the immediate access & egress of persons;
4. Premises to be manned at all times by staff who will monitor Young Persons on the premises at all times;
5. No unaccompanied persons under 16 on the premises after 2100hrs;
6. A CCTV system to be put in place, the cameras are to be of sufficient quality so that people's faces are clearly identifiable from the footage. The cameras are to be placed in such a way as they cover areas of the inside of the venue and the entrance. The system is to record the footage and to keep it for a minimum of 30 days and a copy off CCTV footage is to be made available to Police or the Local Authority upon request and supplied within 24 hours. While the premises are open to the public a member of staff must be on duty who can operate the CCTV system;
7. The premises will operate a Challenge 21 policy, all those who look under 21 years of age will asked for proof of age;
8. An incident record book is to be kept at the premises, this book will record all refusals of the sale of alcohol, all disorder and crimes that occur either in the premises or involve the premises customers, or any other incident of note.

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 15-18** 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

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| Appendix 1 | A copy of the application |
| Appendix 2 | Email from the Applicant’s Legal Agent to Nicola Cadzow, LBTH Environmental Health (Noise) |
| Appendix 3 | Email from the Applicant’s Legal Agent to PC Alan Cruickshank, Metropolitan Police |
| Appendix 4 | Email from the Applicant’s Legal Agent to James Gilley, |

LBTH Child Protection

- Appendix 5** Site plan
- Appendix 6** Maps of the surrounding area
- Appendix 7** Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
- Appendix 8** Representation of local resident Darren Buckingham
- Appendix 9** Representation of local resident Jimmy Mian Guan Lim
- Appendix 10** Representation of local resident Roxanna Ong
- Appendix 11** Representation of local resident Heeten Patel
- Appendix 12** Representation of local resident Tony Portacio
- Appendix 13** Representation of local resident Mr F Wymont
- Appendix 14** Representation of local resident A Petition headed by Mohammed Rashid
- Appendix 15** Licensing Officer comments on Anti-Social Behaviour on the Premises
- Appendix 16** Licensing Officer comments on Anti-Social Behaviour from Patrons Leaving the Premises
- Appendix 17** Licensing Officer comments on Access and Egress Problems
- Appendix 18** Licensing Officer comments on Licensing Policy Relating to Hours of Trading