

Committee :	Date	Classification
Licensing Sub Committee	9th May 2015	Unrestricted

Report of: David Tolley Head of Environmental Health & Trading Standards Originating Officer: Mohshin Ali Senior Licensing Officer	Title: Licensing Act 2003 Application for a Premises Licence for (Kafe 1788 Ltd), 4 Vesey Path, London E14 6BT Ward affected: Lansbury
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1.0 Summary

Applicant:	Kafe 1788 Ltd
Name and	Kafe 1788 Ltd
Address of Premises:	4 Vesey Path London E14 6BT
Licence sought:	Licensing Act 2003 – premises licence <ul style="list-style-type: none"> • The sale by retail of alcohol • The provision of regulated entertainment
Representations:	Local business (one)

2.0 Recommendations

- 2.1 That the Licensing Committee considers the application and representations 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

Mohshin Ali
020 7364 5498

3.0 **Background**

3.1 This is an application for a premises licence for (Kafe 1788 Ltd), 4 Vesey Path, London E14 6BT.

3.2 The applicant has described the premises as follows:

“Kafe 1788 is a coffee shop. We are cooking and baked most of our food. Alcohol will be provided with food mainly. Most of the alcohol will be coming from beer supplier and majestic wines. Alcohol will be consumed within the coffee shop only, no alcohol in to the street will be allowed”.

3.3 The original application was received on the 6th February 2017. However, due to a technical error by the applicant, the consultation period was extended and then an amended application was submitted. A copy of the premises licence application form is enclosed as **Appendix 1**

3.4 The applicant has previously revised the licensable activities and timings in consultation with Environmental Protection and Met Police as follows:-

The Sale by retail of alcohol (on and off sales)

- Monday to Sunday, from 12.00 hours to 22:30 hours

The provision of regulated entertainment – Indoors (films and live music)

- Monday to Sunday, from 12.00 hours to 22:30 hours

(Anything of a similar description to live music, recorded music and performance) Further details: “Yoga Session (now is only yoga but could host more soft activities)”

- Monday to Sunday, from 07.30 hours to 20:00 hours

NOTE: Members may wish to note that holding a yoga (exercise) session is not a licensable activity. The applicant may wish to remove this from the application.

For members’ information, late night refreshment is from 23:00 hours to 05:00 hours. A premises licence is not required outside of these times.

The opening hours of the premises

- Monday to Friday, from 07:30 hours to 23:00 hours
- Saturday, from 10:00 hours to 23:00 hours
- Sunday, from 10:00 hours to 23:00 hours

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 Details of the nearest licensed venues are included as **Appendix 4**.

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 the 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 5**.

- 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 a relevant representation has been made the following local business:
- Mr Hasanie (Prime Wholesale UK Ltd) - **Appendix 6**
- 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
 - Public Health
- 6.10 In addition the application was required to be advertised in a local newspaper and by a blue poster. The applicant failed to advertise the application on the newspaper within the required time. Therefore, the consultation period was extended to 9th April 2017 and it has now been correctly advertised
- 6.11 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 Essentially, the relevant party opposes the application because the applicant has not explained how within the context of the application they will meet licensing objective of the prevention of public nuisance and the prevention of crime and disorder.
- 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 (as offered by the applicant)

- 7.1 No alcohol shall be consumed immediately outside the premises.
- 7.2 There shall be a personal licence holder on duty on the premises at all times when the premises are authorised to sell alcohol.
- 7.3 The supply of alcohol at the premises shall be ancillary to food.
- 7.4 A First aider will be on site at all time
- 7.5 Notices shall be displayed at the entrance and exits to remind customers to leave the premises quietly.
- 7.6 A Challenge 21 or Challenge 25 proof of age scheme shall be operated at the premises
- 7.7 Poster with Age check reminder will be put around till area.

8.0 Conditions in consultation with the Responsible Authorities/other persons

- 8.1 Environmental Protection has agreed (please see **Appendix 7**) the following with the applicant:

“Licensable Activities:- Films, Live Music, Sale of Alcohol until 22:30 hours, with premises closing 30 minutes later at 23:00 hours
Late Night refreshment is not required as closing at 23:00 hours
Anything of a Similar Description (Section H of the Application) – remains as original application.

The following conditions to apply:

- 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 22:00 hours, or at any time when regulated entertainment takes place, except for the immediate access & egress of persons.”

- 8.2 Met Police has also agreed (please see **Appendix 8**) the following with the applicant:

“1) 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 pub specified by the Police. The system is to record the footage and to keep it for a minimum of 30 days and a copy of 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.

2) A 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. The incident book is to be signed off every day by the manager even if there is nothing to report”.

9.0 **Licensing Officer Comments**

9.1 The following is intended simply 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 the premises which primarily sells 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 9 - 14** 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**

Appendix 1	A copy of the application
Appendix 2	Site Plan
Appendix 3	Maps of the surrounding area
Appendix 4	Other licensed venues in the area
Appendix 5	Section 182 Guidance by the Home Office
Appendix 6	Representation of Mr Hasanie
Appendix 7	Agreement with Environmental Protection
Appendix 8	Agreement with Met Police
Appendix 9	Licensing Officer comments on noise while the premise is in use
Appendix 10	Licensing Officer comments on access/egress Problems
Appendix 11	Licensing Officer comments on crime and disorder on the premises
Appendix 12	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 13	Planning
Appendix 14	Licensing Policy relating to hours of trading