

Committee :	Date	Classification
Licensing Sub-Committee	11th July 2017	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 Le Bun, 41 Commercial Street, London E1 6BD Ward affected: Spitalfields and Banglatown
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1.0 Summary

Applicant:	Le Bun Ltd
Name and	Le Bun
Address of Premises:	41 Commercial Street London E1 6BD
Licence sought:	Licensing Act 2003 – premises licence <ul style="list-style-type: none"> • The sale by retail of alcohol • The provision of late night refreshment
Representations:	Licensing Authority

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 Le Bun, 41 Commercial Street, London E1 6BD.
- 3.2 A copy of the premises licence application form is enclosed as **Appendix 1**.
- 3.3 The applicant has applied for the following licensable activities and timings:-

The sale by retail of alcohol (On and off sales)

- Monday to Thursday, from 11:00 hours to 23:30 hours
- Friday and Saturday, from 11:00 hours to 00:00 hours
- Sunday, from 11:00 to 22:30 hours

The provision of late night refreshment – Indoors

- Monday to Thursday, from 23:00 hours to 23:30 hours
- Friday and Saturday, from 23:00 hours to 00:00 hours
- Sunday (No late night refreshment)

Non-standard timings

- From the end of permitted hours on New Year's Eve until, the start of permitted hours on New Year's Day

The opening hours of the premises

- Monday to Thursday, from 11:00 hours to 23:30 hours
- Friday and Saturday, from 11:00 hours to 00:00 hours
- Sunday, from 11:00 to 22:30 hours

Non-standard timings

- From the end of permitted hours on New Year's Eve until, the start of permitted hours on New Year's Day

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 April 2017.
- 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 This hearing is required by the Licensing Act 2003, because relevant representations have been made the following:
 - Licensing Authority (Responsible Authority) – **Appendix 5**
- 6.2 All of the responsible authorities have been consulted about this application. They are as follows:
 - The Licensing Authority (acting as a responsible authority)
 - The Metropolitan Police
 - The LFEPA (the London Fire and Emergency Planning Authority).
 - Planning
 - Health and Safety
 - Environmental Health (Noise)
 - Trading Standards
 - Child Protection
 - Public Health
 - Home Secretary (Home Office Immigration Enforcement)
- 6.3 In addition the application was required to be advertised in a local newspaper and by a blue poster.
- 6.4 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

- 6.5 Essentially, the Responsible Authority opposes the application because the applicant has not explained how within the context of the application they will meet the licensing objective of the prevention of crime and disorder and the prevention of public nuisance.
- 6.6 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.
- 6.7 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 Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.
- 7.2 Save for the area coloured green on the plan, the supply of alcohol at the premises shall only be to a person seated taking a table meal there and for consumption by such a person as ancillary to their meal.
- 7.3 All sales of alcohol for consumption off the premises shall be in sealed containers and with food only save for the outside seating area.
- 7.4 CCTV must be installed at the premises. Tapes and visual images recorded shall be retained for a period of 31 days and the system installed at the premises must be at least in accordance with the specification issued by the Licensing Authority. Access to the system must be made available to an Authorised Officer on request.
- 7.5 An incident log shall be kept at the premises, and made available on request to an authorised officer of the Council or the Police, which will record the following:
 - a) all crimes reported to the venue;
 - b) all ejections of patrons;
 - c) any complaints received
 - d) any incidents of disorder;
 - e) seizures of drugs or offensive weapons;
 - f) any faults in the CCTV system or searching equipment or scanning equipment
 - g) any refusal of the sale of alcohol; or
 - h) any visit by a relevant authority or emergency service.

- i) A fire risk assessment to be conducted and reviewed regularly in accordance with the requirements of the Regulatory Reform (Fire Safety Order) 2005;
- 7.6 Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
- 7.7 No rubbish, including bottles, shall be moved, removed or placed in outside areas between 2300 hours and 0800 hours.
- 7.8 The outside seating area will only be used by patrons between the hours of 11:00 and 22:00.
- 7.9 All persons in the outside area to be seated.
- 7.10 A proof of age scheme, such as Challenge 21, shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence or passport.
- 7.11 No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
- 8.0 Conditions in consultation with the Responsible Authorities/other persons**
- 8.1 None
- 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 6 - 12** 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	Representation of Licensing Authority
Appendix 6	Licensing Officer comments on noise while the premise is in use
Appendix 7	Licensing Officer comments on access/egress Problems
Appendix 8	Licensing Officer comments on crime and disorder on the premises
Appendix 9	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 10	Planning
Appendix 11	Licensing Policy relating to hours of trading
Appendix 12	Licensing Officer comments on the Tower Hamlets Cumulative Impact Zone