

Committee :	Date	Classification
Licensing Sub Committee	26th July 2017	Unrestricted

Report of : David Tolley Head of Environmental Health & Trading Standards Originating Officer: Corinne Holland Licensing Officer	Title: Licensing Act 2003 Application for a new Premises Licence for REDON 'Railway Arch 289' Cambridge Heath Road, London, E2 9HA Ward affected: St Peters
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1.0 **Summary**

Applicant: **Patrick Walsh**

Name and

Address of Premises: **Redon**
289 Railway Arches,
Cambridge Heath Road
London
E2 9HA

Licence sought: **Licensing Act 2003**
The Sale of Alcohol
Late Night Refreshments
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

Corinne Holland
020 7364 3986

3.0 Background

3.1 This is an application for a new premises licence for **(REDON), 289 Railway Arch, Cambridge Heath Road, London, E2 7DJ.**

3.2 This premises previously had a Premises Licence and was known as Arch Gallery. The premises licence was surrendered by the previous owner on 2nd February 2017. The hours which were on this premises licence were:

Supply of Alcohol (both on and off sales only)

- Sunday to Wednesday from 11:00hrs to 23:30hrs
- Thursday to Saturday from 11:00hrs to 01:30hrs (the following day)

Late Night Refreshment (indoors)

- Sunday to Wednesday from 23:00hrs to 23:30hrs
- Thursday to Saturday from 23:00hrs to 01:30hrs (the following day)

Regulated Entertainment (in the form of Plays, Films, Recorded Music, Performances of Dance (and anything of a similar description) (indoors)

- Sunday to Wednesday from 09:00hrs to 00:00hrs (midnight)
- Thursday to Saturday from 09:00hrs to 01:30hrs (the following day)

Regulated Entertainment in the form of Live Music (indoors)

- Sunday to Wednesday from 11:00hrs to 00:00hrs (midnight)
- Thursday to Saturday from 11:00hrs to 01:30hrs (the following day)

Regulated Entertainment in the form Indoor Sporting Events

- Monday to Wednesday from 08:00hrs to 23:30hrs
- Thursday to Saturday from 23:00hrs to 01:30hrs (the following day)
- Sunday from 09:00hrs to 23:30hrs

The opening hours of the premises

- Monday to Wednesday from 08:00hrs until 00:00hrs (midnight)
- Thursday to Saturday from 08:00hrs to 02:00hrs (the following day)
- Sunday from 09:00hrs to 00:00hrs (midnight)

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

3.4 The applicant has applied for the sale of alcohol, late night refreshments and regulated entertainment.

Sale of alcohol – (on sales only)

- Sunday to Thursday 11:00 – 00:00 hours
- Friday to Saturday 11:00 -01:00 hours

Regulated Entertainment (provision of plays, films, live and recorded music, performance of dance) – (indoors only)

- Sunday to Thursday 11:00 – 00:00 hours
- Friday to Saturday 11:00 -01:00 hours

Late Night Refreshments (indoors and outdoors)

- Sunday to Thursday 11:00 – 00:00 hours
- Friday to Saturday 11:00 -01:00 hours

Hours premises are open to the public:

- Sunday – Thursday 08:00 – 00:30 hours
- Friday – Saturday 08:00 – 01:30 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 other licensed venues in the immediate vicinity 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 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 by the following local residents
- Mr Colin Phillips (**Appendix 5**)
 - Ms Jo Denham (**Appendix 6**)
 - Ms Laura Clarke (**Appendix 7**)
 - Mr Jon Marston (**Appendix 8**)
 - Ms Laura Wadsworth (**Appendix 9**)

- 6.2 Following the resident representations the applicant wrote to the residents on 12th July to try to come to an agreement offering to hold a meeting with the residents on 18th July 2017. (**Appendix 10**)
- 6.3 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
 - Trading Standards
 - Child Protection
 - Public Health
- 6.4 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
- 6.5 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
- 6.6 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.
- 6.7 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.
- 6.8 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.
- 6.9 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 6.10 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 11**.
- 6.11 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.

6.12 The objections cover allegations of:

- Anti-social behaviour on the premises
- Anti social behaviour from patrons leaving the premises
- Noise while the premise is in use
- Disturbance from patrons leaving the premises
- Close proximity to residential properties
- Noise leakage from the premises

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 All incidences of crime and disorder shall be reported to police.

7.2 An incident book shall be used to record all instances of public disorder and incidents at the premises.

7.3 In the event of complaints of noise being received and substantiated by the council's noise officers, the licensee shall cease the activity of live music and appoint a noise consultant registered with the Institute of Acoustics or Association of Noise Consultants to prepare a scheme of further sound insulation and noise control measures, which may include the recalibration of the noise limiting device, to prevent persons in the neighbourhood from being unreasonably disturbed by noise of music, including live music, and amplified or raised voices coming from the premises.

7.4 The scheme shall be submitted for approval by the Council, and the approved scheme fully implemented to the satisfaction of the Council and the licensee notified in writing accordingly, before live music and dancing can resume at the premises.

7.5 Where a noise limiting device is installed, the system must be set by the appointed noise consultant to maximum music noise levels approved by, and in conjunction with, the Council's Pollution Team.

7.6 No drinking shall be permitted outside.

- 7.7 Doors and windows to the premises will be kept closed, so far as practicable, at all times when noise generating regulated entertainment is taking place i.e. live and recorded music.
- 7.8 A dedicated licensed taxi/minicab service shall be available with the premises for customers.
- 7.9 Bottling out from the premises is prohibited between 23:00 hours and 08:00 hours.
- 7.10 Refuse such as bottles must be placed into receptacles outside the premises at times that will minimise the disturbance to nearby properties.
- 7.11 The contact telephone number for the premises duty manager shall be displayed inside the premises or immediately outside the premises such that it is clearly visible from outside without the need to enter the premises.
- 7.12 The licensee shall ensure that all staff, including Door Supervisors if required, shall be trained to carry out these tasks and to facilitate effective crowd dispersal at the end of any given evening, and ensure that they have signed a staff record form to verify that they have been trained in these process.
- 7.13 A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
- 7.14 The licensee shall ensure that staff are trained about age restricted products and ensure that they sign to confirm that they have understood the training. The licensee shall keep records of training and instruction given to staff.
- 7.15 The premises will display and maintain appropriate signage advising customers of the contact details of the Designated Premises Supervisor.
- 7.16 All staff will be given refresher training every twelve months on the legislation relating to the sales of alcohol to underage persons and drunken persons.
- 7.17 Written records of this training shall be kept on the premises and produced to police or other authorised officer upon request.
- 7.18 The DPS should regularly monitor staff to check how they are dealing with young people who ask for alcohol and other age restricted products.
- 8.0 **Conditions Agreed/Requested by Responsible Authority** (Conditions agreed with the Police and Environmental Protection Team)
- 8.1 No Music or Amplified Sound shall be generated on the premises to give rise to a nuisance to neighbouring residents.

- 8.2 Loudspeakers shall not be located in the entrance lobby or outside the premise building.
- 8.3 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.
- 8.4 Two door supervisors on Friday and Saturday. (no times have been specified so members may wish to address this)
- 8.5 Limit the amount of smokers outside after 21:00 hours to 10 people.
- 8.6 The CCTV system shall incorporate a recording facility and any recordings shall be retained and stored in a suitable and secure manner for a minimum of 31 days. A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained. The system will comply with other essential legislation, and all signs as required will be clearly displayed. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity. There must also be someone on the premises, who can download the images and present them on request by a police officer or other responsible authority. One camera be placed outside the entrance and on entry.

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 the 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 12- 19** 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 the application
Appendix 2	Site Plan
Appendix 3	Maps of the surrounding area
Appendix 4	Other licensed venues in the vicinity
Appendix 5	Representations from Mr Colin Phillips
Appendix 6	Representations from Ms Jo Denham
Appendix 7	Representation from Ms Laura Clarke
Appendix 8	Representation from Mr Jon Marston
Appendix 9	Representation from Ms Laura Wadsworth
Appendix 10	Applicants letter to residents
Appendix 11	Section 182 advice by Home office concerning relevant, vexatious, and frivolous representations
Appendix 12	Anti- social behaviour on premises
Appendix 13	Anti-social behaviour leaving the premises
Appendix 14	Noise whilst premises is in use
Appendix 15	S182 Guidance on public nuisance
Appendix 16	Licensing Policy on prevention of nuisance
Appendix 17	Access and Egress problems
Appendix 18	Framework Hours
Appendix 19	Planning