

Committee :	Date	Classification
Licensing Sub-Committee		Unclassified

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 (Shuffle Festival), The Lodge, Tower Hamlets Cemetery Park, Southern Grove, London E3 4PX Ward affected: Mile End
--	--

1.0 Summary

Applicant:	Shuffle Festival Limited
Name and	The Lodge
Address of Premises:	Tower Hamlets Cemetery Park Southern Grove London E3 4PX
Licence sought:	Licensing Act 2003 – premises licence <ul style="list-style-type: none"> • The sale by retail of alcohol • The provision of regulated entertainment • The provision of late night refreshment
Representations:	Environmental Health Noise Licensing Authority (RA) Met Police Licensing Residents <u>against</u> the application Residents <u>supporting</u> the application

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 (Shuffle Festival), The Lodge, Tower Hamlets Cemetery Park, Southern Grove, London E3 4PX.

3.2 The applicant has described the premises as follows:

“Lodge within the Tower Hamlets Cemetery Park. The Lodge will be used as a community arts centre and restaurant/café operated by the Shuffle Festival Team.”

3.3 The original application was received on 17th March 2017. However, due to a technical issue the application was withdrawn by the applicant and then resubmitted on 21st June 2017. A copy of the premises licence application form is enclosed as **Appendix 1**.

3.4 The licensable activities and timings applied for are as follows:-

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

- Monday to Saturday, from 10.00 hours to 23:30 hours
- Sunday, from 10:00 hours to 22:30 hours

The provision of regulated entertainment - Indoors and outdoors (Plays, Films, Live music, recorded music and anything of a similar description)

- Monday to Saturday, from 10.00 hours to 23:30 hours
- Sunday, from 10:00 hours to 22:30 hours

The provision of late night refreshment - Indoors and outdoors

- Monday to Saturday, from 23.00 hours to 23:30 hours
- Sunday (none)

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 Saturday, from 08.00 hours to 00:00 hours (midnight)
- Sunday, from 08:00 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 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 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 We have received representations both **AGAINST** the premises and also in **SUPPORT** of the premises.

6.9 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following:

- RESIDENTS AND RESPONSIBLE AUTHORITIES REPRESENTATIONS **AGAINST** THE APPLICATION

Other persons / Responsible Authority	Appendix
Nicola Cadzow – Environmental Health Noise	6
Kathy Driver – Licensing Authority (R.A.)	7
Alan Cruickshank – Police Licensing	8
Richard and Georgina Andrews – Resident (E3)	9
Andy Roberts – Resident (E3)	10
Roman Werpachowski – Resident (E1W)	11
Perry Valton – Resident (E3)	12

- RESIDENTS REPRESENTATIONS **IN SUPPORT** OF THE APPLICATION

Other persons	Appendix
Alistair Brown - Resident (E1)	13
Barry Reid - Resident (E3)	14
Duncan Drury - Resident (E3)	15
Debbie So & Lynton Pepper - Residents (E5)	16
Dan Stowell - Resident (E3)	17
Justin Willson - Resident (E2)	18
Leandra O'Sullivan - Resident (E3)	19
Matthew Brown - Resident (E3)	20
Sjors Timmer - Resident (E3)	21
Nathalie Fonnesu - Resident (E3)	22

6.10 In addition, numerous representations were received in support of the application. However, they were deemed invalid as they did not meet the relevant criteria under the Licensing Act 2003. They were all written to and advised accordingly.

6.11 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
- Home Secretary (Home Office Immigration Enforcement)

6.12 In addition the application was required to be advertised in a local newspaper and by a blue poster. Only representations 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

6.13 Essentially, the relevant parties have made representations both against and in support of the application, in relation to the licensing objective of the prevention of public nuisance and the prevention of crime and disorder.

6.14 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.

6.15 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 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;

7.2 CCTV camera system covering both internal and external to the premises is to be installed;

7.3 The CCTV recordings are to be maintained for 30 days and to be provided upon request to either a police officer or any officer of any other Responsible Authority;

7.4 At all times when the premises is open, a person who can operate the CCTV system must be present on the premises;

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) All seizures of drugs or offensive weapons;
 - f) Any faults in the CCTV system;
 - g) Any refusal of the sale of alcohol;
 - h) Any visit by a relevant authority or emergency service.
- 7.6 Clear signage is to be displayed prominently and maintained at all exits of the premises requiring patrons to leave and enter the premises and area quietly out of respect for local residents;
- 7.7 Refuse, including bottles are to be taken and placed into receptacles outside the premises at times which will minimise the disturbance to nearby premises;
- 7.8 No drinks to be taken outside after 23:00hrs (including external area);
- 7.9 No more than 10 smokers allowed to smoke in the external areas after 23:00hrs;
- 7.10 No music or amplified sound shall be generated on the premises to give rise to a nuisance to neighbouring residents
- 7.11 All windows and external doors shall be kept closed after 22:00hrs, except for the immediate access & egress of persons.
- 7.12 No licensable activities in the external area after 23:00.
- 7.13 Alcohol consumed in the yard shall be in polycarbonate, plastic or other non-glass drinks containers only.
- 7.14 There shall be no off-sales from the premises, except to persons using the premises designated external seating areas.
- 8.0 Conditions in consultation with the Responsible Authorities/other persons**
- 8.1 Some conditions have been agreed with Environmental Health Noise and others are in dispute (please see **Appendix 6**). This will need to be clarified at the hearing.
- 8.2 Met Police Licensing have issues regarding the 22:00 hours finish for the outside yard and the amount of smokers outside (please see **Appendix 8**)

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 (10.25) 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.” (10.58) 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 23 - 28** 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 -12	Representations against the application
Appendix 13-22	Representations in support of the application
Appendix 23	Licensing Officer comments on noise while the premise is in use
Appendix 24	Licensing Officer comments on access/egress Problems
Appendix 25	Licensing Officer comments on crime and disorder on the premises
Appendix 26	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 27	Planning
Appendix 28	Licensing Policy relating to hours of trading