

Committee :	Date	Classification
Licensing Sub-Committee	23 August 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 Time Limited Premises Licence for (Nomadic Community Gardens), Fleet Street Hill, London E1 5ES Ward affected: Spitalfields & Banglatown
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1.0 Summary

Applicant: **James Wheale**

Name and **Nomadic Community Garden**

Address of Premises: **Fleet Street Hill
London
E1 5ES**

Licence sought: **Licensing Act 2003 – Time Limited Premises Licence until 31/12/17**

- **Sale of Alcohol**
- **Provision of Regulated Entertainment (Plays, Films, Live music, Recorded music)**

Representations: **Local Residents**

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

Corinne Holland
020 7364 3986

3.0 **Background**

3.1 This is an application for a premises licence for (Nomadic Community Garden), Fleet Street Hill, London E1 5ES.

3.2 The applicant has described the premises as follows:

“Two and a half acre brownfield site where we have been given permission from the landowners to use as a community gardens and arts and events space.’

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

3.4 The applicant has applied for the following licensable activities. The hours for Plays and Films have been amended following an agreement with the Police and Environmental Protection:

The Sale of Alcohol (on the premises)

- Friday 17:00 hours to 20:30 hours
- Saturday to Sunday 13:00 hours to 20:30 hours

The Provision of Regulated Entertainment (Plays)

- Tuesday to Thursday 19:00 hours to 20:00 hours
- Friday 19:00 hours to 21:00 hours
- Saturday – Sunday 19:00 to 21:30 hours

The Provision of Regulated Entertainment (Films)

- Wednesday to Thursday 19:00 hours to 20:00 hours
- Friday 19:00 hours to 21:00 hours
- Saturday – Sunday 19:00 to 21:30 hours

The Provision of Regulated Entertainment (Live music)

- Friday 17:00 hours to 20:00 hours
- Saturday and Sunday 13:00 hours to 20:00 hours

The Provision of Regulated Entertainment (Recorded music)

- Saturday to Sunday 13:00 hours to 20:00 hours

For members’ information: As a result of deregulatory changes that have amended the 2003 Act, no licence is required for the following activities:

• Plays: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500.

The opening hours of the premises

- Tuesday to Thursday 09:00 hours to 20:00 hours
- Friday 09:00 hours to 21:00 hours
- Saturday to Sunday 09:00 hours to 21:30 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 There are no premises in the immediate vicinity. The premise is bordered on two sides by a railway.

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 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 4**.
- 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 by the following residents:
- Ben James - **Appendix 5**
 - Charles Curran – **Appendix 6**
 - David Knight – **Appendix 7**
 - David Spurring – **Appendix 8**
 - Charles Dunlop – **Appendix 9**
- 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. 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 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.
- 6.12 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 (as offered by the Applicant)

7.1 All Volunteers helping to manage the space will have an induction course.

7.2 Any member serving alcohol will have to understand licensing the law. They will receive training on induction which will include the following:

- a) the operation of the challenge 21 scheme;
- b) types of acceptable ID;
- c) the method of recording challenges;
- d) the likely consequences of making an underage sale;
- e) refusing sales to persons who appear to be drunk;
- f) proxy sales.

7.3 An incident log shall be kept at the premises, and be available on request to the Police or an authorised officer. It must be completed within 24 hours of any incident and will record the following:

- a) all crimes reported to the venue;
- b) all ejections of patrons;
- c) any complaints received concerning crime and disorder
- d) any incidents of disorder;
- e) all seizures of drugs or offensive weapons;
- f) any faults in the CCTV system, searching equipment or scanning equipment;
- g) any refusal of the sale of alcohol;
- h) any visit by a relevant authority or emergency service

7.4 For events with over 100 persons SIA registered door staff will be employed (members may wish to ask the applicant for further details)

7.5 Regular patrols of the garden to be undertaken during operating hours.

7.6 To have a strict door administration and no glasses or bottles policy (for the attention of members this condition needs to be clarified and made enforceable)

- 7.7 To have a strict noise management policy that sets out sound attenuation measures. Musicians are notified of the sound policy in advance of performance. The volume will be reduced significantly after 20:00hrs (*members may wish to clarify this condition*)
- 7.8 A contact telephone number will be made available to all local residents.
- 7.9 There will be a customer dispersal policy to minimise noise disturbance from guests leaving the gardens (members may wish to clarify what this will be)
- 7.10 To operate a strict no ID no sale policy.
- 7.11 Challenge 21 scheme to be operated.
- 7.12 Anyone under 16 will be prevented from entering the gardens unless they are accompanied by an adult.

8.0 Conditions in consultation with the Responsible Authorities/other persons (see Appendix 10)

- 8.1 Headphones will be worn by all patrons whilst watching the films.
- 8.2 No Music or Amplified Sound shall be generated on the premises to give rise to a nuisance to neighbouring residents.

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 11 - 20** 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	Section 182 Guidance by the Home Office
Appendix 5	Representation of Ben James
Appendix 6	Representation of Charles Curran
Appendix 7	Representation of David Knight
Appendix 8	Representation of David Spurring

Appendix 9	Representation of Charles Dunlop
Appendix 10	Agreement with Police & Environmental Protection
Appendix 11	Licensing Officer comments on noise while the premise is in use
Appendix 12	Licensing Officer comments on access/egress Problems
Appendix 13	Licensing Officer comments on anti social behaviour on the premises
Appendix 14	Licensing Officer comments on anti social behaviour from patrons leaving the premises
Appendix 15	Licensing Policy advice on crime and disorder
Appendix 16	Section 182 Advice regarding crime and disorder
Appendix 17	Section 182 Advice on Public Nuisance
Appendix 18	Licensing Policy advice on Public Nuisance
Appendix 19	Planning
Appendix 20	Licensing Policy relating to hours of trading