

Committee :	Date	Classification
Licensing Sub-committee	23rd August 2017	Unrestricted

Report of: David Tolley Head of Environmental Health and Trading Standards Originating Officer: Corinne Holland Licensing Officer	Title: Licensing Act 2003 Application for a variation of a premises licence for (Efes), 1 Whitechapel Road, London, E1 6TY Ward affected: Spitalfields and Banglatown
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1.0 Summary

Applicant: **Ibrahim Uzun**

Name and **EFES**

Address of Premises: **1 Whitechapel Road
London
E1 6TY**

Licence sought: **Licensing Act 2003 – variation of a premises licence**

- **Extending the times of the licensable activities and opening times**

Representations: **Police
Environmental Protection
Licensing Authority
Resident**

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 variation of a premises licence for (Efes), 1 Whitechapel Road, London E1 6TY.
- 3.2 A copy of the existing licence is enclosed as **Appendix 1**.
- 3.3 The timings of the existing licence are detailed below for information only:-

The Supply of Alcohol (on sales only)

- Monday to Thursday from 10:00hrs to 23:00hrs
- Friday and Saturday from 10:00hrs to 23:30hrs
- Sunday 11:00hrs to 23:00hrs

Note: However, New Year's Eve is subject to the Regulatory Reform (Special Occasion Licensing) Order 2002. Which means that while that order is in effect the premises may remain open for the twelve hours between 23:00hrs on New Year's Eve and 11:00hrs on New Year's Day.

The Provision of Late Night Refreshment (indoors)

- Sunday to Wednesday from 23.00hrs to 23.30hrs
- Thursday to Saturday from 23.00hrs to 00.30hrs (the following day)

The opening hours of the premises

- There are no restrictions on the hours during which this premises is open to the public

- 3.4 A copy of the variation application (plus email confirming correct applied hours) is enclosed as **Appendix 2**.

- 3.5 The applicant has described the nature of the variation as follows:

“The proposed variation is to extend the hours of the opening times, sale of alcohol and late night refreshments”.

- 3.6 The times that have been applied for as follows:

The Supply of Alcohol (on sales)

- Sunday to Wednesday 10:00 hours to 00:00 hours (midnight)
- Thursday to Saturday 10:00 hours to 00:30 hours the following day

Late Night Refreshments

- Sunday to Wednesday 23:00 hours to 02:00 hours
- Thursday to Saturday 23:00 hours to 03:00 hours

The opening hours of the premises

- Sunday to Wednesday from 10:00hours to 02:30 hours
- Thursday to Saturday from 10:00 hours to 03:30hours the following 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 3**.
- 4.3 Maps showing the vicinity are included as **Appendix 4**.
- 4.4 Details of the nearest licensed venues are included as **Appendix 5**.

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 by the following:
 - Police (**Appendix 6**)
 - Environmental Protection (**Appendix 7**)
 - Licensing Authority (**Appendix 8**)
 - Local Resident (**Appendix 9**)
- 6.2 All of the responsible authorities have been consulted about this application. They are as follows:
 - The Licensing Authority
 - The Metropolitan Police
 - The LFEP (the London Fire and Emergency Planning Authority).
 - Planning
 - Health and Safety
 - 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. 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

6.4 Essentially, the relevant parties oppose the application because the applicant has not explained how within the context of the application they will meet the licensing objectives, particularly the prevention of crime and disorder and the prevention of public nuisance.

6.5 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.

6.6 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 The premises will operate a Challenge 25 scheme. Signage to this effect will be displayed on entrance. Passports, driving licence and proof of age cards bearing the PASS hologram will be accepted.

7.2 The DPS will undertake routine monitoring of the refusals register and record that this is being done.

7.3 All staff that makes sales of alcohol will receive regular training (induction and refresher)

7.4 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.

7.5 No drinking will be allowed outside.

7.6 Suitable signage will be displayed at point of exit advising customers to leave the premises quietly.

7.7 Deliveries will only be made within normal working hours (members may wish to consider what these hours are)

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 (See 6.2). 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 10 - 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 existing licence
Appendix 2	A copy of the variation application
Appendix 3	Site plan of the venue
Appendix 4	Maps showing vicinity of venue
Appendix 5	Details of nearest licensed venues
Appendix 6	Representation of Met Police
Appendix 7	Representation of Environmental Protection
Appendix 8	Representation from Licensing Authority
Appendix 9	Resident Representation – Mr Jon Shapiro
Appendix 10	Licensing Officer comments on noise while the premise is in use
Appendix 11	Licensing Officer comments on access/egress Problems
Appendix 12	Licensing Officer comments on ASB on the premises
Appendix 13	Licensing Officer comments on ASB from patrons leaving the premises
Appendix 14	Section 182 Advice regarding crime and disorder
Appendix 15	Licensing Policy Advice on crime and disorder
Appendix 16	Section 182 Advice on Public Nuisance
Appendix 17	Licensing Policy advice on Public Nuisance
Appendix 18	Licensing Policy advice for CIZ

Appendix 19 Planning

Appendix 20 Licensing Policy relating to hours of trading