

Committee :	Date	Classification	Report No.	Agenda Item No.
<b>Licensing Sub-Committee</b>	24/1017	<b>Unclassified</b>		

Report of: <b>David Tolley</b> <b>Head of Environmental Health and Trading Standards</b>  Originating Officer: <b>Mohshin Ali</b> <b>Senior Licensing Officer</b>	Title: <b>Licensing Act 2003</b> <b>Application for a variation of a premises licence for (Agah Turkish Restaurant), 43 Commercial Street, London E1 6BD</b>  Ward affected: <b>Spitalfields and Banglatown</b>
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## 1.0 Summary

Applicant:	<b>Lop Lop Ltd</b>
Name and	<b>Agah Turkish Restaurant</b>
Address of Premises:	<b>43 Commercial Street London E1 6BD</b>
Licence sought:	<b>Licensing Act 2003 – variation of a premises licence</b> <ul style="list-style-type: none"> <li>• <b>Extending the times of the existing licensable activities</b></li> <li>• <b>Adding off sale of alcohol</b></li> <li>• <b>Removal/amendment of conditions</b></li> </ul>
Representations:	<b>Met Police</b> <b>Environmental Health Noise Team</b> <b>Licensing Authority (Responsible Authority)</b> <b>Resident</b>

## 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
<ul style="list-style-type: none"> <li>• Guidance Issued under Section 182 of the Licensing Act 2003</li> <li>• Tower Hamlets Licensing Policy</li> <li>• File</li> </ul>		<b>Mohshin Ali</b> <b>020 7364 5498</b>

## **Background**

- 2.2 This is an application for a variation of a premises licence for (Agah Turkish Restaurant), 43 Commercial Street, London E1 6BD.
- 2.3 A copy of the existing licence (including the existing plans) is enclosed as **Appendix 1**. This licence was granted following the Licensing Sub-Committee hearing of 30<sup>th</sup> May 2017.
- 2.4 The timings of the existing licence are detailed below for information only:-

### **The sale by retail of alcohol (on sales only)**

- Monday to Thursday from 12:00hrs (midday) to 23:00hrs
- Friday and Saturday from 12:00hrs (midday) to 00:30hrs the following day
- Sunday from 12:00hrs (midday) to 23:00hrs

### **The Provision of Late Night Refreshment - indoors**

- (Monday to Thursday – None)
- Friday and Saturday from 23:00hrs to 00:30hrs the following day
- (Sunday – None)

### **The Provision of Regulated Entertainment - Indoors**

(in the form of Recorded Music )

- Monday to Thursday from 12:00hrs (midday) to 23:00hrs
- Friday and Saturday from 12:00hrs (midday) to 23:30hrs
- Sunday from 12:00hrs (midday) to 22:00hrs

(Anything of a Similar Description to Live Music, Record Music or Performances of Dance)

- Friday to Sunday from 12:00hrs (midday) to 22:00hrs

### **The opening hours of the premises**

- Monday to Thursday from 07:00hrs to 23:30hrs
- Friday and Saturday from 07:00hrs to 01:00hrs the following day
- Sunday from 07:00hrs to 23:30hrs

- 2.5 A copy of the variation application is enclosed as **Appendix 2**.

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

*“The premises trades as a restaurant on two floor, ground floor and lower ground floor. Alcohol is served to customers taking, a table meal, or waiting for a table, (for a table meal).*

- *The entertainment applied for will take place on the lower ground floor.*
- *The application also includes the facility for outside tables and chairs to allow customers to enjoy food and drink outside weather permitting, and has been applied for on two sides of the premises.*

- *This is the reason that off sales have been added to the application, to allow drinks to be consumed off the premises from the original licensable area.*
- *The outside seating on Commercial Street will measure the length of the premises to the front door, and likewise on Wentworth Street, from the front door to the end of the premises on Wentworth Street.*
- *The seating will protrude by 3 metres from the premises onto the highway”.*

2.7 In addition, the applicant wishes to remove the following condition:  
*Conditions attached following the Licensing subcommittee hearing of 30<sup>th</sup> May 2017:*

Condition 2:

*“No drinks must be allowed to be taken outside the premises under any circumstances”*

2.8 The applicant also wishes to amend the following condition:

Condition 6

*“The premises will operate a Challenge 21 policy and all those who look under 21 years of age will be asked for proof of age. There will be Challenge 21 signs at the bar”*

Amendment: *“Challenge 21”* to be replace with *“Challenge 25”*.

2.9 The times that have been applied for as follows:

The Supply of Alcohol (on and off sales)

- Monday to Sunday from 12:00hrs to 02:00hrs the following day

The Provision of Late Night Refreshment (indoors and outdoors)

- Monday to Sunday from 23:00hrs to 01:00hrs the following day

The Provision of Regulated Entertainment (Indoors) in the form of Live Music, Record Music, Performances of Dance and anything of a similar description

- Monday to Sunday from 12:00hrs to 01:00hrs the following day

### **The opening hours of the premises**

- Monday to Sunday from 12:00hrs to 02:30hrs the following day

### **3.0 Location and Nature of the premises**

3.1 Photographs of the venue and immediate vicinity will be provided at the hearing.

3.2 Maps showing the vicinity are included as **Appendix 3**.

3.3 Details of the nearest licensed venues are included as **Appendix 4**.

#### 4.0 Licensing Policy and Government Advice

- 4.1 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 1<sup>st</sup> November 2013.
- 4.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.
- 4.3 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](http://www.homeoffice.gov.uk). It was last revised in March 2015.
- 4.4 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.

#### 5.0 Representations

- 5.1 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
- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 5.6 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 5**.
- 5.7 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.

- 5.8 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following:
- Met Police (**Appendix 6**)
  - Environmental Health Noise Team (**Appendix 7**)
  - Licensing Authority (Responsible Authority) (**Appendix 8**)
  - Resident (**Appendix 9**)
- 5.9 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
  - Trading Standards
  - Child Protection
  - Public Health
  - Home Secretary (Home Office Immigration Enforcement)
- 5.10 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
- 5.11 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.
- 5.12 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.
- 5.13 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.

## 6.0 **Conditions consistent with Operating Schedule**

- 6.1 *All current conditions to remain on the licence except condition 2, and the alteration to condition 6.*

- 6.2 *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*
- 6.3 *Two SIA staff to be employed from 8pm until closing Friday and Saturday*
- 6.4 *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) *A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained.*
  - b) *The correct time and date will be generated onto both the recording and the real time image screen.*
  - c) *The system will comply with other essential legislation and all signs as required will be clearly displayed.*
  - d) *The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity.*
  - e) *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*
  - f) *A camera to be placed outside the entrance and on entry*
  - g) *If the CCTV equipment (Including any mobile units in use at the premises) breaks down the Premises Licence Holder shall ensure the designated premises supervisor, or in his/her absence other responsible person, verbally informs the Licensing Authority and the Police as soon as is reasonably practicable. This information shall be contemporaneously recorded in the incident report register and shall include the time, date and means this was done and to whom the information was reported. Equipment failures shall be repaired or replaced as soon as is reasonably practicable and without undue delay. The Licensing Authority and the Police shall be informed when faults are rectified.*
  - h) *The premises Licence holder shall ensure that there are trained members of staff available during licensable hours to be able to reproduce and download CCTV images into a removable format at the request of an authorised officer of the Licensing Authority or a constable.*
  - i) *There shall be clear signage indicating that CCTV equipment is in use and recording at the premises during all trading hours.*
- 6.5 *An incident book will be kept at the premises which will record all refusals of the sale of alcohol, all disorder and crimes that occur either in*

*the premises or involve the premises' customers or any other incident of note. The book shall be available for inspection at the premises by the police or an authorised officer of the licensing authority at all times whilst the premises are open.*

- 6.6 *The premises will operate a Challenge 25 policy and all those who look under 25 years of age will be asked for proof of age. There will be Challenge 25 signs at the bar. If the customer is unable to provide identification then no sale shall be made. Any staff member who may be under the age of 18 must call a senior staff member to take over the sale and complete the transaction.*
- 6.7 *If it is known that a customer intends to purchase alcohol to provide to minors then that sale will be refused. All refused sales will be recorded in a refusals book, which will be made available for inspection by Police or Licensing Officers of the council on request.*
- 6.8 *The premises will clearly display operational hours*
- 6.9 *Staff will be trained on Licensing and Health and Safety legislation. Training will be an ongoing part of staff development and will be fully documented*
- 6.10 *The premises will have a clear evacuation procedure in case of a fire*
- 6.11 *Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly. Patrons will be moved on from outside of the premises*
- 6.12 *The premises will clear bins only during permitted hours and no waste or recyclable materials, including bottles, shall be moved, removed from, or placed in outside areas between 23:00 hours and 08:00 hours the following day, so as not to disturb the neighbourhood*
- 6.13 *The premises shall not cause any noise pollution so as not to disturb the neighbourhood*
- 6.14 *Adult supervision at all times for young children.*
- 6.15 *All staff will be fully trained in their responsibilities with regard to the sale of alcohol, and will be retrained every six months, with recorded training records kept for inspection.*

## **7.0 Conditions in consultation with the responsible authorities/other persons**

- 7.1 None

## 8.0 Licensing Officer Comments

8.1 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.

### 8.2 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.” It is a key mechanism for promoting best practice, ensuring consistent application and promoting fairness (1.7)
- ❖ Also “so long as licensing authorities have properly understood the Guidance, they may depart from it if they have reason to do so as long as they have reason to do so.” When doing so 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)
- ❖ Conditions may not be imposed for the purpose other than the licensing objectives.
- ❖ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.6).
- ❖ The Licensing Authority may only impose such conditions as are necessary for meeting the licensing objectives.
- ❖ It is Government policy that facilities for people and performers with disabilities should be provided at places of entertainment.
- ❖ “The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities.” (10.11)
- ❖ Mandatory conditions must be imposed (10.38) and censorship avoided (10.17).
- ❖ 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. This may be unlawful under current law. However, it is important to note that the mandatory conditions made under sections 19A and 73B of the 2003 Act prohibit a number of types of drinks promotions where they give rise to a significant risk to any one of the four licensing objectives (10.26).

- 8.3 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.
- 8.4 In all cases the Members should make their decision on the civil burden of proof that is “the balance of probability.”
- 8.5 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.
- 8.6 The Government has advised that “Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.” (2.20)
- 8.7 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 8.8 In **Appendices 10 - 16** Members are given general advice, and also have explanations of the Council’s Licensing Policy, Government advice and other legislation relating to the matters in the representations.

## 9.0 **Legal Comments**

- 9.1 The Council’s legal officer will give advice at the hearing.

## 10.0 **Finance Comments**

- 10.1 There are no financial implications in this report.

## 11.0 Appendices

<b>Appendix 1</b>	A copy of the existing licence and plan
<b>Appendix 2</b>	A copy of the variation application
<b>Appendix 3</b>	Maps showing vicinity of venue
<b>Appendix 4</b>	Details of nearest licensed venues
<b>Appendix 5</b>	Relevant, vexatious and frivolous representations
<b>Appendix 6</b>	Representation of Police Licensing
<b>Appendix 7</b>	Representation of Environmental Health Noise Team
<b>Appendix 8</b>	Representation of Licensing Authority
<b>Appendix 9</b>	Representation of resident
<b>Appendix 10</b>	Licensing Officer comments on noise whilst the premises is in use
<b>Appendix 11</b>	Licensing Officer comments on access and egress problems
<b>Appendix 12</b>	Licensing Officer comments on crime and disorder on the premises
<b>Appendix 13</b>	Licensing Officer comments on crime and disorder from patrons leaving the premises
<b>Appendix 14</b>	Planning
<b>Appendix 15</b>	Licensing Policy relating to hours of trading
<b>Appendix 16</b>	Licensing Officer comments on the Tower Hamlets Cumulative Impact Zone