

Committee : Licensing Sub-Committee	Date 24/10/17	Classification Unclassified	Report No.	Agenda Item No.
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Report of: David Tolley Head of Environmental Health & Trading Standards	Title: Licensing Act 2003 Application for a Premises Licence for (Tops Pizza), 3 West India Dock Road, London E14 8EZ
Originating Officer: Mohshin Ali Senior Licensing Officer	Ward affected: Poplar

1.0 Summary

Applicant: **Mohammed Aziz**

Name and **Tops Pizza**

Address of Premises: **3 West India Dock Road
London
E14 8EZ**

Licence sought: **Licensing Act 2003 – premises licence**

- **The provision of late night refreshment**

Representations: **Residents (petition)**

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

3.0 Background

3.1 This is an application for a premises licence for (Tops Pizza), 3 West India Dock Road, London E14 8EZ.

3.2 The applicant has described the premises as follows:
“A franchise take away (Tops Pizza), which is adjacent to parade of shops, facing a main road”.

3.3 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 provision of late night refreshment - Indoors and outdoors

- Monday to Thursday, from 23:00 hrs to 02:00 hrs the following day
- Friday and Saturday, from 23:00 hrs to 03:00 hrs the following day
- Sunday, from 23:00 hrs to 00:00 hrs (midnight)

Non-standard timings:

- Vaisaki, Diwali, Valentines Day, Sunday before Bank Holiday, Eid, Christmas Day, New Year’s Eve and New Years Day, from 23:00 hrs to 03:00 hrs the following day

The opening hours of the premises

- Monday to Thursday, from 23:00 hrs to 02:00 hrs the following day
- Friday and Saturday, from 23:00 hrs to 03:00 hrs the following day
- Sunday, from 23:00 hrs to 00:00 hrs (midnight)

Non-standard timings:

- Vaisaki, Diwali, Valentines Day, Sunday before Bank Holiday, Eid, Christmas Day, New Year’s Eve and New Years Day, from 23:00 hrs to 03:00 hrs the following day

3.5 Members may wish to note that late night refreshment are proposed to continue until the premises closes to the public. It is difficult to see how the licence holder will ensure that the licence conditions are met. The problem of course is that if sales continue until the last minute the premises cannot be emptied on time. Members may want to consider a break between the end of the licensable activities and the time the premises closes to the public.

3.6 Following consultation with the Met Police Licensing the applicant has agreed the following timings:

The provision of late night refreshment

- Monday to Thursday, from 23:00 hrs to 01:00 hrs the following day
- Friday and Saturday, from 23:00 hrs to 02:00 hrs the following day
- Sunday, from 23:00 hrs to 00:00 hrs (midnight)

- 3.7 It should be noted that for Sunday, the applicant has applied until midnight (not 01:00 hours as agreed with the).
- 3.8 The applicant may wish to clarify what time the premises will be open to the public in light of the amended 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 This hearing is required by the Licensing Act 2003, because relevant representations (petition) have been made by local residents. Please see **Appendix 6** for the petition.
- 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
 - Home Secretary (Home Office Immigration Enforcement)
- 6.10 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
- 6.11 Essentially, the relevant parties oppose the application because in their opinion, 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

- 7.1 *Appropriate staff training to be completed, training records shall be made available for inspection upon request by a relevant officer of a responsible authority.*
- 7.2 *Vehicles used for delivery must switch off their engines when waiting outside of the Premises for the collection of food for delivery.*
- 7.3 *Drivers shall wait inside the premises between deliveries/for deliveries.*
- 7.4 *Home deliveries shall only be carried out by in-house employees of the business*
- 7.5 *The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of a Metropolitan Police Crime Prevention Officer.*
- a) *All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.*
 - b) *The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises.*
 - c) *All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31-day period.*
 - d) *A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises is open to the public. This staff member shall be able to show Police recent data or footage with the absolute minimum of delay when requested.*

- 7.6 *Notice to customers regarding consideration shall be displayed at the entrance and exit*
- 7.7 *Staff who arrive in the morning or depart late at night will be asked not to cause disturbance to nearby residents.*
- 7.8 *No rubbish will be moved, removed or placed outside between the hours of 23:00 and 08:00*
- 7.9 *An incident log shall be kept at the premises, and made available on request to an authorised officer or the Police.*
- 7.10 *Order is received over the phone by a person who sounds like they may be under 16 years old, staff member will ask to speak to a parent or responsible adult.*

8.0 Conditions in consultation with the Responsible Authorities

- 8.1 Met Police Licensing and Environmental Health Noise have agreed reduced times with the applicant (Please see **Appendix 7**).

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 8 - 13** 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	Representations (petition by residents)
Appendix 7	Conditions agreed with Police and Environmental Health Noise
Appendix 8	Licensing Officer comments on noise while the premise is in use
Appendix 9	Licensing Officer comments on access/egress Problems
Appendix 10	Licensing Officer comments on crime and disorder on the premises
Appendix 11	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 12	Planning
Appendix 13	Licensing Policy relating to hours of trading