

Committee :	Date	Classification
Licensing Sub Committee	15 November 2017	Unclassified

Report of : David Tolley Head of Environmental Health & Trading Standards	Title: Licensing Act 2003 Application for a new Premises Licence for Pho Village, 50 Fashion Street, London, E1 6PX
Originating Officer: Corinne Holland Licensing Officer	Ward affected: Spitalfields and Banglatown

1.0 **Summary**

Applicant: **PHO Village Limited**
Name and
Address of Premises: **PHO Village**
50 Fashion Street,
London
E1 6PX

Licence sought: **Licensing Act 2003**
The Sale of Alcohol

Objectors: **Local Resident**

2.1 **Recommendations**

2.2 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

3.1 **Background**

3.2 This is an application for a new premises licence for **PHO Village, 50 Fashion Street, London, E1 6PX.**

3.3 The applicant has described the premises as follows:

3.4 *“A small Vietnamese restaurant with seating for 16 diners”*

3.5 A copy of the application is enclosed as **Appendix 1.**

3.6 The applicant has applied for the following hours:

Sale of alcohol – (on and off sales)

- Monday – Saturday 12:00 – 23:00 hours
- Sunday 12:00 – 22:00 hours

Hours premises are open to the public:

- Monday – Sunday 11:00 – 23:00 hours

4.1 **Location and Nature of the premises**

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

4.3 The site plan of the venue is included as **Appendix 2.**

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

4.5 Details of other licensed venues in the immediate vicinity are included as **Appendix 4.**

5.1 **Licensing Policy and Government Advice**

5.2 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.

5.3 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.

5.4 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.

5.5 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.

6.1 Representations

6.2 This hearing is required by the Licensing Act 2003, because relevant representations have been made by a local resident.

- Mr Tom Dean (**Appendix 5**)

6.3 The applicant sent an email to Mr Tom Dean to hopefully address his concerns. This email is included in **Appendix 6**. There has been no response to this email.

6.4 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

6.5 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

6.6 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

6.7 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.

6.8 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.

6.9 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.

- 6.10 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 6.11 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 7**.
- 6.12 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.
- 6.13 The objections cover allegations of:
- Anti-social behaviour from patrons leaving the premises
 - Disturbance from patrons leaving the premises
 - Noise when the premises is in use
- 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.

7.1 **Conditions consistent with Operating Schedule**

- The premises licence holder shall ensure that reasonable and adequate staff training shall be carried out and properly documented and made available to Police and Responsible Authority officers upon request.
- The premises licence holder shall operate a 'Challenge 25' scheme at the premises whereby anyone who appears to be under the age of 25 shall be asked to provide proof of age that he or she is over 18. Proof of age shall only comprise of a passport, a photo-card driving licence or an industry approved proof of age identity card bearing the PASS hologram.
- Clear signage stating the premises operating hours to be displayed
- Delivery of goods, necessary for the business, to be delivered in a manner so not to cause a nuisance to residents.

8.0 **Conditions Agreed/Requested by Responsible Authority**

None

9.1 Licensing Officer Comments

9.2 The following is intended 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.

9.3 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 (10.27) 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.” (10.60) 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)

9.4 The Licensing Act 2003 permits children of any age to be on the premises which primarily sell alcohol providing they are accompanied by an adult. It is not necessary to make this a condition.

9.5 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”

9.6 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.

9.7 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)

9.8 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

9.9 In **Appendices 8- 15** 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.

10.1 Legal Comments

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

11.1 Finance Comments

11.2 There are no financial implications in this report.

12.0 Appendices

Appendix 1	A copy the application
Appendix 2	Site Plan
Appendix 3	Maps of the surrounding area
Appendix 4	Other licensed venues in the vicinity
Appendix 5	Representations from Mr Dean (objector)
Appendix 6	Applicants email to objector
Appendix 7	Section 182 advice by Home office concerning relevant, vexatious, and frivolous representations
Appendix 8	Anti- social behaviour on premises
Appendix 9	Anti-social behaviour leaving the premises
Appendix 10	Noise whilst the premises is in use
Appendix 11	S182 Guidance on public nuisance
Appendix 12	Licensing Policy on prevention of nuisance
Appendix 13	Access and Egress problems
Appendix 14	Framework Hours
Appendix 15	Planning