

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub-Committee	29 November 2017	Unrestricted		

Report of: David Tolley Head of Environmental Health & Trading Standards Originating Officer: Mohshin Ali Senior Licensing Officer	Title: Licensing Act 2003 Application for a Premises Licence for (Mangal), 514 Commercial Road, London E1 0HY Ward affected: Shadwell
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1.0 Summary

Applicant: **Mangal Cook Limited**

Name and **Mangal**

Address of Premises: **514 Commercial Road
London
E1 8DR**

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

- **The provision of late night refreshment**

Representations: **One resident**

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

- Guidance Issued under Section 182 of the Licensing Act 2003
- Tower Hamlets Licensing Policy
- File

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3.0 **Background**

- 3.1 This is an application for a premises licence for (Mangal), 514 Commercial Road, London E1 0HY.
- 3.2 The applicant has described the premises as follows:
“Turkish restaurant situated in a parade of shops with residential above”.
- 3.3 A copy of the premises licence application form is enclosed as **Appendix 1**.
- 3.4 The applicant has reduced the hours applied for in consultation with Environmental Health Noise. The revised licensable activities and timings applied for are as follows:-

The provision of late night refreshment - Indoors

- Monday to Sunday, from 23.00 hrs to 01:00 hrs the following day

The opening hours of the premises

- Monday to Sunday, from 11.00 hrs to 01:00 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.

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, than 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 representation has been made by a local resident. Please see **Appendix 6**.
- 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 *Training to be provided to all serving staff to have a good knowledge and awareness of prevention of crime and disorder and drug awareness.*

7.2 *CCTV will be installed and the recorded materials shall be retained and stored in a suitable/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 system will comply with essential legislations.*

c) *CCTV will be operational during opening hours.*

d) *Recordings and images will be available for police or responsible authorities on demand.*

- 7.3 *Management will control the premises, will not cause or permit a person to solicit for custom for the premises in any street or public places*
- 7.4 *Premises to have experienced staff who will run our premises, adequate door control will be taken to prevent crowd outside of our premises.*
- 7.5 *Premises to ensure that all customers leave quietly. If any customers need to wait for a taxi, staff will try to keep them on the premises until the taxi arrives. Premises will offer them a complimentary coffee/ tea.*
- 7.6 *Premises will not allow anyone to queue in front of our restaurant.*
- 7.7 *If anyone comes to pick up their friend or family member from our restaurant we will ask them not to blow their car horn.*
- 7.8 *Premises will provide low key volume recorded music that will not be heard from flat above to our premises or nearby residents.*
- 7.9 *Outside of the premises will be kept tidy, all spillage will be cleaned. I.e. Bottles, glass, litter etc.*
- 7.10 *Bottled drink or food will be not allowed to be consumed in front of the restaurant. (Except take away food which will be taken from the restaurant to eat at customers home).*
- 7.11 *No early morning delivery or collection or late delivery/collection will take place*
- 7.12 *Un-accompanied children Under 16 are not allowed in into the premises premises between midnight to 5 am.*

8.0 Conditions in consultation with the Responsible Authorities

- 8.1 Environmental Health Noise have agreed reduced times with the applicant (Please see **Appendix 7**).
- 8.2 The applicant has submitted evidence in support of the application. This is enclosed in **Appendix 8**.

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 9 - 14** 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	Representation by a local residents
Appendix 7	Conditions agreed with Police and Environmental Health Noise
Appendix 8	Evidence forwarded by applicant
Appendix 9	Licensing Officer comments on noise while the premise is in use
Appendix 10	Licensing Officer comments on access/egress Problems
Appendix 11	Licensing Officer comments on crime and disorder on the premises
Appendix 12	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 13	Planning
Appendix 14	Licensing Policy relating to hours of trading