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| Committee : | Date | Classification | Report No. | Agenda Item No. |
| Licensing Sub-Committee | 6 February 2018 | Unclassified | | |

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| 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 (OSM Ltd) Open Market Space, Old Spitalfields Market, London E1 6AA Ward affected: Spitalfields and Banglatown |
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1.0 Summary

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| Applicant: | OSM Limited |
| Name and | Open Market Space |
| Address of Premises: | Old Spitalfields Market London E1 6AA |
| Licence sought: | Licensing Act 2003 – premises licence <ul style="list-style-type: none"> • The sale by retail of alcohol (on sales only) • The provision of regulated entertainment |
| Representations: | Residents / Residents Association |

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 (OSM Ltd) Open Market Space, Old Spitalfields Market, London E1 6AA. A copy of the premises licence application form is enclosed as **Appendix 1A**.

3.2 The applicant has described the premises as follows:

“The Open Market Space is a covered market space within Old Spitalfields which is detailed on the plans submitted with the application. The Market Space is surrounded by retail outlets and other licensed premises. Access to the Market Space is through the surrounding business premises or directly from one of the four surrounding streets.

The site has traded as a market for over 350 years and is open seven days a week. Alongside the daily market days, the site offers specialist markets, such as an Antiques Market, Record Fair and Vintage Stalls. In addition, within the market on occasion there are pre-arranged cultural, musical and commercial events”.

3.3 The applicant has applied for the following licensable activities and timings as follows:-

The sale by retail of alcohol (On sales only)

- Monday to Sunday, from 11:00 hours to 21:00 hours

The provision of regulated entertainment – Indoors

(Plays, Films. Indoor Sporting Events. Live Music, Recorded Music, Performance of Dance and anything of a similar description)

- Monday to Sunday, from 09:00 hours to 21:00 hours

The opening hours of the premises

- Monday to Sunday, from 08:00 hours to 21:30 hours

3.4 The applicant has also stated the following:

If a satisfactory Premises Licence is granted for the open market space, it is proposed by the Premise Licence Holder that they will surrender the following Premises Licences:-

1. *The existing Premises Licence number for PL 17354 for the Open Market Space*
2. *The existing Premises Licence for Smith's, 109 Commercial Street, Premises Licence number PL26048 held by OSM Limited. This Premises Licence covers a four storey licenced premises with 6,373 square feet of licensed area with 122 hours permitted a week for the sale of alcohol in the basement and 116 hours a week on the ground, mezzanine and first floor*

3. *The existing Premises Licence for Square Pie, 105c Commercial Street, Premises Licence number PL26009 held by OSM Limited. This Premises Licence covers a ground floor area and an external area totalling 1,057 square meters with 70 permitted hours a week for the sale of alcohol.*

3.5 For members information the existing premises licence for Open Market Space held by Old Spitalfields Market Ltd is included as **Appendix 1B**. The times and licensable activities are summarised below:

The sale by retail of alcohol (On sales only):

- Monday to Friday from 09:00 hrs to 19:00 hrs

Regulated entertainment consisting of:

Plays, Films, Indoor sports, boxing or wrestling, live music, recorded music, performance of dance. Provision of facilities for making music and facilities for dancing.

- Monday to Friday from 09:00 hrs to 19:00 hrs

The opening hours of the premises

- Monday to Friday from 09:00 hrs to 19:00 hrs

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 representations have been made by local residents / residents associations.
- 6.9 A list of all those making a representation is contained **Appendix 6**. This includes ninety eight (98) representations against the application and two (2) representations in support of the application. The actual representations are contained within **Appendices 7 - 106**.
- 6.10 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
 - Environmental Health Noise
 - Trading Standards
 - Child Protection

- Public Health
- Home Secretary (Home Office Immigration Enforcement)

6.11 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

6.12 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 all of the above licensing objectives.

6.13 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.

6.14 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 (as offered by the applicant)

7.1 *The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Tower Hamlets Police Licensing Team. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.*

7.2 *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 are open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.*

7.3 *At all times the licence is in operation, security staff will be on duty in Old Spitalfields Market and any additional security required as a result of the Premises Licence being in operation will be subject to written risk assessment.*

- 7.4 *Areas where alcohol is dispensed from shall not exceed 5% of the total area licensed under this Premises Licence, save for Special Events where the area will increase to a maximum of 10%.*
- 7.5 *There shall be a duty member of OSM staff on duty, on the premises, at all times when the authorised sale of alcohol takes place.*
- 7.6 *There shall be no sales of alcohol for consumption off the premises.*
- 7.7 *Food should be available at all times when the authorised sale of alcohol takes place.*
- 7.8 *The Designated Premises Supervisor shall ensure that an incident log is maintained within the premises and details of all known incidents are recorded within the log. This log shall be kept on the premises and made available on request to a Police Officer or an Authorised Officer of LBTH.*
- 7.9 *The Premises shall be used primarily as a retail market and the provision of alcohol shall remain ancillary to that use.*

Additional conditions for Special Events:

Special Events are defined as an organised and prearranged cultural, musical or commercial events taking place in the whole open market space of a public or private nature which replace the daily stall market, are prearranged and booked at least 28 days in advance.

- 7.10 *There shall be no special events between 25th December 2017 and 1st January 2018.*
- 7.11 *There will be no more than 91 days of special events in any calendar year*
- 7.12 *An advance notice event calendar will be circulated to the Statutory Authorities and local residents providing a minimum of 28 days notice of any special event.*
- 7.13 *The Premises Licence Holder will maintain an accurate record of the times and dates of the special events.*
- 7.14 *No event operator will be allowed amplification equipment that is not fitted with a noise limiter approved OSM Management.*
- 7.15 *No dismantling or derigging that is audible outside the Market Hall shall be permitted after 10pm.*
- 7.16 *Security staff or stewards shall assist with the departure of guests or attendees from events and encourage them to depart quietly and safely from the premises.*
- 7.17 *Statutory Authorities and local residents to be advised with a minimum of 28 days' notice of any special events planned at the Premises beyond*

7pm. The Premises Licence folder will provide full details of the event and the OSM event management plan will be subject to relevant comprehensive risk assessments so as to ensure residents are not disturbed.

- 7.18 Notices shall be prominently displayed at all gated exits requesting patrons to respect the need of local residents and leave the area quietly.*
- 7.19 The premises will operate a written dispersal policy and such policy shall be made available to the Police and LBTH and local residents and amenity groups on request.*
- 7.20 A Noise Limiter with a traffic light indicator must be fitted to the musical amplification system set at a level determined by and to the satisfaction of an acoustic consultant who is a member of the Institute of Acoustics so as to ensure that no noise nuisance is caused to local residents or businesses. The operation panel of the noise limiter shall then be secured by a key or password to the satisfaction of the acoustic consultant and access shall only be by persons authorised by the Premises Licence Holder. No alteration or modification to any existing sound system(s) should be effected without prior agreement with an acoustic consultant. No additional sound generating equipment shall be used on the premise without being routed through the sound limiter device.*
- 7.21 During the hours of operation of the premises the Premises Licence Holder shall ensure sufficient measures are in place to remove and prevent litter always deriving from OSM customers in the area outside the premises and that this area shall be swept as required, litter collected and stored in accordance with the approved refuse storage arrangements by close of business.*
- 7.22 A dedicated telephone number for the Designated Premises Supervisor or the duty manager shall be maintained for use by any person who may wish to make a complaint during the operation of the licence. which shall be provided to the Licensing Authority and local residents' association. A log shall be kept of all complaints. which shall be available for inspection by Council Officers at all times when the premises are open to the public. Any change to the number shall be notified to the Licensing Authority and to local residents' associations within 7 days of the change.*
- 7.23 The consumption of alcohol shall cease 30 minutes after the permitted hours for the sale and supply of alcohol.*
- 7.24 A Challenge 21 Proof of Age Scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographed identification cards.*
- 7.25 Training shall be provided to all staff relating to the sale of alcohol and other relevant licensing matters.*

7.26 *Records detailing the initial training and refresher briefing provided shall be kept on the premises and be made available upon a request by a Police Officer or an authorised officer of the Council.*

8.0 **Conditions in consultation with the Responsible Authorities**

8.1 Trading Standards have requested a condition and the applicant has now accepted their condition (Please see **Appendix 107**):
A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.

9.0 **Licensing Officer Comments**

9.1 The Live Music Act removed licensing requirements for the following:

- amplified live music and recorded music between 8am and 11pm before audiences of no more than 500 people on premises authorised to sell alcohol for consumption on the premises;
- unamplified live music between 8am and 11pm in all venues.
- Further exemptions apply see Section 16.5-16.6 of Section 182 Guidance.

9.2 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.

9.3 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 (10.25) 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)
- 9.4 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.
- 9.5 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 108 - 114** 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

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| Appendix 1A | A copy of the application |
| Appendix 1B | A copy of the existing licence |
| 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 | List of representations (against and support) |
| Appendices 7-106 | Actual individual representations |
| Appendix 107 | Comments of Trading Standards |
| Appendix 108 | Licensing Officer comments on noise while the premise is in use |
| Appendix 109 | Licensing Officer comments on access/egress Problems |
| Appendix 110 | Licensing Officer comments on crime and disorder on the premises |
| Appendix 111 | Licensing Officer comments on crime and disorder from patrons leaving the premises |
| Appendix 112 | Planning |
| Appendix 113 | Licensing Policy relating to hours of trading |
| Appendix 114 | Licensing Officer comments on the Tower Hamlets Cumulative Impact Zone |