

Committee :	Date	Classification	Report No.	Agenda Item No.
<b>Licensing Sub Committee</b>	26 February 2018	<b>Unclassified</b>		

Report of : <b>David Tolley</b> <b>Head of Environmental Health &amp; Trading Standards</b>  Originating Officer: <b>Catrina Marshall</b> <b>Licensing Officer</b>	Title: <b>Licensing Act 2003 Application for a Variation Premises Licence for :Suito 90 Brick Lane, London E1 6RL</b>  Ward affected: <b>Spitalfields and Banglatown</b>
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## 1.0 Summary

Applicant: **MD Altamasul Islam Khan**

Name and Address of Premises: **Suito  
90 Brick Lane  
London  
E1 6RL**

Licence sought: **Licensing Act 2003 – Premises Licence**

- The Sale by retail of Alcohol
- The Provision of late night refreshment

Objectors: **Environmental Protection  
Licensing Authority  
Local Residents**

## 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

File Only

**Catrina Marshall**  
**020 7364 2665**

## **Background**

This is an application for a new premises licence for

**Suito**

**90 Brick Lane**

**London E1 6RL**

- 2.2 The applicant has described the premises as follows:  
Japanese Restaurant
- 2.3 A copy of existing licence (including site plan) is enclosed as **Appendix 1**.
- 2.4 The timings of the existing licence are detailed below for information only:-

### **Sale by retail of alcohol (On sales only)**

- Monday to Saturday from 12.00 hrs to 23.30 hrs
- Sunday from 12.00 hrs to 23.00 hrs
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### **The provision of late night refreshment - Indoors**

- Monday to Saturday, from 23:00 hrs to 0:00 hrs
- Sunday, from 23:00 hrs to 23:30 hrs

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

- Monday to Saturday, from 23:00 hrs to 0:00 hrs
- Sunday, from 23:00 hrs to 23:30 hrs

- 2.5 A copy of the variation application is enclosed as **Appendix 2**
- 2.6 The applicant has applied for the sale of alcohol for the following hours:

### **Sale of alcohol – (On sale only)**

- Monday to Saturday 12:00hrs to 01:00hrs the next day
- Sunday from 12:00hrs to 00:30hrs the next day

### **The Provision of late night refreshment**

- Monday to Saturday 23:00hrs to 01:00hrs the next day
- Sunday 23:00hrs to 00:30Hrs the next day

### **Hours premises are open to the public:**

- Monday to Saturday 12:00hrs to 01:30hrs the next day
- Sunday from 12:00hrs to 01:00hrs the next day

- 2.7 The Applicant has reduced their hours from a previous application received on **04/12/2017** by the Licensing Authority and the hours they applied for until 3.00am although it was an invalid application the applicant hadn't applied for the hours he thought he had on the sale of alcohol hours were reduced so he withdrew and re-applied.

### 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 layout of the premises are in **Appendix 3**.

3.3 Details of other licensed venues in the immediate vicinity 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 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 April 2017.

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 This hearing is required by the Licensing Act 2003, because relevant representations have been made by a Responsible authorities and local residents

- Environmental Protections Objection **Appendix 5**.
- Licensing Authority **Appendix 6**
- Representation submitted by Glen Leeder **Appendix 7**
- Representation submitted by Margaret Gordon **Appendix 8**
- Representation submitted by David Cunningham **Appendix 9**

5.2 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

- 5.3 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
- 5.4 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
- 5.5 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.
- 5.6 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.
- 5.7 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.
- 5.8 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 5.9 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 9**.
- 5.10 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.
- 5.11 The objections cover allegations of:
- Anti-social behaviour from patrons leaving the premises
  - Close proximity to residential properties
  - Magnet for anti-social behaviour
  - Noise whilst the premises is in use
- 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**

- a) A Challenge 21 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.
- b) A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the premises by the police or an authorised officer at all times whilst the premises is open.
- c) 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.
- d) Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
- e) All children must be accompanied by adults

## **7.0 Conditions Agreed/Requested by Responsible Authority**

### **Police:**

1. A CCTV system to be put in place, the cameras are to be of sufficient quality so that peoples faces are clearly identifiable from the footage. The cameras are to be placed in such a way as they cover areas of the premises specified by the Police.
2. The system is to record the footage and to keep it for a minimum of 30 days and a copy off CCTV footage is to be made available to Police or the Local Authority upon request (subject to data protection legislation).
3. While the premises are open to the public a member of staff must be on duty who can operate the CCTV system.
4. An Incident Report book is to be kept and used to record all incidents of crime and disorder as well as any incidents of note. This book is to be made available on request to any Police officer or representative of a responsible authority. **Appendix 10.**

### **Trading Standards:**

1. 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. **Appendix 11**

## **8.0 Licensing Officer Comments**

- 8.1 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.

## **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 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)

- 8.3 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.
- 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 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)
- 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 12 - 18** 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.

## 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 existing licence (including site plan)
<b>Appendix 2</b>	A copy of the variation application
<b>Appendix 3</b>	Maps of the surrounding area
<b>Appendix 4</b>	Details of nearby licensed premises
<b>Appendix 5</b>	Representation of Environmental Protection
<b>Appendix 6</b>	Representation of Licensing Authority
<b>Appendix 7</b>	Representation of Glenn Leeder
<b>Appendix 8</b>	Representation of Margaret Gordon
<b>Appendix 9</b>	Representation of David Cunningham
<b>Appendix 10</b>	Section 182 Guidance by the Home Office concerning relevant, vexatious, and frivolous representations
<b>Appendix 11</b>	Amended Hours agreed with Environmental Protection and Police
<b>Appendix 12</b>	Licensing Officer comments on noise while the premises is in use
<b>Appendix 13</b>	Licensing Policy on Public Nuisance
<b>Appendix 14</b>	Licensing Officer comments on access/egress
<b>Appendix 15</b>	Licensing Officer comments on crime & disorder from patrons leaving the premises
<b>Appendix 16</b>	Planning
<b>Appendix 17</b>	Licensing Policy relating to hours of trading
<b>Appendix 18</b>	Licensing Officer comments on the Tower Hamlets Cumulative Impact Zone