

Committee : <b>Licensing Sub-Committee</b>	Date 11 April 2018	Classification <b>Unclassified</b>	Report No.	Agenda Item No.
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Report of: <b>David Tolley</b> <b>Head of Environmental Health &amp; Trading Standards</b>  Originating Officer: <b>Mohshin Ali</b> <b>Senior Licensing Officer</b>	Title: <b>Licensing Act 2003</b> <b>Application for a Premises Licence for (Food &amp; Wine Mini Market), Unit 13, 71 Ben Johnson Road, London E1 4SA</b>  Ward affected: <b>St. Dunstan's</b>
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## 1.0 Summary

Applicant: **Erdal Pinar**

Name and Address of Premises: **Food & Wine Mini Market**  
**Unit 13**  
**71 Ben Johnson Road**  
**London**  
**E1 4SA**

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

- **Sale by retail of alcohol (off sales)**

Representations: **Residents / other persons**

## 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

Mohshin Ali  
020 7364 5498

### 3.0 **Background**

3.1 This is an application for a premises licence for (Food & Wine Mini Market), Unit 13, 71 Ben Johnson Road, London E1 4SA.

3.2 A copy of the premises licence application form is enclosed as **Appendix 1**.

3.3 The licensable activities and timings applied for are as follows:-

**The sale by retail of alcohol (Off sales only)**

- Monday to Sunday, from 07:00 hrs to 24:00 hrs (midnight)

**The opening hours of the premises**

- Monday to Sunday, from 07:00 hrs to 06:59 hrs the following day

(To clarify, this is effectively 24 hours a day)

### 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 1<sup>st</sup> 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](http://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 representation has been made by the following :

<b>Resident / other persons</b>	<b>Appendix</b>
David Kennedy	<b>6</b>
Margaret Fisher	<b>7</b>
Zakaria Hussain	<b>8</b>

- 6.9 Zakaria Hussain has submitted a petition with his representation, However, full name and addresses and signatures are not stated. Also, the petition has not been signed by each petitioner so Members will need to decide how much weight should be given.
- 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
  - Noise (Environmental Health)

- 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 licensing objective of the prevention of public nuisance and the prevention of crime and disorder.

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**

7.1 *All staff whose responsibilities include the retail sale of alcohol shall receive training. This training shall be recorded and the records to be available on request to the Police or any authorised officer.*

8.0 *The premises shall install and maintain a comprehensive CCTV system. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer.*

9.0 *Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.*

10.0 *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.*

## 11.0 Conditions in consultation with the Responsible Authorities

11.1 Trading Standards have requested the following condition:

*“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”.*

At the time of writing this report a response was not received to their email. (Please see **Appendix 9**).

## 12.0 Licensing Officer Comments

12.1 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.

### 12.2 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)

- 12.3 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.
- 12.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 12.5 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.
- 12.6 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)
- 12.7 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

12.8 In **Appendices 10 - 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.

### 13.0 **Legal Comments**

13.1 The Council's legal officer will give advice at the hearing.

### 14.0 **Finance Comments**

14.1 There are no financial implications in this report.

## 15.0 Appendices

<b>Appendix 1</b>	A copy of the application
<b>Appendix 2</b>	Site Plan
<b>Appendix 3</b>	Maps of the surrounding area
<b>Appendix 4</b>	Other licensed venues in the area
<b>Appendix 5</b>	Section 182 Guidance by the Home Office
<b>Appendix 6</b>	Representation of David Kennedy
<b>Appendix 7</b>	Representation of Margaret Fisher
<b>Appendix 8</b>	Representation of Zakaria Hussain
<b>Appendix 9</b>	Trading Standard request condition
<b>Appendix 10</b>	Licensing Officer comments on noise while the premise is in use
<b>Appendix 11</b>	Licensing Officer comments on access/egress Problems
<b>Appendix 12</b>	Licensing Officer comments on crime and disorder on the premises
<b>Appendix 13</b>	Licensing Officer comments on crime and disorder from patrons leaving the premises
<b>Appendix 14</b>	Planning
<b>Appendix 15</b>	Licensing Policy relating to hours of trading