

Committee :	Date	Classification	Report No.	Agenda Item No.
<b>Licensing Sub Committee</b>	30 <sup>th</sup> August 2018	<b>Unclassified</b>		

Report of : <b>David Tolley</b> <b>Head of Environmental Health &amp; Trading Standards</b>  Originating Officer: <b>Corinne Holland</b> <b>Licensing Officer</b>	Title: <b>Licensing Act 2003 Application for a new Premises Licence for Cookies and Cream, Unit 5 The Chronos Building, 9-25 Mile End Road, London, E1 4TW</b>  Ward affected: <b>Bethnal Green</b>
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## 1.0 Summary

Applicant: **C & C East Ltd**  
Name and  
Address of Premises: **Cookies and Cream**  
**Unit 5**  
**The Chronos Building**  
**9-25 Mile End Road,**  
**London**  
**E1 4TP**

Licence sought: **Licensing Act 2003**  
**The Provision of Late Night Refreshment**  
**The Provision of Recorded Music**

Objectors: **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

Corinne Holland  
020 7364 3986

### 3.0 **Background**

3.1 This is an application for a new premises licence for **Cookies and Cream, Unit 5, The Chronos Building, 9-25 Mile end Road, London, E1 4TP.**

3.2 The applicant has described the premises as follows:

3.3 *“A retail unit serving hot and cold sandwiches and drinks”*

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

3.5 The revised hours the applicant has applied for in agreement with the Environmental Protection are the following hours:

#### **Recorded Music** (indoors only)

- Sunday – Thursday 12:00 – 23:30 hours
- Friday - Saturday 12:00 – 00:30 hours

#### **Late Night Refreshments** (indoors only)

- Sunday – Thursday 23:00 – 23:30 hours
- Friday - Saturday 23:00 – 00:30 hours

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

- Sunday – Thursday 12:00 – 00:00 hours (midnight)
- Friday – Saturday 12:00 – 01:00 hours

### 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 other licensed venues in the immediate vicinity 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 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 2018.
- 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 This hearing is required by the Licensing Act 2003, because relevant representations have been made by a local resident.

- Barry Callaghan (**Appendix 5**)
- Chloe Seddon (**Appendix 6**)
- Freddie Cinus (**Appendix 7**)
- Frances Kung (**Appendix 8**)
- Simon Epstein (**Appendix 9**)
- Karen Chiu – Petition of 20 persons (**Appendix 10**) All above representations have also signed the petition.

- 6.2 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

- 6.3 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

- 6.4 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

- 6.5 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.
- 6.6 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.
- 6.7 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.
- 6.8 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 6.9 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 11**.
- 6.10 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.
- 6.11 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
- 6.12 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**

1. Ensure staff are familiar with the licensing objectives and adhere to them at all times.
2. Clear and legible notice will be placed outside the premises indicating the normal hours under the terms of the premises licence during which licensable activities are permitted.
3. Clear and conspicuous notices warning of potential criminal activity, such as theft, that may target customers will be displayed.

4. Custom will not be sought by means of personal solicitation outside or in the vicinity of the premises.
5. Drinks will only be served in plastic bottle and paper cups.
6. Persons appearing drunk or under the influence of illegal substances will not be permitted into the premises.
7. Maintain an incident log of any criminal activity or attempted criminal activity within or within the immediate vicinity of the premises.
8. A log book or recording system will be kept in the premises for recording inspections made including those required by legislation, and information compiled to comply with any public safety condition attached to the premises license. The logbook shall be kept available and produced for inspection when required by persons authorised by the Licensing Act 2003 or associated legislation.
9. Prominent, clear and legible notices will be displayed at exits requesting the public to respect the needs of nearby residents and to leave the premises and the area quietly.
10. Deliveries to the premises will be carried out at such a time or in such a manner as to prevent nuisance and disturbance to nearby residents.
11. Staff who arrive early morning or depart late at night when the business has ceased trading conduct themselves in such a manner to avoid causing disturbance to nearby residents.
12. Customers will be asked not to stand around talking in the street outside the premises; and asked to leave the vicinity quickly and quietly.
13. The movement of bins and rubbish outside the premises will be kept to a minimum after 11.00pm. This will help to reduce the levels of noise produced by the premises.
14. Noise or vibration will not emanate from the premises such as to cause unreasonably disturbance to neighbours. The placing of refuse, such as bottles, into receptacles outside the premises takes place at times that will prevent disturbance to nearby properties.
15. Provision of mechanical ventilation and air conditioning system will not allow noise breakout from the premises or cause a nuisance by its operation.
16. All the rubbish produced by the premises will be stored securely in a designated area or in a bin with a tight fitting lid. This will help prevent litter being blown around.
17. Children below the age of 16 will be excluded from the premises between the hours of 23:00 to 04:00.

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

Agreed with Environmental Protection

1. Loudspeakers shall not be located in the entrance lobby or outside the premise building.
2. All windows and external doors shall be kept closed after 22:00 hours, or at any time when regulated entertainment takes place, except for the immediate access & egress of persons.
3. The premises license holder shall ensure that noise or vibration is not audible at the nearest noise sensitive premises.

## Agreed with Police

4. A CCTV system to be put in place, the cameras are to be of sufficient quality so that people's 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.
5. 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). While the premises are open to the public a member of staff must be on duty who can operate the CCTV system.
6. An incident book is to be kept to record all incidents of crime and incidents like refusal of entry to the premises, asking people to leave etc.

## 9.0 Licensing Officer Comments

9.1 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.

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 (10.27) 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)

- 9.3 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.
- 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 12 - 17** 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

<b>Appendix 1</b>	A copy 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 vicinity
<b>Appendix 5</b>	Representations from Barry Callaghan
<b>Appendix 6</b>	Representations from Chloe Seddon
<b>Appendix 7</b>	Representations from Freddie Cinus
<b>Appendix 8</b>	Representations from Frances Kung
<b>Appendix 9</b>	Representations from Simon Epstein
<b>Appendix 10</b>	Representations from Karen Chiu (Petition)
<b>Appendix 11</b>	Section 182 advice by Home office concerning relevant, vexatious, and frivolous representations
<b>Appendix 12</b>	Anti-social behaviour leaving the premises
<b>Appendix 13</b>	Noise when the premises is in use
<b>Appendix 14</b>	Magnet for anti-social behaviour
<b>Appendix 15</b>	S182 Guidance on public nuisance
<b>Appendix 16</b>	Licensing Policy on prevention of nuisance
<b>Appendix 17</b>	Framework Hours
<b>Appendix 18</b>	Planning