

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	27 February 2019	Unclassified		

Report of : David Tolley Head of Environmental Health & Trading Standards	Title: Licensing Act 2003 Application for a new Premises Licence for Sichuan Folk, 32 Hanbury Street, London, E1 6QR
Originating Officer: Corinne Holland Licensing Officer	Ward affected: Spitalfields and Banglatown

1.0 Summary

Applicant: **STAR1032 LTD**
Name and
Address of Premises: **Sichuan Folk**
32 Hanbury Street
London
E1 6QR

Licence sought: **Licensing Act 2003**
The Sale the Alcohol

Objectors: **Local Authority**

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

Section 182 guidance
Licensing Policy
File

Corinne Holland
020 7364 3986

3.0 **Background**

- 3.1 This is an application for a new premises licence for **Sichuan Folk, 32 Hanbury Street, London, E1 6QR.**
- 3.2 The applicant has described the premises as follows:
"A Chinese restaurant"
- 3.3 This premise was initially licensed from January 2006 until the licence lapsed in February 2018 due to the Premises Licence Holder going into liquidation. The previous Premises Licence Holder was a company called '1906 LTD' who transferred onto the licence in January 2012.
- 3.4 The licensable activities and timings on the original licence were as follows:

The sale by retail of alcohol

- On weekdays, other than Christmas Day, Good Friday or New Year's Eve from 10am to 12pm.
- On Sundays, other than Christmas Day or New Year's Eve, and on Good Friday: 12 noon to 11:30pm
- On Christmas Day: 12 noon to 11:30pm;
- On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).

Late Night Refreshment

Hot food and hot drinks may be sold for up to thirty minutes after the end of normal permitted hours.

Regulated Entertainment (recorded music only)

This is not restricted as to hours

The opening hours of the premises

There are no restrictions on the hours during which this premises is open to the public

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

- 3.6 The hours applied for are:

The sale of alcohol:

- Monday – Sunday 12:00 – 23:00 hours

Hours premises are open to the public:

- Monday – Sunday 12:00 – 23:00 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 1st November 2018.
- 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 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 responsible authority.

- Mohshin Ali – Licensing Authority (**Appendix 5**)

- 6.2 All of the responsible authorities have been consulted about this application. They are as follows:

- The Licensing Authority
- The Metropolitan Police
- The Fire Authority
- Planning
- Health and Safety
- Noise
- Trading Standards
- Child Protection
- Public Health
- Immigration Office

- 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 6**.
- 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:
- Prevention of crime and disorder
 - Prevention of public nuisance
 - CIZ
- 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. An incident log book will be maintained by the premises that details incidents of note that occur in the premises. This shall include refused sales, disorder and ejections as a minimum. The log book shall be kept on the premises is open and management shall regularly check the book to ensure all staff are using it.
2. The CCTV system shall be maintained in good working order and at all times the premises are open to the public, be fully operational covering areas of the premises to which the public have access.
3. The licence holder shall ensure that CCTV cameras and recorders are installed at the premises and are of a standard acceptable to and approved by the Police.
4. Signs must be displayed in the customer areas to advise that CCTV is in operation.
5. There shall be no off sales.
6. Customers shall not be permitted to take drinks outside with them.
7. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of the local residents and to use the area quietly.
8. All external doors and windows to the premises shall be kept closed during the provision of regulated entertainment, save during access and egress.
9. A Challenge 21 policy will be enforced, where any person reasonably looking under the age of 21 shall be asked to prove their age when attempting to purchase alcohol and signs to this effect will be displayed at the premises. The only acceptable forms of identity will be those with photographic identification documents recognised in the Home Office guidance; including passports, photo-card driving licence or proof of age card bearing the PASS hologram.
10. There shall be no vertical drinking. Alcohol will only be sold by waiter/waitress service to customers seated at tables.
11. Alcohol will only be sold ancillary to food.

12. Staff will be given training:

- a. In conflict management in order to give them the knowledge and confidence to deal with difficult situations and reduce crime and disorder at the Premises;
- b. On the effects of alcohol and how to spot early signs of customers becoming drunk and confidence to deal with drunken patrons; and
- c. On the appropriate “cut off” points for serving drunken customers, so as to reduce the likelihood of fights or aggressive behaviour.

13. A full risk assessment taking into account public safety will be carried out at the Premises to identify potential hazards posed to staff or customers and setting out precautions to manage the hazards. A risk assessment will be regularly reviewed at least every 12 months.

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

Conditions agreed with Environmental Protection - See Appendix 7

1. Loudspeakers shall not be located near doors and windows, or in the entrance lobby or outside the premise building
2. No Music or amplified sound shall be generated on the premises to give rise to a nuisance to neighbouring residents
3. No collections of waste or recycling materials (including bottles) from the premises shall take place between 22:00 hours and 08:00 hours on the following day.
4. No deliveries to the premises shall take place between 22:00 hours and 08:00 hours the following day.
5. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
6. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall be limited to 5 persons at any one time.

Conditions agreed with Police - See Appendix 8

1. CCTV is kept for a minimum of 30 days and made available to Police or other Licensing Authority on request.

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 9 - 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.

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 the application
Appendix 2	Site Plan
Appendix 3	Maps of the surrounding area
Appendix 4	Other licensed venues in the vicinity
Appendix 5	Representations from Licensing Authority
Appendix 6	Section 182 advice by Home office concerning relevant, vexatious, and frivolous representations
Appendix 7	Environmental Protection agreed conditions
Appendix 8	Police Agreed Conditions
Appendix 9	Licensing Policy advice on crime and disorder
Appendix 10	S182 Guidance on crime and disorder
Appendix 11	Licensing Policy advice on Public Nuisance
Appendix 12	Section 182 guidance Public Nuisance
Appendix 13	Licensing Policy - CIZ
Appendix 14	Framework Hours
Appendix 15	Planning