

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub-Committee	5th March 2019	Unclassified		

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 (Roman Road PFC) 89 Roman Road, London E2 0QN Ward affected: Bethnal Green
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1.0 Summary

Applicant:	Roman Road PFC
Name and	Roman Road PFC Limited
Address of Premises:	89 Roman Road London E2 0QN
Licence sought:	Licensing Act 2003 – premises licence <ul style="list-style-type: none"> • The provision of late night refreshment
Representations:	Residents (including a petition)

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

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3.0 **Background**

3.1 This is an application for a premises licence for (Roman Road PFC) 89 Roman Road, London E2 0QN.

3.2 The applicant has described the premises as follows:
“retail unit serving fast food”.

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

3.4 The applicant has applied for the following licensable activities and timings:-

The provision of late night refreshment - Indoors

- Monday to Thursday, from 23:00 hrs to 00:00 hrs (midnight)
- Friday and Saturday, from 23:00 hrs to 01:00 hrs the following day
- Sunday, from 23:00 hrs to 00:00 hrs (midnight)

The opening hours of the premises

- Monday to Thursday, from 06:00 hrs to 00:00 hrs (midnight)
- Friday and Saturday, from 06:00 hrs to 01:00 hrs the following day
- Sunday, from 06:00 hrs to 00:00 hrs (midnight)

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 2018.

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 the following:

Other persons	Appendix
Alex Howard	6
Jack Matthews	7
Jane Pollard (petition)	8
Marcella Mastantuono	9
Nicholas Sanderson	10
Steven Lang	11
Tolullah Oni	12

- 6.9 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)

6.10 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

6.11 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 the licensible objectives of the prevention of crime and disorder, public safety and the prevention of public nuisance.

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 (as offered by the applicant)

7.1 *Clear and conspicuous notices warning of potential criminal activity, such as theft, that may target customers will be displayed.*

7.2 *Custom will not be sought by means of personal solicitation outside or in the vicinity of the premises.*

7.3 *All CCTV cameras will be maintained in good working order and will continually record whilst the premises is open to the public.*

7.4 *CCTV recordings are kept for a minimum of 30 days and made available to Police or other licensing authorities on request (agreed with Police).*

7.5 *Persons appearing drunk or under the influence of illegal substances will not be permitted into the premises.*

- 7.6 *Maintain an incident log of any criminal activity or attempted criminal activity within or within the immediate vicinity of the premises.*
- 7.7 *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.*
- 7.8 *Customers will be asked not to stand around talking in the street outside the premises; and asked to leave the vicinity quickly and quietly.*
- 7.9 *All the rubbish produced by the premises will be stored securely in a designated area or in a bin with a tight fitting lid.*
- 7.10 *Children below the age of 16 years old will be excluded from the premises between the hours of 23:00 hours to 01:00 hours the following day.*

8.0 Conditions in consultation with the Responsible Authorities

Conditions agreed with Met Police Licensing and Environmental Health Noise Team (See Appendix 13)

- 8.1 *CCTV recordings are kept for a minimum of 30 days and made available to Police or other licensing authorities on request.*
- 8.2 *An incident report book is kept and maintained.*
- 8.3 *No deliveries to the premises shall take place between 22:00 hours and 08:00 hours the following day.*
- 8.4 *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.*

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 14 - 20** 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 of the application
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
Appendices 6-12	Representations of residents
Appendix 13	Conditions agreed with Police Licensing and Environmental Health Noise
Appendix 14	Licensing Officer comments on noise while the premise is in use
Appendix 15	Licensing Officer comments on access/egress Problems
Appendix 16	Licensing Officer comments on crime and disorder on the premises
Appendix 17	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 18	Safety problems
Appendix 19	Planning
Appendix 20	Licensing Policy relating to hours of trading