

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub-Committee	30 July 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 variation of a Premises Licence for (Mick's Garage) Queens Yard, White Post Lane, London E9 5EN Ward affected: Bow East
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1.0 Summary

Applicant:	Crate Drinks Limited
Name and	Mick's Garage
Address of Premises:	Unit 8a Queens Yard White post Lane London E9 5EN
Licence sought:	Licensing Act 2003 – variation of a premises licence <ul style="list-style-type: none"> • To extend the times for the of alcohol • To extend the times for the provision of regulated entertainment • To extend the times for the provision of late night refreshment
Representation(s):	One resident

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 variation of a premises licence for (Mick's Garage) Queens Yard, White Post Lane, London E9 5EN.
- 3.2 A copy of the existing premises licence is enclosed as **Appendix 1** for information only.
- 3.3 The licensable activities and timings of the existing licence are detailed below for information:

The sale by retail of alcohol (on sales only)

- *Monday to Thursday, from 17:00 hours to 23:00 hours*
- *Friday, from 17:00 hours to 02:30 hours the following day*
- *Saturday, from 09:00 hours to 02:30 hours the following day*
- *Sunday, from 09:00 hours to 23:30 hours the following day*

The provision of late night refreshment - Indoors

- *Friday and Saturday, from 23:00 hours to 02:00 hours the following day*

The provision of regulated entertainment - Indoors

(Plays, Films, Indoor Sporting Event, and Recorded Music, Performances of Dance)

- *Monday to Thursday, from 17:00 hours to 23:00 hours*
- *Friday, from 17:00 hours to 02:30 hours the following day*
- *Saturday, from 09:00 hours to 02:30 hours the following day*
- *Sunday, from 09:00 hours to 23:30 hours*

Live Music

- *Monday to Thursday, from 17:00 hours to 23:30 hours*
- *Friday, from 17:00 hours to 02:30 hours the following day*
- *Saturday, from 09:00 hours to 02:30 hours the following day*
- *Sunday, from 09:00 hours to 23:00 hours*

Non-standard timings:

For the 20 occasions per year for Live music, recorded Music, late night refreshment until 02:30 hours the following day, closing at 03:00 hours the following day, including the New Year's Eve closing at 04:00 hours the following day that the Police and Environmental Health are informed of each of these events at least 10 working days before they occur, so that they may consider each event, and if there is any reason to believe that the Licensing Objectives will not be met, have the right to refuse an event

The opening hours of the premises

- *Monday to Thursday, from 17:00 hours to 23:30 hours*
- *Friday, from 17:00 hours to 02:30 hours the following day*
- *Saturday from 09:00 hours to 02:30 hours the following day*
- *Sunday, from 09:00 hours to 23:30 hours the following day*

Non-standard timings:

For the 20 occasions per year for Live music, recorded Music, later night refreshment until 02:30 am, closing at 03:00 am, including the New Year's Eve closing at 04:00 am that the Police and Environmental Health are informed of each of these events at least 10 working days before they occur, so that they may consider each event, and if there is any reason to believe that the Licensing Objectives will not be met, have the right to refuse an event.

- 3.4 The applicant has described the nature of the proposed variation as follows:

"... We would like to have the sale of alcohol, regulated entertainment, late night refreshment etc until 02:30 on Friday and Saturday and closing by 03:00..."

- 3.5 A copy of the premises licence application form is enclosed as **Appendix 2**.

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

The sale by retail of alcohol (on sales only)

- Monday to Thursday, from 17:00 hours to 23:00 hours (No change)
- Friday, from 02:30 hours the following day to 03:30 hours (Saturday)
- Saturday, from 02:30 hours the following day to 03:30 hours (Sunday)
- Sunday, from 23:30 hours the following day to 00:00 hours (midnight)

The provision of late night refreshment – Indoors and outdoors (adding outdoors)

- Friday and Saturday, from 23:00 hours to 02:00 hours the following day

The provision of regulated entertainment - Indoors

(Plays, Performances of Dance)

- Monday to Thursday, from 23:00 hours to 23:30 hours
- Friday, from 02:30 hours the following day to 04:00 hours (Saturday)
- Saturday, from 02:30 hours the following day to 04:00 hours (Sunday)
- Sunday, from 23:30 hours to 00:00 hours (midnight)

(Films)

- Monday to Friday, from 23:00 hrs to 23:30 hrs
- Saturday, from 09:00 hrs to 02:30 hrs the following day (no change)
- Sunday, from 09:00 hours to 23:30 hours the following day (no change)

(Indoor Sporting Event)

- No change

Live Music

- Monday to Thursday, from 17:00 hours to 23:30 hours (No change)
- Friday, from 02:30 hours the following day to 04:00 hours (Saturday)

- *Saturday, from 02:30 hours the following day to 04:00 hours (Sunday)*
- *Sunday, from 23:00 hours to 00:00 hours (midnight)*

Recorded Music

- *Monday to Thursday, to 23:00 hours to 23:30 hours*
- *Friday, from 02:30 hours the following day to 04:00 hours (Saturday)*
- *Saturday, from 02:30 hours the following day to 04:00 hours (Sunday)*
- *Sunday, from 23:30 hours to 00:00 hours (midnight)*

Performances of Dance

- *Monday, from 17:00 hours to 23:00 hours (No change)*
- *Tuesday to Thursday 23:00 to 23:30 hours*
- *Friday, from 02:30 hours the following day to 04:00 hours (Saturday)*
- *Saturday, from 02:30 hours the following day to 04:00 hours (Sunday)*
- *Sunday, from 23:30 hours to 00:00 hours (midnight)*

Non-standard timings:

- No change

The opening hours of the premises

- *Monday to Thursday, from 17:00 hours to 23:30 hours (no change)*
- *Friday, from 17:00 hours to 04:00 hours the following day*
- *Saturday from 09:00 hours to 04:00 hours the following day*
- *Sunday, from 09:00 hours to 00:00 hours (midnight)*

4.0 Location and Nature of the premises

4.1 The site plan of the venue is included as **Appendix 3**.

4.2 Maps showing the vicinity are included as **Appendix 4**.

4.3 Details of the nearest licensed venues are included as **Appendix 5**.

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 6**.
- 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 a local resident (See **Appendix 7**).
- 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
 - Environmental Health Noise Team
 - 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 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 (Existing conditions)

7.1

1. A CCTV camera system covering both internal and external to the premise is to be installed.
2. The CCTV recordings are to be maintained for 31 days and to be provided upon request to either a Police Officer or an officer of any other Responsible Authority.
 - a. A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained.
 - b. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity.
3. At all times the premises is open, a person who can operate the CCTV system must be present on the premises who can download the images and present them immediately on request by a police officer or other responsible authority.
4. A number of SIA staff to be set at a level agreed with the Tower Hamlets Police Licensing, with a minimum of 4 SIA Staff, (at least

one of whom must be a female) when hosting events for more than 100 people.

5. A 'Challenge 25' policy shall be put in place.
6. An incident book shall be kept and maintained every day the premises is open.
 - a. The book shall contain the names and SIA numbers of security staff, their time on duty and time off duty.
 - b. It shall also record any refusals of entry, refusals of sale of alcohol and any incidents of disorder, incidents of crime or other incidents of note.
 - c. It shall be signed off by the duty manager at the end of each day.
7. A diary of events shall be sent to Tower Hamlets Police Licensing on a monthly basis.
8. Events that finish past the terminal time for public transport to have a travel plan put in place to ensure that customers can leave without causing nuisance to local residents.
9. A security policy shall be agreed with Tower Hamlets Police Licensing.
10. The amplified music levels as advised in the noise assessment report from KP Acoustics Ref 13779.NIA.01 to be set to a maximum limit of 85dB(A). The operational panel of the amplified noise equipment shall be secured by key or password to the satisfaction of officers from the Environmental Health Service and access shall only be by persons authorised by the Premises License Holder. No alteration or modification to any existing sound system(s) should be effected without prior knowledge of an authorised Environmental Health Service.
11. Loudspeakers shall not be located near the entrance to the premises or outside the premises building
12. All windows and external doors shall be kept closed after 21:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.
13. The venue shall operate an over 18 policy after the hours of 21:00 hours, any events which are subject to non-standard timings are also subject to over 18s checks and Challenge 25 at the door.

14. Children must always be under the supervision of a responsible adult. Staff and security personnel shall be on duty to monitor for lost children.

8.0 Conditions in consultation with the Responsible Authorities

None

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 8 - 11** 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 existing premises licence
Appendix 2	A copy of the current application
Appendix 3	Site Plan
Appendix 4	Maps of the surrounding area
Appendix 5	Other licensed venues in the area
Appendix 6	Section 182 Guidance by the Home Office
Appendix 7	Representation of resident
Appendix 8	Licensing Officer comments on noise while the premise is in use
Appendix 9	Licensing Officer comments on access/egress Problems
Appendix 10	Planning
Appendix 11	Licensing Policy relating to hours of trading