

Committee: <b>Licensing Sub-Committee</b>	Date: 3 <sup>RD</sup> February 2011	Classification: <b>Unclassified</b>	Report No. LSC 59/011	Agenda Item No.
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Report of: <b>Colin Perrins</b> <b>Head of Trading Standards and Environmental Health (Commercial)</b>  Originating Officer: <b>Mohshin Ali</b> <b>Acting Senior Licensing Officer</b>	Title: <b>Licensing Act 2003</b> <b>Application for a New Premises Licence for Blackstone, Ground Floor and Basement, 159 Commercial Street, London E1 6BJ</b>  Ward affected: <b>Spitalfields and Banglatown</b>
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## 1.0 Summary

Applicant:	<b>Bengal Bites Ltd t/a Black Stone</b>
Name and	<b>Black Stone</b>
Address of Premises:	<b>Ground Floor and Basement 159 Commercial Street London E1 6BJ</b>
Licence sought:	<b>Premises Licence under Licensing Act 2003</b> <ul style="list-style-type: none"> <li>• Sale of alcohol</li> <li>• The provision of regulated entertainment (recorded music)</li> <li>• The provision of late night refreshment</li> </ul>
Representations:	<b>Local Residents Residents Association</b>

## 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		Mohshin Ali 020 7364 5498

### 3.0 Background

- 3.1 This is an application for a premises licence for Blackstone, Ground Floor and Basement, 159 Commercial Street, London E1 6BJ.
- 3.2 A copy of the application is enclosed as **Appendix 1**.
- 3.3 The applicant has amended the application following consultation with Environmental Protection and the Police. The applicant's amendments are enclosed in **Appendix 2**.
- 3.4 The amended licensable activities and timings are as follows:

Sale of alcohol (on sales) and late night refreshment

- § Monday to Thursday, from 11:00 hours to 22:30 hours
- § Friday and Saturday, from 11:00 hours to 23:30 hours
- § Sunday, from 11:00 hours to 21:30 hours

**Note:** For late night refreshment, a licence is not required prior to 23:00 hours

The provision of regulated entertainment (recorded music)

- § Monday to Thursday, from 11:00 hours to 23:00 hours
- § Friday and Saturday, from 11:00 hours to 23:59 hours
- § Sunday, from 11:00 hours to 22:00 hours

Hours open to the public

- § Monday to Thursday, from 11:00 hours to 23:00 hours
- § Friday and Saturday, from 11:00 hours to 23:59 hours
- § Sunday, from 11:00 hours to 22:00 hours

**Note:** Non-standard timings have been removed from the application and the capacity has been reduced

- 3.5 A map showing the relevant premises is included as **Appendix 3**.

### 4.0 Licensing Policy and Government Advice

- 4.1 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 7<sup>th</sup> January 2008.
- 4.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.

- 4.3 The Home Office 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 will also be available at the hearing. It was last revised on the 12<sup>th</sup> October 2010.
- 4.4 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.

## **5.0 Representations**

- 5.1 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
- 5.2 Interested party as defined in Section 13 (3) of the Licensing Act 2003 is limited to persons living in the vicinity of the premises, their representatives and local businesses in the vicinity of the premises and their representatives. Essentially, the interested party making the representation should show by what they say that they, or those they represent are sufficiently close to be personally affected by the application.
- 5.3 Only a responsible authority or an interested party can make a representation. Both of these terms are defined by statute, in Section 13 of the Licensing Act 2003.
- 5.4 There are two tests for an interested party and only one for a responsible authority. The two tests are contained in Section 18 of the Act.
- 5.5 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.
- 5.6 Representations by responsible authorities do not have to meet the second test of not being vexatious and frivolous. Interested parties and their representatives have to meet this test.
- 5.7 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.

- 5.8 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 4**.
- 5.9 All the representations in this report have been considered by the relevant officer (Licensing Services Manager) and determined to have met the requirements of the Licensing Act 2003.
- 5.10 All of the responsible authorities have been consulted about this application. They are as follows:
- The Metropolitan Police
  - The LFEPA (the London Fire and Emergency Planning Authority).
  - Planning
  - Health and Safety
  - Environmental Protection
  - Trading Standards
  - Child Protection
- 5.11 This hearing is required by the Licensing Act 2003, because relevant representations have been made by local residents and residents association
- 5.12 In relation to the application and the representations, the personal details such as emails, phone numbers and signatures have been redacted for the purposes of identity theft protection. The Licensing Officer has the original documents on file.
- 5.13 Please see **Appendix 5** for a list of the residents/ residents association making representations.
- 5.14 Please see **Appendices 6 - 35** for the actual representations of the local residents/ residents association.
- 5.15 The Police and Environmental Protection initially made representations to the original application but then agreed timings and conditions with the applicant.
- 5.16 Please see **Appendix 36** for the agreements with the Police.
- 5.17 Please see **Appendix 37** for the agreements with Environmental Protection.
- 5.18 The London Fire and Emergency Planning Authority did not make a representation and their comments are included in **Appendix 38**.
- 5.19 The application was required to be advertised in a local newspaper and by a blue poster. In addition the licensing section consulted on a 40 m basis.

5.20 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

5.21 Essentially, the local residents oppose the application because the applicant has not explained how within the context of the application they will meet the above licensing objectives, particularly:

- the prevention of crime and disorder
- the prevention of public nuisance
- public safety

5.22 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.

## **6.0 Licensing Officer Comments**

6.1 The Licensing Section is not a responsible authority and therefore has no ability to make any relevant representations. The following therefore 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.

### **6.2 Guidance issued under section 182 of the licensing Act 2003**

- ∇ As stated in the guidance it is “provided for licensing authorities carrying out this their functions.” It is a key mechanism for promoting best practice, ensuring consistent application and promoting fairness (1.6).

Also “so long as the guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so.” When doing so licensing authorities will need to give full reasons for their actions (1.7).

- ∇ 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.” (1.10)

- ∇ Conditions may not be imposed for the purpose other than the licensing objectives.
  - ∇ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.7).
  - ∇ The Licensing Authority may only impose such conditions as are necessary for meeting the licensing objectives.
  - ∇ It is Government policy that facilities for people and performers with disabilities should be provided at places of entertainment. (S.10.24).
  - ∇ The Government has stated “there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested.” (10.20)
- 6.3 The Licensing Act 2003 permits children of any age to be on the premises providing they are accompanied by an adult. It is not necessary to make this a condition.
- 6.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 6.5 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.
- 6.6 The Government has advised that “In the context of preventing public nuisance it is again essential that conditions are focused on measures within the direct control of the licence holder. Conditions relating to public nuisance caused by anti-social behaviour of customers once they are beyond the control of the licence holder or premises management cannot be justified and will not serve the licensing objectives.” (2.38)
- 6.7 The Council’s licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

- 6.8 Members will find advice on the issues relating to conduct on the premises and egress as follows:

<b>Appendix 39</b>	Licensing Officer comments on crime and disorder on the premises
<b>Appendix 40</b>	Licensing Officer comments on crime and disorder from patrons leaving the premises
<b>Appendix 41</b>	Licensing Officer comments on noise while the premise is in use
<b>Appendix 42</b>	Licensing Officer comments on egress problems
<b>Appendix 43</b>	Licensing Officer comments on public safety
<b>Appendix 44</b>	Planning
<b>Appendix 45</b>	Licensing Policy relating to hours of trading

## **7.0 Exemptions**

- 7.1 There are a number of statutory exemptions from the operation of the Licensing Act 2003, and Members need to bear these in mind.
- 7.2 Acts of religious worship, wherever performed are not licensable.
- 7.3 Section 177, (1) and (2) of the Act provides that where a premises (or club) is licensed for alcohol consumption on the premises and is primarily thus used, and the permitted capacity does not exceed 200, additional conditions relating to the music should only relate to public safety or the prevention of crime (or both). That is they should not relate to any “noise nuisance.”
- 7.4 Section 177 (4) provides that where a premises licence (or club) has a capacity of not more than 200 and the only music is unamplified live music between 08 00 hrs and midnight, no additional conditions should be set relating to the music.
- 7.5 Section 177 can be disapplied on a licence review if it is proportionate to do so.

## **8.0 Legal Comments**

- 8.1 The Council’s legal officer will give advice at the hearing.

## **9.0 Finance Comments**

- 9.1 There are no financial implications in this report.

## 10.0 Appendices

<b>Appendix 1</b>	A copy of the premises licence application
<b>Appendix 2</b>	Email to amend the application
<b>Appendix 3</b>	Maps of the area
<b>Appendix 4</b>	Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations
<b>Appendix 5</b>	list of the residents/ residents association making representations
<b>Appendices 6 - 35</b>	the actual representations of the local residents/ residents association
<b>Appendix 36</b>	Timings and conditions agreed with Police
<b>Appendix 37</b>	Timings and conditions agreed with Environmental Protection
<b>Appendix 38</b>	Comments of London Fire and Emergency Planning Authority
<b>Appendix 39</b>	Licensing Officer comments on crime and disorder on the premises
<b>Appendix 40</b>	Licensing Officer comments on crime and disorder from patrons leaving the premises
<b>Appendix 41</b>	Licensing Officer comments on noise while the premise is in use
<b>Appendix 42</b>	Licensing Officer comments on access and egress problems
<b>Appendix 43</b>	Licensing Officer comments on public safety
<b>Appendix 44</b>	Planning
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