

Committee: Licensing Sub-committee	Date 4th September 2012	Classification Unclassified	Report No. LSC 046/123	Agenda Item No.
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Report of: Colin Perrins Head of Commercial Services Originating Officer: Mohshin Ali Senior Licensing Officer	Title: Licensing Act 2003 Application for a Premises Licence for The Oval, 29 – 32 The Oval, London E2 9DT Ward affected: Bethnal Green North
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1.0 Summary

Applicant: **Oval Space Limited**

Name and Address of Premises: **The Oval
29 – 32 The Oval
London
E2 9DT**

Licence sought: **Licensing Act 2003 - Premises licence**

- **Sale by retail of alcohol**
- **The provision of regulated entertainment**
- **The provision of late night refreshment**

Representations: **Local church
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

Mohshin Ali
020 7364 5498

3.0 Background

- 3.1 This is an application for a premises licence for The Oval, 29 – 32 The Oval, London E2 9DT.
- 3.2 A copy of the application is enclosed as **Appendix 1**.
- 3.3 The licensable activities and timings that have been applied for are as follows:

The sale by retail of alcohol (On sales)

- Monday to Thursday, from 18:00 hours to midnight
- Friday and Saturday, from 12:00 hours to 05:00 hours the following days
- Sunday, from 12:00 hours to midnight

The provision of regulated entertainment

Plays (Indoors). Provision of anything similar to live music, recorded music or performance of dance (Indoors and outdoors)

- Monday to Thursday, from 09:00 hours to midnight

Films - Indoors

- Monday to Thursday, from 09:00 hours to midnight
- Friday and Saturday, from 09:00 hours to 06:00 hours the following days
- Sunday, from 09:00 hours to midnight

Provision of facilities for making music (Indoors). Provision of facilities for entertainment of a similar description to those provided for making music or dancing (Indoors). Provision of facilities for dancing

- Monday to Thursday, from 09:00 hours to midnight
- Friday and Saturday, from 09:00 hours to 06:00 hours the following days
- Sunday, from 09:00 hours to midnight

Note: the applicant has not indicated if the “Provision of facilities for dancing” is for indoors or outdoors

Performance of dance. Provision of facilities for making music – Indoors and outdoors

- Monday to Thursday, from 09:00 hours to midnight
- Friday and Saturday, from 09:00 hours to 06:00 hours the following days
- Sunday, from 09:00 hours to midnight

Live music, recorded music.– indoors and outdoors

- Monday to Thursday, from 12:00 hours to midnight
- Friday and Saturday, from 12:00 hours to 06:00 hours the following days
- Sunday, from 12:00 hours to midnight

Note: "All outdoor events to cease at 21:00".

Note: Non-standard timings

The applicant has stated "Bank Holiday NYE/NYD may present timings outside the norm". However, the actual timings have not been stated.

The provision of late night refreshment – Indoors and outdoors

- Monday to Thursday, from 23:00 hours to midnight
- Friday and Saturday, from 23:00 hours to 03:00 hours the following days
- Sunday, from 23:00 hours to midnight

Hours premises are open to the public

- Monday to Thursday, from 09:00 hours to midnight
- Friday and Saturday, from 09:00 hours to 06:00 hours the following days
- Sunday, from 09:00 hours to midnight

3.4 A map showing the relevant premises is included as **Appendix 2**.

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 in 2011.

4.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.

4.3 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 2012.

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 making the representation should show by what they say that they, or those they represent are 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 3**.
- 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 This hearing is required by the Licensing Act 2003, because relevant representations have been made by local residents.
- 5.11 The representations against the premises are listed below:

- Minister O. Mankanjuola (Church)**Appendix 4**
- Carol Haigh (Diocese of Westminster).....**Appendix 5**
- Rev Petras Tverijonas (Church) and petition...**Appendix 6**

- 5.12 One of the petitions submitted by Rev Petras Tverijonas (Church) has been included in **Appendix 6**. We wrote to one of the petitioners (Resident X) to acknowledge the petition. For members’ information Resident X responded by asking for her details to be removed from the petition by responding as follows:

“I just received a letter about a petition I signed under false pretence. A priest from across the road knocked on my door late one night and basically lied and said they were planning to run a late night nightclub down the road. At no point did I authorise to represent for any correspondence on this matter. After talking to the people who are applying for the licence it isn’t a nightclub as was put to me.”

The fact that the priest has not put his name on the document is absurd. I felt like I have been lied to and want to remove my name from this correspondence. I don't not mind the licence grant going ahead.

If you want to speak to the person that gave me the petition I recommend contact the priest at the church

<http://www.rcdow.org.uk/lithuanianchurch/>

Thank you.

Please notify that you have taken my name off this petition”.

- 5.13 Rev Petras Tverijonas also submitted a further petition signed by 471 parishioners as mentioned in the representation, however, this petition was not considered a valid representation as it did not relate to the licensing objectives. For members' information, the analysis of this invalid petition is as follows. The petition starts with signatures of 121 people who mainly live outside of Tower Hamlets which was headed: *“We, the undersigned, are parishioners of St. Casimir’s Church, 21 The Oval, London, E2 9DT. The Church recently celebrated its centenary, and is attended by Lithuanians of all ages, including many children. In addition to services, a wide range of other activities takes place in the Church itself and the adjoining hall. We object strongly to the presence of the Oval Space, which is essentially a night club, so close to the Church; it is not appropriate for such an establishment to be situated in such close proximity to a church which is also an important centre for the Lithuanian community in London”*

The petition continues with the following heading: *“We, parishioners of St. Casimir’s church, express our strong opposition to give a license to The Oval Space 29 – 32 The Oval E2 9DT”*. This was signed by 350 people, however, no addresses were given, only telephone numbers and emails.

- 5.14 Furthermore, Minister O. Mankanjuola also submitted a further petition signed by 36 people, giving their addresses as the Church address 7 – 8 The Oval. Again, this petition was not considered a valid representation as it did not relate to the licensing objectives. For members' information, this petition was headed as follows: *“Petition By Parishioners of the Redeemed Christian Church of God Regarding The Oval Space. We, the undersigned, are the members of the Redeemed Christian Church of God, 7-8 The Oval, London E2 9DT. We object strongly to the presence of the Oval Space, which is essentially a night club, so close to the Church: it is not appropriate for such”*

Amongst the signatories of the petition, one has given their home address as being in Texas, United states of America. Another has given their home address as being in Melbourne, Australia.

- 5.15 The Licensing Section has also received various supporting documents from the applicant. The documents include individual letters that were not considered to be valid representations as they did not relate to the licensing objectives. However, these have been including as supporting documents from the applicant in **Appendix 7**.
- 5.16 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
 - Noise
 - Trading Standards
 - Child Protection
- 5.17 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
- 5.18 Essentially, the relevant parties oppose the application because the applicant has not explained how within the context of the application they will meet the licensing objectives, particularly:
- The prevention of crime and disorder
 - The prevention of public nuisance
- 5.19 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 At the time when the application was received, the Licensing Section was not a responsible authority and therefore had 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(See 6.2). 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 to licensing authorities in relation to the carrying out of their functions.” It is a key mechanism

for promoting best practice, ensuring consistent application and promoting fairness (1.7)

- ∇ Also “so long as licensing authorities have properly understood the Guidance, they may depart from it if they have reason to do so as long as they have reason to do so.” When doing so 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)
- ∇ 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 (10.6).
- ∇ 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.10.25).
- ∇ “The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities.” (10.20)
- ∇ Mandatory conditions must be imposed (10.43) and censorship avoided (10.33).
- ∇ 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. This may be unlawful under current law. However, it is important to note that the mandatory conditions made under sections 19A and 73B of the 2003 Act prohibit a number of types of drinks promotions where they give rise to a significant risk to any one of the four licensing objectives (10.39).

6.3 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.

- 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, club or premises management cannot be justified and will not serve the licensing objectives.” (2.39)
- 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 In **Appendices 7 - 12** Members are given general advice, and also have explanations of the Council’s Licensing Policy, Government advice and other legislation relating to the matters in the representations.

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 Schedule 1 Part 2 of the Act states that entertainment in churches, Morris dancing (and accompanying music if live and unamplified) and incidental music are not licensable activities-that is no conditions can be set for them.
- 7.3 Acts of religious worship, wherever performed are not licensable.
- 7.4 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.”
- 7.5 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.
- 7.6 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

- Appendix 1** A copy of the application form
- Appendix 2** Maps of the area
- Appendix 3** Section 182 Guidance by the Home Office
- Appendix 4** Minister O. Makanjuola (Church)
- Appendix 5** Carol Haigh (Diocese of Westminster)
- Appendix 6** Rev Petras Tverijonas (Church) and petition
- Appendix 7** Licensing Officer comments on noise while the premise is in use
- Appendix 8** Licensing Officer comments on access/egress problems
- Appendix 9** Licensing Officer comments on crime and disorder on the premises
- Appendix 10** Licensing Officer comments on crime and disorder from patrons leaving the premises
- Appendix 11** Planning
- Appendix 12** Licensing Policy relating to hours of trading
- Appendix 13** Supporting documents from the applicant