

Committee :	Date	Classification
Licensing Sub Committee	10th January 2017	Unrestricted

Report of : David Tolley - Head of Environmental Health & Trading Standards	Title: Licensing Act 2003 Application for a Premises Licence for Efes Express – 79 Brick Lane, London, E1 6QL
Originating Officer: Andrew Heron - Licensing Officer	Ward affected: Spitalfields and Banglatown

1.0 Summary

Applicant: **Ahmet Uzun**

Name and Address of Premises: **Efes Express
79 Brick Lane
London
E1 6QL**

Licence sought: **Licensing Act 2003
Provide Late Night Refreshment**

Objectors: **The Metropolitan Police (Licensing Division)
LBTH Environmental Health
LBTH Licensing Authority
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

Andrew Heron
020 7364 2665

3.0 **Background**

3.1 This is an application for a premises licence for Efes Express – 79 Brick Lane, London, E1 6QL.

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

3.3 The Applicant has described the nature of the application as:

- Providing Late Night Refreshment

3.4 The hours that have been applied for are as follows:-

The Provision of Late Night Refreshment (indoors):

- Monday to Sunday from 23:00hrs to 02:00hrs (the following day)

Hours premises is open to the public:

- Monday to Sunday from 08:00hrs to 02:30hrs (the following day)

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 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 March 2015.

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 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 Responsible Authorities:
 - **Appendix 6** PC Alan Cruickshank of the Metropolitan Police (Licensing Division)
 - **Appendix 7** Nicola Cadzow of LBTH Environmental Health
 - **Appendix 8** Mohshin Ali of LBTH Licensing Authority
- 6.9 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following local residents.
 - **Appendix 9** Keith Bowler
 - **Appendix 10** John and Sandy Critchley
 - **Appendix 11** Jane Curtis
 - **Appendix 12** Olwen Evans

- **Appendix 13** Jeremy Freedman
- **Appendix 14** Sarah and Ed Jenkins
- **Appendix 15** Susan and Michael Kay
- **Appendix 16** Glenn Leeder
- **Appendix 17** Conor McLernon
- **Appendix 18** Glen Misfud
- **Appendix 19** Spitalfields Community Group (C/o Selina Misfud)
- **Appendix 20** John Shapiro

6.10 Please note that the application also received a number of invalid and late representations. Objectors who made invalid representations were written to in order to provide an opportunity for them to validate their objections. Representations received after the end consultation date were duly rejected.

6.11 Some local resident representations lack detail and in some cases fail to make direct reference to the premises. However, as the premises lies within the LBTH Cumulative Impact Zone, borderline representations have been accepted if they infer towards that Policy.

6.12 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
- Primary Care Trust (Public Health England)

6.13 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

6.14 The objections cover allegations of:

- Close proximity to residential properties
- Excessive hours, outside of the Council Policy framework hours
- The LBTH Cumulative Impact Zone

6.15 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.

6.16 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

7.1

1. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
2. No person shall be employed to solicit for custom or be permitted to solicit for custom for business for the premises in any public place within a 500-metre radius of the premises.
3. Clear signage shall be placed in the restaurant windows stating that the premises supports the Council's 'No Touting' policy.
4. The premises shall install and maintain a comprehensive CCTV system. All entry and exit points will be covered enabling frontal identification with a "head and shoulder" image of every person entering, in any light condition. The CCTV system shall continually record whilst the premise is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available upon request of Police or authorised officer throughout the preceding 31-day period (subject to data protection legislation).
5. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public. This staff member must be able to show a Police or authorised council officer recent data or footage with the absolute minimum of delay when requested.
6. A minimum of one SIA registered door supervisor shall be on duty from 23:00 daily until the closure of the premises to the public.
7. Reasonable steps shall be taken to ensure that any persons loitering outside the premises disperse quickly and do not congregate.

8.0 Conditions Agreed with Responsible Authorities

8.1 None. The Applicant's legal agent has failed to respond to representations of the Responsible Authorities.

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 21-23** 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 Advice by the DCMS- Relevant, vexatious and frivolous representations
- Appendix 6** Representation of PC Alan Cruickshank of the Metropolitan Police (Licensing Division)
- Appendix 7** Representation of Nicola Cadzow of LBTH Environmental Health
- Appendix 8** Representation of Mohshin Ali of LBTH Licensing Authority
- Appendix 9** Representation of local resident Keith Bowler
- Appendix 10** Representation of local resident John and Sandy Critchley
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- Appendix 19** Representation of local resident Spitalfields Community Group (C/o Selina Misfud)
- Appendix 20** Representation of local resident John Shapiro
- Appendix 21** Licensing officer comments on Access and Egress Problems
- Appendix 22** Licensing officer comments on Licensing Policy Relating to Hours of Trading
- Appendix 23** Licensing officer comments on Special Cumulative Impact Policy for the Brick Lane Area