

Committee :	Date	Classification
Licensing Sub Committee	14th February 2017	Unrestricted

Report of : David Tolley Head of Environmental Health & Trading Standards Originating Officer: Andrew Heron Licensing Officer	Title: Licensing Act 2003 Application for a Variation to Premises Licence for Original Taste, 74 Bow Road, London, E3 4DL Ward affected: Bromley North
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1.0 **Summary**

Applicant: **Original Taste Limited**
 Name and **Original Taste**
 Address of Premises: **74 Bow Road**
London
E3 4DL

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

Objectors: **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
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3.0 **Background**

- 3.1 This is an application for a variation to the premises licence for Original Taste at 74 Bow Road, London, E3 4DL.
- 3.2 For Members' information, the Director of Original Taste Limited, Mr Shahin Ahmed applied to the Licensing Authority for a premises licence for late night refreshment in August 2013. The application received representation from local residents and was ultimately refused by the LBTH Licensing Sub Committee in October that year.
- 3.3 A copy of the current application is enclosed as **Appendix 1**.
- 3.4 The applicant has described the nature of the variation as:
- Providing late night refreshment
- 3.5 The hours that have been applied for are as follows:-

The Provision of Late Night Refreshment (indoors):

- Friday to Saturday from 23:00hrs to 23:59hrs

Members will note that that application incorrectly states that the application is for late night refreshment from:

- Sunday to Thursday from 11:00hrs to 22:00hrs
- Friday and Saturday from 11:00hrs to 23:59hrs

Members will note that the hours listed from Sunday to Thursday fall outside of the requirements for late night refreshment.

Hours the premises is open to the public:

- Sunday to Thursday from 11:00hrs to 23:00hrs
- Friday and Saturday from 11:00hrs to 23:59hrs

Members may wish to fully establish with the Applicant (and/or Agent) what hours are specifically being applied for. The current application suggests that there would be an hour's break between the provision of any hot food and closing. At present the application appears muddled.

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 local residents.

- **Appendix 6** Ben Brookes
- **Appendix 7** Melanie Rain
- **Appendix 8** Petition from Local Residents: Charlotte Atyeo and Robert Smith / Alistair Baker / Elizabeth Burnett / David Thompson / Louis Harbridge and Leandra Searfin / Sara Dunn / Michael Keith and Cathy McIlwaine / Dan Jude

Members may wish to note the petition received via correspondence containing 24 names. There are no signatures on the petition, only a list of names and addresses. No one has identified themselves as the lead petitioner.

It is not practice for the Licensing Authority administering an application to contact all the signatories on a petition to verify that the objection has been properly sought and understood. Therefore Members may wish to decide how much weight to give to the petition in its current form.

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
- Primary Care Trust (Public Health England)

6.10 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

6.11 The objections cover allegations of:

- Anti-social behaviour on the premises
- Anti-social behaviour from patrons leaving the premises

- Acting as a magnet attracting the young who then engage in anti-social behaviour
- Noise while the premise is in use
- Disturbance from patrons leaving the premises on foot
- Disturbance from patrons leaving the premises by car
- Lack of adequate car parking facilities
- Close proximity to residential properties

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

7.1 The following appear in the Applicant's Operating Schedule within the application:

1. CCTV System installed to monitor entrances, exits, and other parts of the premises in order to address the prevention of crime objective;
2. A clear and legible notice outside the premises indicating the normal hours under the terms of the premises licence during which licensable activities are permitted;
3. Clear and conspicuous notices warning of potential criminal activity, such as theft, that may target customers will be displayed;
4. Custom will not be sought by means of personal solicitation outside or in the vicinity of the premises;
5. Prevention and vigilance in illegal drug use at the retail unit area;
6. A log book or recording system shall be kept upon the premises in which shall be entered particulars of inspections made; those required to be made by statute, and information compiled to comply with any public safety condition attached to the premises licence that requires the recording of such information. The log book shall be kept available for inspection when required by persons authorised by the Licensing Act 2003 or associated legislation;

7. All parts of the premises and all fittings and apparatus therein, door fastenings and notices, lighting, heating, electrical, air condition, sanitary accommodation and other installations, will be maintained at all times in good order and in a safe condition;
8. Noise reduction measures to address the public nuisance objective;
9. Prominent, clear and legible notices will be displayed at the exit requesting the public to respect the needs of nearby residents and to leave the premises and the area quietly;
10. Deliveries of goods necessary for the operation of the business will be carried out at such a time or in such a manner as to prevent nuisance and disturbance to nearby residents;
11. The Licensee will ensure that staff who arrive early morning or depart late at night (ex. for unpacking, pricing newly delivered goods) when the business has ceased trading conduct themselves in such a manner to avoid causing disturbance to nearby residents;
12. Customers will be asked not to stand around loudly talking in the street outside the premises;
13. Customers will not be admitted to premises above opening hours;
14. The movement of bins and rubbish outside the premises will be kept to a minimum after 23.30hrs. This will help to reduce the levels of noise produced by the premises;
15. Any lighting on or outside the premises will be positioned and screened in such a way so as to not cause a disturbance to nearby residents;
16. Adequate waste receptacles for use by customers will be provided in the local vicinity;
17. All the details provided in Training Record Book available the retail unit;
18. Log Book will be kept upon the premises all the time.

8.0 Licensing Officer Comments

- 8.1 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.

8.2 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)

- 8.3 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.
- 8.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 8.5 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.
- 8.6 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)
- 8.7 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 8.8 In **Appendices 9-13** 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.

9.0 Legal Comments

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

10.0 Finance Comments

- 10.1 There are no financial implications in this report.

11.0 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 local resident Ben Brookes
Appendix 7	Representation of local resident Melanie Rain
Appendix 8	Representation of local residents in the form of a petition
Appendix 9	Licensing Officer comments on anti-Social behaviour on the premises
Appendix 10	Licensing Officer comments on anti-social behaviour patrons leaving the premises
Appendix 11	Licensing officer comments on access and egress problems
Appendix 12	Licensing officer comments on noise when the premises is in use
Appendix 13	Licensing officer comments on Acting as a magnet attracting the young