

Committee :	Date	Classification
Licensing Sub Committee	28th February 2017	Unrestricted

Report of : David Tolley Head of Environmental Health & Trading Standards	Title: Licensing Act 2003 Application for a New Premises Licence for 106 Commercial Street, London E1 6LZ
Originating Officer: Kathy Driver Principal Licensing Officer	Ward affected: Spitalfields and Banglatown

1.0 Summary

Applicant: **Time Out Market Limited**
Name and Address of Premises: **106 Commercial Street
London E1 6LZ**

Licence sought: **Licensing Act 2003
The Sale of Alcohol
Provision of regulated entertainment**

Objectors: **Local Residents
Local Resident Groups**

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

Kathy Driver

020 7364 5171

3.0 **Background**

- 3.1 This is an application for a new premises licence for 106 Commercial Street, London E1 6LZ.
- 3.2 A copy of the application is enclosed as **Appendix 1**.
- 3.3 The application has been amended with off sales of alcohol being removed and removal of Non Standard Timings for News Years Eve.
- 3.4 The hours that have been applied for are as follows:-

Sale of Alcohol (on sales only)

Monday to Saturday from 11:00 hours to 23:00 hours
Sunday 11:00 hours to 22:00 hours

The Provision of Regulated Entertainment in the form of recorded music and films (indoors):

Monday to Saturday from 11:00 hours to 23:00 hours
Sunday 11:00 hours to 22:00 hours

Hours premises is open to the public:

Monday to Saturday from 08:00 hours to 23:30 hours
Sunday 10:00 hours to 22:30 hours

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 The premises already have two licences in place covering different areas of the venue.
Licence 1 (Ely & Sidney) See **Appendix 4** for licence and plan
Licence 2 (Stables Gallery) See **Appendix 5** for licence and plan
- 4.5 Details of other licensed venues in the immediate vicinity are included as **Appendix 6**.

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 7**.
- 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 and resident groups.
- See **Appendix 8** For list of representations
see **Appendices 9 - 15** For resident Groups
See **Appendices 16 - 77** For individual residents

- 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
 - Noise while the premise is in use
 - Disturbance from patrons leaving the premises on foot
 - Close proximity to residential properties
 - Noise leakage from the premises
 - The LBTH Cumulative Impact Zone
- 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 premises shall operate in accordance with the Time Out Operational Management Statement. The Time Out Operations Management Statement shall be reviewed regularly and at least one every 3 months and a copy shall be made available for inspection by any responsible authority within a reasonable time of request.
- 7.2 Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and to leave the area quietly.
- 7.3 A noise limiter must be fitted to the musical amplification system set at a level determined by and to the satisfaction of a specialist acoustician, so as to ensure that no noise nuisance is caused to local residents or businesses. The operational panel of the noise limiter shall then be secured by key or password and access shall only be by persons authorised by the Premises Licence holder. The limiter shall not be altered without prior agreement with the satisfaction of the specialist acoustician. No alteration or modification to any existing sound system(s) should be effected without prior knowledge of the specialist consultant and records of any approvals shall be available for inspection by the Environmental Health Officers. No additional sound generating equipment shall be used on the premises without being routed through the sound limiter device.
- 7.4 During the hours of operation the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.
- 7.5 Substantial food and non-intoxicating beverages, including drinking water, shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.

Prevention of Crime and Disorder

- 7.6 The premises shall install and maintain a comprehensive CCTV system. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises 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. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period.

- 7.7 A staff member from the premises who is conversant with the operation of the CCTV shall be on the premises at all times when the premises are open to the public. This staff member shall be able to show Police recent data or footage with the absolute minimum of delay when requested.
- 7.8 An incident log shall be kept at the premises and made available on request to an authorized officer of the London Borough of Tower Hamlets or the Police, which will record the following:
- a) All crimes reported to the venue;
 - b) All ejections of patrons;
 - c) Any complaints received concerning crime and disorder;
 - d) Any incidents of disorder;
 - e) All seizures of drugs or offensive weapons;
 - f) Any refusal of sale of alcohol.
- 7.9 The premises licence holder shall ensure that any patrons smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.
- 7.10 A direct telephone number for the manager at the premises shall be publically available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.
- 7.11 During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.
- 7.12 The approved arrangements at the premises, including means of escape provisions, emergency warning equipment, the electrical installation and mechanical equipment, shall at all material times be maintained in good condition and full working order.
- 7.13 The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the plans provided.
- 7.14 All self closing doors shall be effectively maintained and not held open other than by an approved device.
- 7.15 The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
- 7.16 Curtains and hangings shall be arranged so as not to obstruct emergency signs.

- 7.17 The certificates listed below shall be submitted to the Licensing Authority upon written request.
- a) Any emergency lighting battery or system
 - b) Any electrical installation
 - c) Any emergency warning system
- 7.18 Any special effects or mechanical installations shall be arranged and stored so as to minimise any risk to the safety of those using the premises.

Protection of Children from Harm

- 7.19 A challenge 21 proof of age scheme shall be operated at the premise where the only acceptable forms of identification are recognised photographic identification cards such as a driving licence, passport or proof of age card with the PASS hologram.
- 7.20 There will be no striptease or nudity and all persons shall be decently attired at all times unless the premises are operating under the provisions of a Sexual Entertainment Licence.

8.0 Conditions Agreed by Responsible Authorities

Police Agreement:

- 8.1 No drinks in open containers to be taken outside for immediate consumption
- 8.2 SIA to be employed:
Thursday and Friday: 4 SIA from 18:00 until closing
Saturday and Sunday: 4 SIA from 13:00 until closing
Bank Holidays: 4 SIA from 13:00 until closing
or such lesser numbers as may be agreed with the Police from time to time

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 78 - 84** 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 the application
Appendix 2	Site Plan
Appendix 3	Maps of the surrounding area
Appendix 4	Licence 1 – Ely & Sidney
Appendix 5	Licence 2 – Stables Gallery
Appendix 6	Other licensed venues in the area
Appendix 7	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations

Appendix 8	List of Representations
Appendices 9 - 15	Local Resident Groups
Appendices 16 - 77	Local Residents
Appendix 78	Licensing Officer comments on Anti-Social Behaviour on the premises
Appendix 79	Licensing officer comments on anti-social behaviour patrons leaving the premises
Appendix 80	Licensing officer comments on Access and egress problems
Appendix 81	Licensing officer comments on Noise when the premises is in use
Appendix 82	Planning
Appendix 83	Licensing Policy relating to hours of trading.
Appendix 84	CIZ Policy