

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub-committee	30/10/18	Unclassified		

Report of: David Tolley Head of Environmental Health and Trading Standards Originating Officer: Corinne Holland Licensing Officer	Title: Licensing Act 2003 Application for a premises licence variation for Preem, 118-122 Brick Lane, London E1 6RL Ward affected: Spitalfields and Banglatown
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1.0 Summary

Applicant: **Mr Azmal Hussain**

Name and **Preem Restaurant**

Address of Premises: **118-122 Brick Lane
London
E1 6RL**

Licence sought: **Licensing Act 2003 – Premises Licence variation
(Alcohol/Late Night Refreshment/Recorded Music)**

Representations: **Licensing Authority
Police
Residents
Resident Associations**

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

Corinne Holland
020 7364 3986

3.0 **Background**

- 3.1 This is an application for a premises licence variation for (Preem Restaurant), 118-122 Brick Lane, London E1 6RL.
- 3.2 A copy of the existing Premises Licence is enclosed as **Appendix 1**.
- 3.3 The current hours for the premises are as follows:

The sale by retail of alcohol:

Monday to Sunday 12:00 (midday) to 01:00 hours (the following day)

The provision of late night refreshment:

Monday to Sunday 23:00 hours to 01:00 hours (the following day)

The opening hours of the premises

Monday to Sunday 12:00 (midday) to 01:30 hours the following day)

- 3.4 A copy of the variation application is enclosed as **Appendix 2**
- 3.5 The applicant has described the nature of the variation as:
Extending the licensable activities and removal of conditions.
- 3.6 The hours that have been applied for are as follows:-

The sale by retail of alcohol:

- Monday to Sunday 11:00 to 02:00 hours

Provision of Late Night Refreshments:

- Monday to Sunday 23:00 to 02:30 hours

Recorded Music (low key volume):

- Monday – Sunday 23:00 to 02:30 hours

Hours premises are open to the public:

- Monday to Sunday 11:00 to 02:30 hours

- 4.0 Applicant requests below conditions (12 and 13) to be removed from the Premises Licence:

12. Photo identification badges must be worn by staff at all times and surrendered to an officer of the responsibility authority upon request.

13. From 18:00hrs each evening two (2) SIA staff to be employed until closing;

5.0 Location and Nature of the premises

- 5.1 Photographs of the venue and immediate vicinity will be provided at the hearing.
- 5.2 The site plan of the venue is included as **Appendix 3**.
- 5.3 Maps showing the vicinity are included as **Appendix 4**.
- 5.4 Details of the nearest licensed venues are included as **Appendix 5**.

6.0 Licensing Policy and Government Advice

- 6.1 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 1st November 2013.
- 6.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.
- 6.3 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 2018.
- 6.4 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.

7.0 Representations

- 7.1 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
- 7.2 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.
- 7.3 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.
- 7.4 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.

- 7.5 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 7.6 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 6**.
- 7.7 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.
- 7.8 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following responsible authorities and local residents:
- Licensing Authority (**Appendix 7**)
 - Police (**Appendix 8**)
 - Environmental Protection (**Appendix 9**)

 - Residents: (**Appendices 10 – 22**)
 - Alan Williams
 - Carolyn & David Fuest
 - Jeannie Lowen
 - Juliet McKoen
 - Katie Ruane
 - Martin Hughes
 - Paul Shearer
 - John & Sandy Critchley
 - Susan Kay
 - Sophie Stebbins
 - Dame Sian Phillips
 - Rose Sheldon (on behalf of Spitalfields Market Residents Association)
 - Margaret Gordon (on behalf of St. George Residents' Association)
- 7.9 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
 - Trading Standards
 - Child Protection
 - Public Health

- 7.10 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
- 7.11 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 and the prevention of public nuisance.
- 7.12 Representations mainly cover concerns of
- Anti-social Behaviour on the premises
 - Anti-social behaviour from patrons leaving the premises
 - Noise whilst the premise is in use
 - Close proximity to residential properties
 - Access and egress
 - Crime and disorder
- 7.13 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.
- 7.14 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.

8.0 The following are conditions already on the existing Premises Licence:

Annex 2 - Conditions consistent with the operating Schedule

1. No nudity or semi nudity permitted;
2. Any customers under the age of 18 years must be accompanied by a person over the age of 18 years.

Annex 3 - Conditions attached after a hearing by the licensing authority

1. No regulated entertainment is to be provided except low key background music only;
2. To ensure, as far as reasonably practical, that patrons who enter and exit the premises especially late at night will act quietly and considerately at all times by ensuring prominent and clearly legible notices to be displayed at all exits of the premises requesting patrons to respect the needs of local residents and to leave the premises and area quietly;
3. The premise is required to have CCTV cameras installed, covering the premises internally and externally;
4. That the CCTV system should incorporate a recording facility and any recording should be retained and stored in a suitable and secure manner for a minimum of 31 days. A system should be in place to maintain the quality of the recorded image and a complete audit trail maintained. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. Recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period;
5. No food or drink will be allowed to be consumed outside the premises;
6. There will be no early morning (before 08:00hrs) or late night (after 19:00hrs) deliveries of food and drink to the premises. No bottles or refuse will be placed outside the premises after 21:00hrs.

(Conditions added after Review Hearing on 11th January 2011 and repeated in the Variation Hearing of 18th August 2015)

7. 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;
8. Clear signage to be placed in the restaurant windows stating that the premises supports the Council's 'No Touting Policy'.

(Condition added after Review Hearing on 6th October 2011)

9. A CCTV camera to be installed so that it captures images of persons entering the premise via the front entrance.

(Conditions added after Variation Hearing on 18th August 2015)

10. Alcohol to be only served ancillary to a meal
11. There are to be no off sales of alcohol
12. Photo identification badges must be worn by staff at all times and surrendered to an officer of the responsibility authority upon request.
13. From 18:00hrs each evening two (2) SIA staff to be employed until closing;
14. The management will offer customers complementary teas and coffees after a meal to positively promote leaving the premises in an orderly manner and to not cause any problems relating to anti-social behaviour.
15. No regulated entertainment is to be provided except low key background music only;
16. No food or drinks to be allowed to be consumed immediately outside the premises in the street.
17. Patrons will be encouraged to leave the premises quietly and considerately especially late at night. A dedicated taxi or mini cab service will be made available and offered to assist patrons on leaving the premises quietly as required. They will be asked to wait at the table until a taxi or other transport arrives in order to discourage patrons from standing and talking.
18. CCTV covering the inside and outside of the premises shall be installed. It shall be capable of taking a head and shoulders shot of person entering the shop and storing image for a period of at least 31days. The CCTV shall be in operation during all the hours that the premises are open to the public. A member of staff capable of downloading images for Police or Authorised Council Officers shall be on duty at all times the premises are open to the public.

9.0 Conditions consistent with Operating Schedule

1. No queues allowed at the front of the premises.
2. The front of the premises to be kept tidy. All spillages will be cleaned.

10.0 Conditions agreed in consultation with responsible authorities:

None

11.0 Licensing Officer Comments

11.1 The following 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.

11.2 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 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.” (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)
- ❖ It is not acceptable for licensing authorities to simply replicate the wording from an applicant’s operating schedule. A condition should be interpreted in accordance with the applicant’s intention (10.5)
- ❖ 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.
- ❖ “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.” (10.11)
- ❖ Mandatory conditions must be imposed (10.25) 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.” (10.58)
- ❖ 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 (10.21).
- ❖ 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)

- 11.3 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.
- 11.4 In all cases the Members should make their decision on the civil burden of proof that is “the balance of probability.”
- 11.5 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.
- 11.6 The Government has advised that “Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.” (2.21)
- 11.7 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 11.8 In **Appendices 23 - 33** 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.

12.0 Legal Comments

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

13.0 Finance Comments

- 13.1 There are no financial implications in this report.

Appendices

Appendix 1	A copy of existing Premises Licence
Appendix 2	Copy of variation application
Appendix 3	Site Plan of premises
Appendix 4	Maps showing vicinity of venue
Appendix 5	Details of nearest licensed venues
Appendix 6	Section 182 Home Office advice
Appendix 7	Representation from Licensing Authority
Appendix 8	Representation from Police
Appendix 9	Representation from Environmental Protection
Appendix 10	Representation from Alan Williams
Appendix 11	Representation from Carolyn & David Fuest
Appendix 12	Representation from Jeannie Lowen
Appendix 13	Representation from Juliet McKoen
Appendix 14	Representation from Katie Ruane
Appendix 15	Representation from Martin Hughes
Appendix 16	Representation from Paul Shearer
Appendix 17	Representation from John & Sandy Critchley
Appendix 18	Representation from Susan Kay
Appendix 19	Representation from Sophie Stebbins
Appendix 20	Representation from Dame Sian Phillips
Appendix 21	Representation from Rose Sheldon (on behalf of Spitalfields Market Residents Association)
Appendix 22	Representation from Margaret Gordon (on behalf of St. George Residents' Association)
Appendix 23	S182 Advice on crime and disorder
Appendix 24	Licensing Policy advice on crime and disorder

Appendix 25	S182 Advice on public nuisance
Appendix 26	Licensing Policy advice on public nuisance
Appendix 27	Licensing Officer comments on access and egress
Appendix 28	Licensing Officers comments on anti-social behaviour on the premises
Appendix 29	Licensing Officers comments on anti-social behaviour leaving the premises
Appendix 30	Licensing Officers comments on noise when the premises is in use.
Appendix 31	Licensing Policy on the ClZ
Appendix 32	Licensing Policy comments on the hours of trading
Appendix 33	Planning