

Committee :	Date	Classification	Report No.	Agenda Item No.
<b>Licensing Sub Committee</b>	22 November 2018	<b>Unclassified</b>		

Report of : <b>David Tolley</b> <b>Head of Environmental Health &amp; Trading Standards</b>  Originating Officer: <b>Kathy Driver</b> <b>Principal Licensing Officer</b>	Title: <b>Licensing Act 2003 Application for variation of a Premises Licence for Kays Local, 209 Roman Road, London E2 0QY</b>  Ward affected: <b>Bethnal Green</b>
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## 1.0 **Summary**

Applicant: **Ali Haydar Kayhan**  
 Name and Address of Premises: **Kays Local**  
**209 Roman Road**  
**London E2 0QY**

Licence sought: **Licensing Act 2003**  
**The Sale of Alcohol**  
**Provide Late Night Refreshment**  
**Provide regulated entertainment**

Objectors: **Metropolitan Police**  
**Environmental Protection**  
**Local resident**

## 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  
 Section 182 Guidance  
 LBTH Licensing Policy

Kathy Driver  
 020 7364 5171

### 3.0 **Background**

- 3.1 This is an application for a variation of the premises licence for Kays Local, 209 Roman Road, London E2 0QY
- 3.2 A copy of the existing licence is enclosed as **Appendix 1**.
- 3.3 An application was submitted on 2<sup>nd</sup> August 2018 of which the applicant was applying to extend the hours until 03:00 hours, the application process restarted due to errors on advertising blue notice. The application was restarted on 2<sup>nd</sup> October 2018. A copy of the variation application is enclosed as **Appendix 2**.
- 3.4 The current hours licensed are;  
Monday to Sunday, from 07:00 hours to midnight
- 3.5 The hours that have been applied for are as follows:-

#### **Sale of Alcohol (off sales)**

Monday to Wednesday 08:00 hours to 00:30 hours  
Thursday to Saturday from 08:00 hours to 01:30 hours  
Sunday from 10:00 hours to 00:30 hours

#### **Hours premises is open to the public:**

Monday to Wednesday 08:00 hours to 00:30 hours  
Thursday to Saturday from 08:00 hours to 01:30 hours  
Sunday from 10:00 hours to 00:30 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 3**.
- 4.3 Maps showing the vicinity are included as **Appendix 4**.
- 4.4 Details of other licensed venues in the immediate vicinity are included as **Appendix 5**.

### 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. At the time of the application the Policy in place was effective from 1<sup>st</sup> November 2013 to 31<sup>st</sup> October 2018 and guidance is provided from this Policy.

- 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](http://www.homeoffice.gov.uk). It was last revised in April 2018.
- 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 6**.
- 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:

Metropolitan Police	See <b>Appendix 7</b>
Environmental Protection	See <b>Appendix 8</b>
Local Resident	See <b>Appendix 9</b>

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)
- Home office Immigration Enforcement

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
- 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 Training and implementation of underage ID checks.
- 7.2 Deliveries of goods will be carried out at a time to prevent nuisance and disturbance to nearby residents.
- 7.3 The movement of bins and rubbish outside will be kept to minimum after 11pm.

## **8.0 Conditions Requested by Police**

- 8.1 Should the application be granted the Police are requesting the following conditions to be added:
- 8.2 A CCTV camera system covering both internal and external to the premise is to be installed. The CCTV recordings are to be maintained for 31 days and to be provided upon request to either a Police Officer or an officer of any other Responsible Authority.  
A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity.
- 8.3 At all times the premises is open, a person who can operate the CCTV system must be present on the premises who can download the images and present them immediately on request by a police officer or other responsible authority.
- 8.4 There shall be an Incident Report book that documents all incidents of disorder, refusals of entry, sale of alcohol and any other incident of note.
- 8.5 Notices shall be displayed asking patrons to leave quietly if they are harassing other customers or staff members.
- 8.6 A Challenge 25 scheme to be operated.
- 8.7 No sale of Beer or Cider above 6.5% save for Premium or Craft beer or cider.

## **9.0 Licensing Officer Comments**

- 9.1 The Live Music Act removed licensing requirements for the following:
  - amplified live music and recorded music between 8am and 11pm before audiences of no more than 500 people on premises authorised to sell alcohol for consumption on the premises;
  - unamplified live music between 8am and 11pm in all venues.

Further exemptions apply see Section 16.5-16.6 of Section 182 Guidance.

9.2 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.

9.3 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 (10.25) 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)
- ❖ 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)

- 9.4 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.
- 9.5 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 9.6 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.
- 9.7 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)
- 9.8 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 9.9 In **Appendices 10-13** 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.

## 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**

<b>Appendix 1</b>	A copy the existing licence
<b>Appendix 2</b>	A copy of the application for variation
<b>Appendix 3</b>	Site Plan
<b>Appendix 4</b>	Maps of the surrounding area
<b>Appendix 5</b>	Other licensed venues in the area
<b>Appendix 6</b>	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
<b>Appendix 7</b>	Representations of Metropolitan Police
<b>Appendix 8</b>	Representations of Environmental Health
<b>Appendix 9</b>	Representations of Local resident
<b>Appendix 10</b>	Licensing Officer comments on Anti-Social Behaviour on the premises
<b>Appendix 11</b>	Licensing officer comments on anti-social behaviour patrons leaving the premises
<b>Appendix 12</b>	Planning
<b>Appendix 13</b>	Licensing Policy relating to hours of trading.