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| Committee : Licensing Sub-Committee | Date 3 rd June 2019 | Classification Unclassified | Report No. | Agenda Item No. |
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| Report of: David Tolley Head of Environmental Health & Trading Standards Originating Officer: Mohshin Ali Senior Licensing Officer | Title: Licensing Act 2003 Application for a Premises Licence for (Munich Cricket Club) Unit E2, Hertsmere Road, Canary Wharf, London E14 4AE Ward affected: Canary Wharf |
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1.0 Summary

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| Applicant: | Munich Cricket Club Limited |
| Name and | Munich Cricket Club |
| Address of Premises: | Unit E2 Hertsmere Road Canary Wharf London E14 4AE |
| Licence sought: | Licensing Act 2003 – premises licence <ul style="list-style-type: none"> • The sale by retail of alcohol • The provision of regulated entertainment (recorded music only) |
| Representation(s): | Resident |

2.0 Recommendations

- 2.1 That the Licensing Committee considers the application and representations 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

- Guidance Issued under Section 182 of the Licensing Act 2003
- Tower Hamlets Licensing Policy
- File

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3.0 Background

- 3.1 This is an application for a premises licence for (Munich Cricket Club) Unit E2, Hertsmere Road, Canary Wharf, London E14 4AE.
- 3.2 The applicant has described the premises as follows:
“Munich Cricket Club is a successful and exciting contemporary Bierkeller in the traditional Bavarian Style. The premises will deliver traditional, freshly prepared authentic German food and specially selected Munich beers”.
- 3.3 A copy of the existing premises licence for “La Tasca” held by “Casual Dining Services Ltd” is enclosed as **Appendix 1** for members information. However, it should be noted that this licence is currently suspended as the annual fee for 2018 (November) has not been paid.
- 3.4 A copy of the premises licence application form is enclosed as **Appendix 2**.
- 3.5 The applicant has applied for the following licensable activities and timings:-
- The sale by retail of alcohol – On sales only**
- Monday to Wednesday, from 11:00 hrs to 23:30 hrs
 - Thursday to Saturday, from 11:00 hrs to 01:00 hrs the following day
 - Sunday, from 11:00 hrs to 23:30 hrs
- The provision of regulated entertainment - Indoors (Recorded music)**
- Monday to Wednesday, from 11:00 hrs to 23:30 hrs
 - Thursday to Saturday, from 11:00 hrs to 01:00 hrs the following day
 - Sunday, from 11:00 hrs to 23:30 hrs
- Non-standard timings
- From the end of permitted hours on New Year's Eve until 02:00 on New Year's Day
- The opening hours of the premises**
- Monday to Wednesday, from 11:00 hrs to 00:00 hrs (midnight)
 - Thursday to Saturday, from 11:00 hrs to 02:00 hrs the following day
 - Sunday, from 11:00 hrs to 00:00 hrs (midnight)
- Non-standard timings
- From the end of permitted hours on New Year's Eve until 02:00 on New Year's Day

4.0 Location and Nature of the premises

- 4.1 The site plan of the venue is included as **Appendix 3**.
- 4.2 Maps showing the vicinity are included as **Appendix 4**.

4.3 Details of the nearest licensed venues 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. The revised policy came into effect on the 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 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 a local resident (See **Appendix 7**).
- 6.9 The applicant has written to the objector following the representation and the email correspondence is included as **Appendix 8**. At the time of writing this report no response was received by the Licensing Authority.
- 6.10 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
 - Public Health
 - Home Secretary (Home Office Immigration Enforcement)
- 6.11 In addition the application was required to be advertised in a local newspaper and by a blue poster. Only representations 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
- 6.12 Essentially, the relevant parties oppose the application because in their opinion, the applicant has not explained how within the context of the application they will meet the licensible objectives of the prevention of crime and disorder, public safety and the prevention of public nuisance.
- 6.13 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.
- 6.14 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.
- 7.0 **Conditions consistent with Operating Schedule (as offered by the applicant)**

General (all licensing objectives)

- 7.1 *No licensable activities shall take place at the premises until premises licence 20080 (or such other number subsequently issued for the premises) has been surrendered.*
- 7.2 *From 20:00 until the premises closes to the public daily there shall be a personal licence holder on duty on the premises.*
- 7.3 *There shall be no admittance or re-admittance to the premises after 23:30 on Thursday, Friday and Saturday evenings except for patrons permitted to temporarily leave the premises to smoke.*
- 7.4 *A direct telephone number for the manager at the premises shall be available at all times the premises is open.*
- 7.5 *Until 22:30 daily substantial food shall be available in all parts of the premises where alcohol is sold or supplied for consumption on the premises.*
- 7.6 *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.*

The prevention of crime and disorder

- 7.7 *The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Police Licensing Team. 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 entire 31 day period.*
- 7.8 *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 is open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.*
- 7.9 *A minimum of 2 SIA licensed door supervisors shall be on duty at the premises from 20:00 until close of business on Thursday, Friday and Saturday evenings. An incident log shall be kept at the premises, and made available on request to an authorised officer of the Council or the Police. It must be completed within 24 hours of the incident and 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 faults in the CCTV system, searching equipment or scanning equipment any refusal of the sale of alcohol any visit by a relevant authority or emergency service.*

7.10 *In the event that a serious assault is committed on the premises (or appears to have been committed) the management will immediately ensure that:*

- a) *The police (and, where appropriate, the London Ambulance Service) are called without delay;*
- b) *All measures that are reasonably practicable are taken to apprehend any suspects pending the arrival of the police;*
- c) *The crime scene is preserved so as to enable a full forensic investigation to be carried out by the police; and*
- d) *Such other measures are taken (as appropriate) to fully protect the safety of all persons present on the premises.*

The prevention of public nuisance

7.11 *No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.*

7.12 *Loudspeakers shall not be located in the entrance lobby or outside the premises building.*

7.13 *All windows and external doors shall be kept closed after 22:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.*

7.14 *All outside tables and chairs shall be rendered unusable by 22:30 each day. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.*

7.15 *Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.*

- 7.16 *Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall not be permitted to take drinks or glass containers with them.*
- 7.17 *Patrons permitted to temporarily leave and then re-enter the premises to smoke shall be restricted to a designated smoking area as shown on the plan.*
- 7.18 *The premises licence holder shall ensure that any patrons drinking and/or 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.*
- 7.19 *No fumes, steam or odours shall be emitted from the licensed premises so as to cause a nuisance.*

Public safety

- 7.20 *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. The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.*
- 7.21 *The protection of children from harm*
- 7.22 *A Challenge 21 proof of age scheme shall be operated at the premises 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.*

8.0 Conditions in consultation with the Responsible Authorities

None

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 simply 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 sells 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 9 - 12** 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

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| Appendix 1 | A copy of the existing premises licence |
| Appendix 2 | A copy of the current application |
| Appendix 3 | Site Plan |
| Appendix 4 | Maps of the surrounding area |
| Appendix 5 | Other licensed venues in the area |
| Appendix 6 | Section 182 Guidance by the Home Office |
| Appendix 7 | Representations of resident |
| Appendix 8 | Applicant email to resident |
| Appendix 9 | Licensing Officer comments on noise while the premise is in use |
| Appendix 10 | Licensing Officer comments on access/egress Problems |
| Appendix 11 | Planning |
| Appendix 12 | Licensing Policy relating to hours of trading |