

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	10 September 2019	Unclassified		

Report of : David Tolley Head of Environmental Health & Trading Standards Originating Officer: Kathy Driver Principal Licensing Officer	Title: Licensing Act 2003 Application for a Premises Licence for Mailinda, 62 Mellish Sreet, London E14 8NS Ward affected: Canary Wharf
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1.0 Summary

Applicant: **Xian Ran Zhao**
 Name and **Mailinda**
 Address of Premises: **62 Mellish Street**
London E14 8NS

Licence sought: **Licensing Act 2003**
The Sale of Alcohol

Objectors: **Local Residents**
Fire Brigade

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 new premises licence for Mailinda, 62 Mellish Street, London E14 8NS.
- 3.2 A licence exists for the ground floor, however a new application has been made as the applicant wishes to increase the area from ground floor to include ground and first floor.

A transfer and variation of Designated Premises Supervisor was applied on 26th March 2018 to Mr. Xinran Zhao. A copy of the existing licence is enclosed as **Appendix 1**.

An application for new premises licence for the ground floor and first floor was made on 22nd June 2018, this included holding karaoke on the first floor. The application received objections from local residents of which a hearing took place and was refused on 25th September 2018. An appeal against this decision was lodged but later withdrawn.

- 3.3 A copy of the application is enclosed as **Appendix 2**.
- 3.4 The hours have been amended since making the application through agreement with Environmental health the hours being applied for are as follows:-

Sale of alcohol

Monday to Sunday from 12:00 hours to 23:00 hours

From the start of New Years Eve until the terminal New Years Day

Hours premises is open to the public:

Monday to Saturday from 12:00 hours to 23:00 hours

From the start of New Years Eve until the terminal New Years Day

No regulated entertainment has been applied, Members should take into account deregulation of live and recorded music when a premises is granted the sale of alcohol for consumption on the premises, see point 9 and 9.1 of the report. The applicant's solicitors have confirmed their position in regards to Regulated Entertainment. See **Appendix 3**

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 4**.
- 4.3 Maps showing the vicinity are included as **Appendix 5**.
- 4.4 There are no licensed premises in the immediate vicinity of the premises.

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 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 local residents. **Appendix 10** includes a petition signed by residents, some of which are excluded as not all addresses were provided

	Appendix
London Fire Brigade	7
Francis McKevitt	8
Mohammed Abdul Malik	9
Petition of local residents	10

- 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 from patrons leaving the premises
 - Disturbance from patrons leaving the premises on foot
 - Disturbance from patrons leaving the premises by car
 - Close proximity to residential properties
 - Close to residential home for the elderly
- 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 An incident log shall be kept at the premises and made available on request to the police or an authorised officer which will record:

- (a) Any allegations of crime and disorder reported at the venue
- (b) Any and all complaints received by any party;
- (c) Any fault in the CCTV System
- (d) Any visit by a relevant Authority or emergency service
- (e) Any ejection of patrons;
- (f) any and/or seizures of drugs or offensive weapons
- (g) Any refusal of the sale of alcohol

7.2 CCTV Shall be installed, operated and maintained to function at all times that the premises is open for licensable activities. CCTV will comply with the following:

- (a) The licensee will ensure that the system is checked every 2 weeks to ensure that the system is working properly and the date and time is correct;
- (b) A Record of these checks showing the date and name of person checking, will be kept and made available to the police or other authorised officer on request;
- (c) The Police will be informed if the system will not be operating for longer than 1 day of business for any reason;
- (d) one camera will show a close up of the entrance to the premises to capture a clear full length view of anyone entering
- (e) The system shall provide full coverage of the interior of the premises both on the ground floor and the first floor premises. They will also provide coverage of any exterior part of the premises accessible to the public;
- (f) The system will record in real time and recordings will be date and time stamped
- (g) At all times during operating hours, there will be at least one member of staff on the premises who can operate the system sufficiently to allow the Police or any authorised Council officer to view footage on request;
- (h) Recordings will be kept for a minimum of 31 days and downloaded footage will be provided free of charge to the Police or any other authorised officers (subject to data Protection Act 1998) within 24 hours of any requests.

7.3 Refuse such as bottles shall be placed in receptacles outside the premises at times that will minimise the disturbance to nearby residents.

- 7.4 Notices will be placed at the entrance to the premises requesting customers to respect local residents and leave quietly.
- 7.5 Noise or vibration shall not emanate from the premises so as to cause any nuisance to nearby properties.
- 7.6 A Challenge 21 or Challenge 25 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.
- 7.7 A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the premises by the police or an authorised officer at all times whilst the premises is open.

8.0 Licensing Officer Comments

- 8.1 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.

- 8.2 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.

- 8.3 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)
- 8.4 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.
- 8.5 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”

- 8.6 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.
- 8.7 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)
- 8.8 The Council's Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 8.9 In **Appendices 11-14** 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 the existing licence
Appendix 2	A copy of a new premises application
Appendix 3	Agent confirmation of no Regulated Entertainment
Appendix 4	Site Plan
Appendix 5	Maps of the surrounding area
Appendix 6	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 7	Representations of Fire Brigade
Appendix 8	Representation of Mr. McKevitt
Appendix 9	Representation of Mr. Malik
Appendix 10	Local Resident Petition
Appendix 11	Licensing officer comments on anti-social behaviour patrons leaving the premises
Appendix 12	Licensing officer comments on Access and egress problems
Appendix 13	Planning
Appendix 14	Licensing Policy relating to hours of trading.