

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: Corinne Holland Licensing Officer	Title: Licensing Act 2003 Application for a new Premises Licence for (Nomadic Community Gardens), Fleet Street Hill, London E1 5ES Ward affected: Spitalfields & Banglatown
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1.0 Summary

Applicant: **James Wheale**

Name and **Nomadic Community Garden**

Address of Premises: **Fleet Street Hill**
London
E1 5ES

Licence sought: **Licensing Act 2003 – New Premises Licence**

- **Sale of Alcohol**

Representations: **Environmental Protection**
Licensing Authority
Local Residents

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
<ul style="list-style-type: none"> • Guidance Issued under Section 182 of the Licensing Act 2003 • Tower Hamlets Licensing Policy • File 		Corinne Holland 020 7364 3986

3.0 Background

3.1 This is an application for a premises licence for (Nomadic Community Garden), Fleet Street Hill, London E1 5ES.

3.2 The applicant has described the premises as follows:
“Nomadic is a community garden operating as a private company. It provides 160 allotment beds to the local community for free. The space is also used as a community centre where arts and crafts are encouraged and also provides plenty of space for people to just relax and socialise. It has also become a popular tourist attraction. Daytime music events will be held usually on a Saturday or Sunday, within the conditions of deregulation. The purpose of this application is to sell alcohol to visitors to help cover the cost of the gardens.

3.3 An application for a Time Limited Licence was submitted by the same applicant in June 2017 which received objections from local residents. A Licensing Sub Committee hearing took place on 23rd August 2017 and the application was refused.

3.4 A copy of the premises licence application form is enclosed as **Appendix 1**.

3.5 The applicant has applied for the following licensable activities.

The Sale of Alcohol (on the premises)

- Tuesday - Friday 14:00 hours to 21:00 hours
- Saturday to Sunday 12:00 hours to 21:00 hours

The opening hours of the premises

- Tuesday to Sunday 09:00 hours to 22:00 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 There are no immediate neighbouring licensed premises. Railway tracks border two sides of the Community Gardens.

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 2018.

- 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, than 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 4**.
- 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 a relevant representation has been made by the following responsible authorities and residents:
 - Licensing Authority - **Appendix 5**
 - Environmental Protection – **Appendix 6**
 - Alison Retz – **Appendix 7**

- Charles Dunlop – **Appendix 8**
- Felix Frixou – **Appendix 9**
- Ben James – **Appendix 10**
- David Knight – **Appendix 11**
- Maria Papageorgiou – **Appendix 12**
- Christina Monteiro – **Appendix 13**
- Rachpal Singh – **Appendix 14**
- David Spurring – **Appendix 15**

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
- Public Health

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 Essentially, the relevant parties oppose the application because the applicant has not explained how within the context of the application they will meet licensing objective of the prevention of public nuisance and the prevention of crime and disorder.

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 (as offered by the Applicant)**

1. All volunteers will undergo a training session prior to being given permission to sell alcohol at the premises, which will include essential training in licensing law, details of the mandatory and specific conditions of this Premises Licence records.
2. A written record of persons given permission to sell alcohol, along with the date permission was given will be kept at the premises.
3. A refresher training session will be provided every six months for volunteers given permission to sell alcohol and continuing to offer their support to the gardens.
4. 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 will be updated within 24 hours of any incident and will record the following:
 - (a) any refusal of the sale of alcohol
 - (b) any visit by a relevant authority or emergency service.
 - (c) any complaints received concerning crime and disorder or public nuisance
 - (d) any person ejected from the premises on grounds of being in possession of illegal substances or unacceptable behaviour.
 - (e) any incidents of disorder
5. External lighting will be installed to cover the entrance and exit to the gardens, along with outdoor areas within the gardens where licensable activities will take place.
6. A risk assessment will be completed on occasions when live music is going to take place (within the conditions for it to be deregulated) or when more than 100 are expected to attend any planned event, and a minimum of 2 security personnel will be engaged whenever the risk of crime and disorder is sufficient for an SIA presence to be required.
7. Hourly patrols of the gardens will be undertaken throughout the times the premises is open to the public, increased to every half hour during times when live music is played.
8. There will be a zero tolerance policy in relation to illegal substances or aggressive behaviour in the gardens, with persons involved in such activities being asked to leave immediately.
9. A pre-opening safety check will be completed every morning based on risk assessments focussing on all aspects of public safety.
10. No fumes, steam or odours shall be emitted from the licensed premises so as to cause a nuisance to any persons living or carrying on business in the area where the premises are situated.

11. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
12. No deliveries to the premises shall take place between 21.00 and 09.00 on the following day.
13. No waste or recyclable materials shall be moved, removed from or placed in outside areas between 22.00 hours and 09.00 hours on the following day.
14. Nomadic Community Gardens will operate a proactive policy to prevent public nuisance to local residents, by the use of sound level meters to control the level of noise escape from music or persons visiting the gardens.
15. The premises will operate a customer dispersal policy to prevent nuisance caused by visitors leaving the gardens at closing time.
16. Local residents will be provided a contact telephone number on request to advise the DPS of any issues of relevance to the four licensing objectives.
17. A 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.
18. Children entering the gardens must be accompanied by an adult at all times.

8.0 Policy agreement & Condition agreed in consultation with the Police - Appendix 16

- Drugs and weapons policy
- The premises will have a security plan agreed with Central East Police Licensing, this security plan will outline the necessary security steps for each type of event and cover things such as number of SIA security staff, searching of customers, and checks carried out by management on any acts that are booked to perform

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 17 - 26** 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 of the application
Appendix 2	Site Plan
Appendix 3	Maps of the surrounding area
Appendix 4	Section 182 Guidance by the Home Office
Appendix 5	Representation of Licensing Authority
Appendix 6	Representation of Environmental Protection
Appendix 7	Representation of A. Retz
Appendix 8	Representation of C. Dunlop
Appendix 9	Representation of F. Frixou
Appendix 10	Representation of B. James
Appendix 11	Representation of D.Knight
Appendix 12	Representation of M. Papageorgiou
Appendix 13	Representation of C. Monteiro
Appendix 14	Representation of R.Singh
Appendix 15	Representation of D. Spurring
Appendix 16	Agreement with Police
Appendix 17	Licensing Officer comments on noise while the premise is in use
Appendix 18	Licensing Officer comments on access/egress Problems
Appendix 19	Licensing Officer comments on anti-social behaviour on the premises
Appendix 20	Licensing Officer comments on anti-social behaviour from patrons leaving the premises
Appendix 21	Licensing Policy advice on crime and disorder
Appendix 22	Section 182 Advice regarding crime and disorder
Appendix 23	Licensing Policy advice on Public Nuisance

Appendix 24	Section 182 Advice on Public Nuisance
Appendix 25	Licensing Policy relating to hours of trading
Appendix 26	Planning