

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	22nd April 2010	Unclassified	LSC 064/910	5.1

Report of Colin Perrins Head of Trading Standards and Commercial Originating Officer: Nick Kemp Licensing Officer	Title Licensing Act 2003 Application to Vary the Premises Licence for Devons Food & Wine, 214 Devons Road, London, E3 3PN. Ward affected Bromley by Bow
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1.0 Summary

Applicant: **Kalender Onay**
 Name and
 Address of Premises: **Devons Food & Wine, 214 Devons Road,**
London, E3 3PN

Licence sought: **Licensing Act 2003 variation**
Extending the hours for the sale of alcohol

Objectors: **The Metropolitan Police** and
Environmental Health

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
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File Only

020 7364 7664

3.0 **Background**

3.1 This is an application for a variation in a premises licence for Devons Food & Wine, 214 Devons Road, London, E3 3PN

3.2 A copy of the existing licences is enclosed for information in **Appendix 1**.

The current hours are as follows:-

Sale by retail of alcohol:

Monday to Thursday from 09:00 hrs to 23:30 hrs

Friday and Saturday from 09:00 hrs to midnight

Sunday from 10:00 hrs to 22:30 hrs

Late Night Refreshment:

Monday to Thursday until 23:30 hrs

Friday to Saturday until midnight

3.3 A copy of the variation application is enclosed as **Appendix 2**. The applicant has described the nature of the variation as follows:

Extending the hours for the sale of alcohol.

3.4 **The hours that have been applied for are as follows:-**

Sale of Alcohol (off sales only sales only)

Monday to Sunday 24 hours per day.

Hours premises is open to the public:

Monday to Sunday 24 hours per day.

There is no request to extend the existing Late Night Refreshment.

3.5 A map showing the relevant premises is included as **Appendix 3**.

4.0 **Licensing Policy and Government Advice**

4.1 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 7th January 2008.

4.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.

- 4.3 The Government Minister, the Secretary of State for Culture, Media and Sport has issued Guidance under Section 182 of the Licensing Act 2003. This is available on the Government's website, www.culture.gov.uk. It will also be available at the hearing. It was substantially revised on the 28 June 2007.
- 4.4 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.

5.0 **Objections**

- 5.1 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following responsible authorities:
The Metropolitan Police (**See Appendix 4**)
Environmental Health (**See Appendix 5**)
- 5.2 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
- 5.3 Essentially, both regulatory Authorities oppose the application because the applicant has not explained how, within the context of longer hours, they will meet the licensing objectives, particularly:
- the prevention of crime and disorder
 - the prevention of public nuisance
- 5.4 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.

6.0 **Licensing Officer Comments**

- 6.1 The Licensing Section is not a responsible authority and therefore has no ability to make any relevant representations. The following therefore 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.

6.2 Guidance issued under section 182 of the licensing Act 2003

- ❖ As stated in the guidance it is “provided for licensing authorities carrying out their functions.” It is a key mechanism for promoting best practice, ensuring consistent application and promoting fairness (1.6).
Also “so long as the guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so.” When doing so licensing authorities will need to give full reasons for their actions (1.7).
- ❖ 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.” (1.10)
- ❖ Conditions may not be imposed for the purpose other than the licensing objectives.
- ❖ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.7).
- ❖ 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. (S. 10.24).
- ❖ The Government has stated “there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested.” (10.20)

6.3 The Licensing Act 2003 permits children of any age to be on the premises providing they are accompanied by an adult. It is not necessary to make this a condition.

6.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”

6.5 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.

- 6.6 The Government has advised that “In the context of preventing public nuisance it is again essential that conditions are focused on measures within the direct control of the licence holder. Conditions relating to public nuisance caused by anti-social behaviour of customers once they are beyond the control of the licence holder or premises management cannot be justified and will not serve the licensing objectives.” (2.38)
- 6.7 The Council’s licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 6.8 Members will find advice on the issues relating to conduct on the premises and egress as follows:

Appendix 6	Licensing Officer comments on Crime and Disorder on the Premises
Appendix 7	Licensing Officer comments on Crime and Disorder From Patrons Leaving The Premises
Appendix 8	Licensing Officer comments on Noise While The Premise Is In Use
Appendix 9	Licensing Officer comments on Egress Problems
Appendix 10	Planning
Appendix 11	Licensing Policy relating to hours of trading

7.0 Exemptions

- 7.1 There are a number of statutory exemptions from the operation of the Licensing Act 2003, and Members need to bear these in mind.
- 7.2 Acts of religious worship, wherever performed are not licensable.
- 7.3 Section 177, (1) and (2) of the Act provides that where a premises (or club) is licensed for alcohol consumption on the premises and is primarily thus used, and the permitted capacity does not exceed 200, additional conditions relating to the music should only relate to public safety or the prevention of crime (or both). That is they should not relate to any “noise nuisance.”
- 7.4 Section 177 (4) provides that where a premises licence (or club) has a capacity of not more than 200 and the only music is unamplified live music between 08 00 hrs and midnight, no additional conditions should be set relating to the music.
- 7.5 Section 177 can be disapplied on a licence review if it is proportionate to do so.

8.0 Legal Comments

8.1 The Council's legal officer will give advice at the hearing.

9.0 Finance Comments

9.1 There are no financial implications in this report.

10.0 Appendices

- Appendix 1** Copy of existing licence.
- Appendix 2** A copy of the application for variation.
- Appendix 3** Maps of the area
- Appendix 4** Representations of the Metropolitan Police
- Appendix 5** Representations of Environmental Health
- Appendix 6** Licensing Officer comments on Crime and Disorder on the Premises
- Appendix 7** Licensing Officer comments on Crime and Disorder From Patrons Leaving The Premises
- Appendix 8** Licensing Officer comments on Noise While The Premise Is In Use
- Appendix 9** Licensing Officer comments on Egress Problems
- Appendix 10** Planning
- Appendix 12** Licensing Policy relating to hours of trading