

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	23/06/20	Unclassified		

Report of : David Tolley Head of Environmental Health & Trading Standards	Title: Licensing Act 2003 Application for variation of a Premises Licence for Retreat East Farm Shop, 20 - 22 Toynbee Street, London E1 7NE
Originating Officer: Corinne Holland Licensing Officer	Ward affected: Spitalfields & Banglatown

1.0 Summary

Applicant:	Architekton Ltd
Name and Address of Premises:	Retreat East Farm Shop 20-22 Toynbee Street London E1 7NE
Licence sought:	Licensing Act 2003 - Variation to Premises Licence <ul style="list-style-type: none"> Extend the licensable hours for the Sale of Alcohol
Objectors:	Licensing Authority Environmental Protection Residents

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

Section 182 guidance
Licensing Policy
File

Corinne Holland
020 7364 3986

3.0 **Background**

- 3.1 This is an application for a variation of the premises licence for Retreat East Farm Shop, 20-22 Toynbee Street, London, E1 7NE
- 3.2 The existing Premise Licence was issued on 15th August 2017 and a copy is enclosed as **Appendix 1**.
- 3.3 The timings of the existing licence are detailed below for information only:-

The sale by retail of alcohol (on and off sales)

Monday to Sunday, from 08:00 hours to 18:00 hours

The opening hours of the premises

Monday to Sunday, from 08:00 hours to 18:30 hours

- 3.4 A copy of the variation application is enclosed as **Appendix 2**.
- 3.5 The applicant has described the nature of the variation as follows:
'Café, delicatessen and farm shop. The increased hours are to allow business to trade into the evening and enable private dining events'.
- 3.6 The extended hours applied for are as below:

The Sale of Alcohol:

- Monday – Saturday 08:00 – 23:00 hours
- Sunday – 08:00 – 22:30 hours

The opening hours of the premises:

- Monday – Saturday 08:00 – 23:30 hours
- Sunday – 08:00 – 23:00 hours

4.0 **Location and Nature of the premises**

- 4.1 Photographs of the venue and immediate vicinity are enclosed in **Appendix 3**.
- 4.2 Maps showing the vicinity are included as **Appendix 4**.
- 4.3 Nearby Licensed Premises are shown in **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 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, 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 received.

REPRESENTATION	APPENDIX
Licensing Authority	7
Environmental Protection	8
Gerry King	9
Kabir Ahmed	10
Naineshkumar Tanna	11

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 The objections cover allegations of

- Public nuisance
- Anti - social behaviour
- Noise
- Crime & disorder
- CIZ

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.

Conditions on existing Premises Licence:

1. There shall be notice of 'authority' record for all staff who sell alcohol
2. There shall be adequate training for staff and records kept for inspection
3. Contact details of the Designated Premises Supervisor to be made available to staff and the authorities
4. Substantial food will be available to customers throughout the hours that alcohol is offered for sale.
5. The premises shall install and maintain a comprehensive digital colour CCTV system.
 - a. All public areas of the licensed premises, including all public entry and exit points, will be covered enabling facial recognition of every person entering in any light condition.
 - b. The CCTV cameras shall continually record whilst the premises are open to the public and recordings shall be kept available for a minimum of 31 days with date and time stamping.
 - c. A staff member who is conversant with the operation of the CCTV system shall be present on the premises at all times when they are open to the public. This staff member shall be able to show the police or the Licensing Authority recordings of the preceding two days immediately when requested.
6. In the unlikely event that the CCTV system is faulty, a written record will be kept of the details of the fault and the times that it is not properly working and management will take all reasonable steps to promptly restore the operational system.
7. Alcohol will not be allowed to leave the premises in open bottles or containers.
8. Staff being trained on all security issues including how to identify and refuse service to customers that are drunk, appear to be drunk or are suspected to be dependent drinkers.
9. A policy of zero-tolerance to drugs at the premises
10. An incident log shall be kept at the premises and made available on request to an authorised officer of the local authority or the Police, which will record the following:
 - a. All crimes reported to the venue
 - b. all ejections of patrons

- c. any complaints received regarding crime and disorder
- d. any incidents of disorder (e) all seizures of drugs or offensive weapons
- e. any faults in the CCTV system
- f. any refusal of the sale of alcohol
- g. any visit by a responsible authority or emergency service.

11. The management and staff will have an effective policy to maintain a safe venue for customers and staff. Any risk to safety will be assessed before the premises are opened to the public each day and throughout the hours of operation.
12. Ensuring that the entrance, the outside area and any walkways within the premises are kept free from obstruction
13. The premises and public areas nearby are kept free from litter associated with the operation of the business
14. Deliveries and waste removal are undertaken at a time and in a manner that does not cause disturbance
15. The premises will be promoted as family friendly and suitable for all ages. There will be no inappropriate entertainment, promotions, activities or behaviour tolerated at the premises that might put children at risk.
16. The appropriate display of notices relating to the policy within the premises. These notices will indicate that any customer not appearing to have reached the age of 25 will be required to produce appropriate identification proving that they have turned 18 before being sold alcohol.
17. Appropriate ID will be a valid passport, photo driving licence, PASS accredited proof of age card or other reliable photo-ID that is recommended and approved for acceptance by the police or other authorities.
18. Staff shall be trained in aspects of responsible alcohol retailing and in particular the Protection of Children including the Challenge 25 policy.
19. Staff training will occur before a staff member is authorised to sell alcohol within the premises.
20. Staff training records will be available for inspection by the police or other responsible authority upon request.

Conditions consistent with Operating Schedule

1. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
2. The premises licence holder shall ensure that any patrons 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.
3. 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.
4. All windows and external doors shall be kept closed after 21:00 hours except for the immediate access and egress of persons or in the case of an emergency.

7.0 Conditions agreed in consultation with the responsible authorities

None

8.0 Licensing Officer Comments

8.1 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.

8.2 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)
- ❖ It is not acceptable for licensing authorities to simply replicate the wording from an applicant’s operating schedule. A condition should be interpreted in accordance with the applicant’s intention (10.5)
- ❖ The Licensing Authority may only impose such conditions as are necessary for meeting the licensing objectives.
- ❖ The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities.” (10.11)
- ❖ 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)

- ❖ 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. This may be unlawful under current law. However, it is important to note that the mandatory conditions made under sections 19A and 73B of the 2003 Act prohibit a number of types of drinks promotions where they give rise to a significant risk to any one of the four licensing objectives (10.21).
 - ❖ 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)
- 8.3 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.
- 8.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 8.5 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.
- 8.6 The Government has advised that “Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.” (2.21)
- 8.7 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 8.8 In **Appendices 12 - 20** 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 the application for variation
Appendix 3	Photographs
Appendix 4	Maps of the surrounding area
Appendix 5	Nearby licensed premises
Appendix 6	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 7	Representations from LA
Appendix 8	Representations from EP
Appendix 9	Representations from G King
Appendix 10	Representations from K Ahmed
Appendix 11	Representation from N Tanna
Appendix 12	S182 on crime & disorder
Appendix 13	Licensing Policy advice on crime & disorder
Appendix 14	S182 advice re public nuisance
Appendix 15	Licensing Policy advice on public nuisance
Appendix 16	Advice re noise whilst the premises is in use
Appendix 17	Anti-social behaviour when on premises
Appendix 18	CIZ policy
Appendix 19	Framework hours
Appendix 20	Planning