

Committee : Licensing Sub-Committee	Date 28 July 2020	Classification Unclassified	Report No.	Agenda Item No.
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Report of: David Tolley Head of Environmental Health and Trading Standards Originating Officer: Mohshin Ali Senior Licensing Officer	Title: Licensing Act 2003 Application for a Variation of a Premises Licence for (Dirty Bones) 1 Club Row, London E1 6JX Ward affected: Weavers
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1.0 Summary

Applicant:	DB Prop Ltd
Name and Address of Premises:	Dirty Bones 1 Club Row London E1 6JX
Licence sought:	Licensing Act 2003 - variation <ul style="list-style-type: none"> • To extend the times for the sale by retail of alcohol • To extend the times for the provision of late night refreshment • Remove existing conditions
Representations:	Licensing Authority (Responsible Authority) Environmental Health Noise Team

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

- 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 variation of a premises licence for (Dirty Bones) 1 Club Row, London E1 6JX.
- 3.2 There are currently two licences on the Council's system which is causing a confusing. A copy of the first existing licence is enclosed as **Appendix 1**. It should be noted that the annual fee for March 2020 has not been paid. The timings of the existing licence (Resam London BV, dated 10th March 2016) are detailed below:

The basement floor, ground floor, first floor, second floor and third floor

Sale by retail of alcohol (On sales only)

- Monday to Thursday, from 10:00 hours to 23:30 hours
- Friday and Saturday, from 10:00 hours to 00:00 hours (midnight)
- Sunday, from 10:00 hours to 22:30 hours

The provision of late night refreshment - Indoors

- Monday to Thursday, from 23:00 hours to 23:30 hours
- Friday and Saturday, from 23:00 hours to 00:00 hours (midnight)

Non-standard timings

- New Years, from 00:00 hours until the start of permitted hours the following day

The opening hours of the premises

- Monday to Thursday, from 09:00 hours to 00:00 hours (midnight)
- Friday and Saturday, from 09:00 hours to 00:30 hours (the following day)
- Sunday, from 09:00 hours to 23:00 hours

- 3.3 A copy of the second existing licence is enclosed as **Appendix 2**. The timings of the existing licence (Dirty Bones, dated 30th November 2005) are detailed below:

Alcohol shall not be sold or supplied except during permitted hours. In this condition, permitted hours means: (On and off sales)

- a. On weekdays, other than Christmas Day, Good Friday or New Year's Eve, 10 a.m. to 11 p.m.
- b. On Sundays, other than Christmas Day or New Year's Eve, 12 noon to 10.30 p.m.
- c. On Good Friday, 12 noon to 10.30 p.m.
- d. On Christmas Day, 12 noon to 10 30 pm
- e. On New Year's Eve, except on a Sunday, 11 a.m. to 11 p.m.
- f. On New Year's Eve on a Sunday, 12 noon to 10.30 p.m.
- g. On New Year's Eve from the end of permitted hours to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).

Alcohol may be sold or supplied for one hour following the hours set out above to persons taking table meals in the premises in a part of the premises usually set apart for the service of such persons and for consumption by such a person in that part of the premises as an ancillary to his meal. For other purposes or in other parts of the premises the hours set out above shall continue to apply.

The opening hours of the premises (includes recorded music)

There are no restrictions on the hours during which this premises is open to the public

- 3.4 Although, there is nothing stopping the licensee having two licences, it will be wise to surrender one of them to avoid any future confusion in terms of enforcement.
- 3.5 A copy of the variation application is enclosed as **Appendix 3**. The applicant has described the variation as follows:
“1) Vary the terminal hour for the sale of alcohol and late night refreshment to 01:00 Monday to Sunday, closing 30 minutes thereafter at 01:30;
2) Include the sale of alcohol for consumption off the premises, subject to the following condition:-
- All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
3) Amend the existing non-standard timing to read as:-
- From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day”.
- 3.6 The licensable activities and timings that have been applied for are clarified as follows:

Sale by retail of alcohol (On and off sales)

- Monday to Sunday, from 10:00 hrs to 01:00 hrs the following day

The provision of late night refreshment - Indoors

- Monday to Sunday, from 23:00 hrs to 01:00 hrs the following day

Non-standard timings

- From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

The opening hours of the premises

- Monday to Sunday, from 09:00 hrs to 01:30 hrs the following day

The following conditions to be removed

1. There shall be no off sales
2. No drinks shall be taken outside the premises.

4.0 Location and Nature of the premises

- 4.1 The site plan of the venue is included as **Appendix 4**.
- 4.2 Maps and photographs showing the vicinity are included as **Appendix 5**.
- 4.3 Details of the nearest licensed venues are included as **Appendix 6**.

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, 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 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following:
 - Licensing Authority (RA) - **(Appendix 7)**
 - Environmental Health Noise Team - **(Appendix 8)**
- 6.2 All of the responsible authorities have been consulted about this application. They are as follows:
 - The Licensing Authority
 - The Metropolitan Police
 - London Fire Brigade
 - Planning Department
 - Health and Safety
 - Environmental Health Noise Team
 - Trading Standards
 - Child Protection
 - Public Health
 - Home Secretary (Home Office Immigration Enforcement)

- 6.3 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
- 6.4 Essentially, the relevant parties oppose the application because the applicant has not explained how within the context of the application they will meet the licensing objectives, particularly the prevention of crime and disorder and the prevention of public nuisance.
- 6.5 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.
- 6.6 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 Save for the additional proposed condition and removal of existing conditions 1 and 2 at annex 3, the remaining conditions address all four licensing objectives.

“Annex 3 - Conditions attached after a hearing by the licensing authority

Conditions attached following the Licensing subcommittee hearing of 10th March 2016

- 3. There shall be no off sales (to be removed)*
- 4. No drinks shall be taken outside the premises (to be removed).*
- 5. The number of smokers shall be limited to five at any one time.*
- 6. 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. Notices restricting the number of smokers to also be displayed at all exits;*
- 7. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the LBTH Police Licensing Team.*

- a. *All entry and exit points will be covered enabling frontal identification of every person entering in any light condition.*
 - b. *The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises.*
 - c. *All recordings shall be stored for a minimum period of 31 days with date and time stamping.*
 - d. *Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.*
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.*
9. *The Licence Holder shall ensure that the details of all complaints are recorded in an occurrence book and such book shall be available for police inspection.*
10. *The pavement from the building line to the kerb edge immediately outside the premises, including gutter/channel at its junction with the kerb edge, shall be swept and/or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements.*
11. *Non-intoxicating beverages, including drinking water, shall be available to patrons throughout the permitted hours for the sale or supply of alcohol.*
12. *No music or amplified sound shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance at the nearest noise sensitive premises.*
13. *Clearly legible notices shall be displayed at all exits from the premises requesting patrons to respect the needs of local residents and to leave the premises and area quietly.*
14. *A dedicated telephone number for the Designated Premises Supervisor or the duty manager shall be maintained for use by any person who may wish to make a complaint and shall be advertised at the premises or on its website.*
15. *The premises shall operate a Challenge 21 Policy”.*

8.0 Conditions in consultation with the responsible authorities/other person (Agreed with Police Licensing Team – See Appendix 9)

1. *The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Tower Hamlets 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.*
2. *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 are 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.*
3. *An incident log shall be kept at the premises, and be available on request to the Police or an authorised officer. It must be completed within 24 hours of any 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;*
 - g. *any refusal of the sale of alcohol;*
 - h. *any visit by a relevant authority or emergency service.*
4. *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*
 - d. *forensic investigation to be carried out by the police; and*
 - e. *such other measures are taken (as appropriate) to fully protect the safety of all persons present on the premises.*
5. *There must be at the premises a lockable drugs box to which no member of staff, save the DPS and /or XX, shall have access. All controlled drugs (or items suspected to be controlled drugs or contain controlled drugs) found at the premises must be placed in this box as soon as practicable. Whenever this box is emptied, all of its contents must be given to the Police for appropriate disposal.*

6. *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.*
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. *The Premises shall adopt Central East Licensing drugs policy which is attached.*
9. *The premises shall have a written risk assessment for all licensable activities and events taking place at the venue which will be made available to Police upon request.*

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 (See 6.2). 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 10 - 16** 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 existing licence (Resam)
Appendix 2	A copy of the existing licence (Dirty Bones)
Appendix 3	A copy of the variation application
Appendix 4	Site plan of the venue
Appendix 5	Maps and photographs showing vicinity of the venue
Appendix 6	Details of nearest licensed venues
Appendix 7	Representation of Licensing Authority (RA)
Appendix 8	Representation of Environmental Health Noise Team
Appendix 9	Agreement with Police Licensing
Appendix 10	Licensing Officer comments on noise while the premise is in use
Appendix 11	Licensing Officer comments on access/egress Problems
Appendix 12	Licensing Officer comments on crime and disorder on the premises
Appendix 13	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 14	Planning
Appendix 15	Licensing Policy relating to hours of trading
Appendix 16	Tower Hamlets Cumulative Impact Zone