

Committee: Licensing Sub-committee	Date: 20 July 2010	Classification: Unclassified	Report No. LSC 14/011	Agenda Item No.
--	------------------------------	--	---------------------------------	-----------------

Report of: Colin Perrins Head of Trading Standards and Commercial Originating Officer: Mohshin Ali Acting Senior Licensing Officer	Title: Licensing Act 2003 Application to Vary the Premises Licence for the Madison's Bar & Restaurant, Manhattan Building, Bow Quarter, Fairfield Road, London E3 2UJ Ward affected: Bow East
--	---

1.0 Summary

Applicant: **Ali Investments Ltd**

Name and Address of Premises: **Madison's Bar & Restaurant
Manhattan Building
Bow Quarter
Fairfield Road,
London E3 2UJ**

Licence sought: **Licensing Act 2003 – Premises variation**
- To add licensable activities
- To extend the hours for licensable activities
- To remove the transitional embedded hours and conditions

Representations: **Environmental Protection
Local 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

File Only

Mohshin Ali
020 7364 5498

3.0 **Background**

- 3.1 This is an application for a variation of the premises licence for Madison's Bar & Restaurant, Manhattan Building, Bow Quarter, Fairfield Road, London E3 2UJ.
- 3.2 A copy of the existing premises licence is enclosed for information in **Appendix 1**.

The current licensable activities and timings are as follows:-

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

- 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 3 p.m. and 7 p.m. to 10.30 p.m.
- 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).

Supper Hours Certificate

Alcohol may be sold or supplied (for one hour following the hours set out above and) 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. In addition on Christmas Day for the purposes set out under Supper Hours Certificate the permitted hours shall extend between the first and second parts of the general licensing hours

Late Night Refreshment

Hot drinks and hot food can be served up to 30 minutes after the last permitted sale of alcohol.

Thus Monday to Saturday until 00:30 hrs
Sunday 12 midnight

For conditions re. "drinking up time" see Annex 1 Mandatory Conditions

Regulated entertainment (recorded music only)

There are no time restrictions on recorded music or private entertainment

Note: However, New Years Eve is subject to the Regulatory Reform (Special Occasion Licensing) Order 2002. Which means that while that order is in effect the premises may remain open for the twelve hours between 11pm on New Years Eve and 11am on New Years Day.

Hours premises are open to the public:

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

3.3 A copy of the variation application is enclosed as **Appendix 2**.

The applicant has described the nature of the variation as follows:

“To vary the sale of alcohol by an additional hour on Monday to Thursday and by an additional 2 hours on Friday and Saturday and by an hour and a half on Sunday. To add the performance of live music and dance and the performance if karaoke to the regulated entertainment”. The applicant has also applied to change the sale of alcohol from to “on sales” to both on and off sales.

The timings that have been applied for are as follows:-

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

- Sunday to Thursday, from 10:00 hrs to 01:00 hrs the following day
- Friday and Saturday, from 10:00 hrs to 02:00 hrs the following day

The provision of regulated entertainment - Indoors

Live music,

- Sunday to Thursday, from 10:00 hrs to 23:00 hrs
- Friday and Saturday, from 10:00 hrs to 01:00 hrs the following day

Recorded music, performances of dance and anything of a similar description

- Sunday to Thursday, from 10:00 hrs to 01:00 hrs the following day
- Friday and Saturday, from 10:00 hrs to 02:00 hrs the following day

Provision of late night refreshment

- Sunday to Thursday, from 23:00 hrs to 01:00 hrs the following day
- Friday and Saturday, from 23:00 hrs to 02:00 hrs the following day

Non-standard timings

- Christmas Eve, New Years Eve and Sunday preceding Bank Holidays from opening until 04:00 hours the following day.
- An additional hour for the start of British summer time

Hours premises are open to the public:

- Monday to Thursday, from 10:00 hrs to 01:30 hrs the following day
- Friday to Sunday, from 10:00 hrs to 02:30 hrs the following day

Non-standard timings

- Christmas Eve, New Years Eve and Sunday preceding Bank Holidays from opening until 05:00 hours the following day.
- An additional hour for the start of British summer time

3.4 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 was last revised on 29th March 2010.

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 Representations

5.1 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

5.2 Interested party as defined in Section 13 (3) of the Licensing Act 2003 is limited to persons living in the vicinity of the premises, their representatives and local businesses in the vicinity of the premises and their representatives. Essentially, the interested party making the representation should show by what they say that they, or those they represent are sufficiently close to be personally affected by the application.

5.3 Only a responsible authority or an interested party can make a representation. Both of these terms are defined by statute, in Section 13 of the Licensing Act 2003.

5.4 There are two tests for an interested party and only one for a responsible authority. The two tests are contained in Section 18 of the Act.

5.5 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.

- 5.6 Representations by responsible authorities do not have to meet the second test of not being vexatious and frivolous. Interested parties and their representatives have to meet this test.
- 5.7 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 5.8 Section 182 Advice by the DCMS concerning relevant, vexatious and frivolous representations is attached as **Appendix 4**.
- 5.9 All the representations in this report have been considered by the relevant officer (Licensing Services Manager) and determined to have met the requirements of the Licensing Act 2003.
- 5.10 This hearing is required by the Licensing Act 2003, because relevant representations have been made by Environmental Protection and local residents. In relation to the residents, representations have been received both against the premises and in support of the premises.
- 5.11 Please see **Appendix 5** for the representation of Environmental Protection.
- 5.12 In relation to the application and the representations, the personal details such as emails, phone numbers and signatures have been redacted for the purposes of identity theft protection. The Licensing Officer has the original documents on file.
- 5.13 Please see **Appendix 6** for the list of residents making representations.
- 5.14 Please see **Appendices 7 to 33** for the individual representations.
- 5.15 A petition has been submitted by a local resident, Prafula Copp, which is included in **Appendix 34**. Please note that parts of the supporting letter to the petition have been blanked out as it contains information on a personal dispute between two residents which is irrelevant to Members' making their decision on the variation application.
- 5.16 A second petition has been submitted by Prafula Copp. A list of the residents on the petition with their addresses and the petition itself has been included in **Appendix 35**.
- 5.17 A petition has also been submitted by the licence holder which includes residents who are in support of the premises. A list of the residents on the petition with their addresses and the petition itself has been included in **Appendix 36**.
- 5.18 Please see **Appendix 37** for the representation of Gareth Davies who is in support of the premises.
- 5.19 Please see **Appendix 38** for the representation of Andrew and Malini Luke who are in support of the premises.

- 5.20 All of the responsible authorities have been consulted about this application. They are as follows:
- The Metropolitan Police
 - The LFEPA (the London Fire and Emergency Planning Authority).
 - Planning
 - Health and Safety
 - Noise
 - Trading Standards
 - Child Protection

5.21 In addition the application was required to be advertised in a local newspaper and by a blue poster. In addition the licensing section consulted on a 40 m basis.

- 5.22 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

- 5.23 Essentially, Environmental Protection and the residents oppose the application because the applicant has not explained how within the context of the variation they will meet all of the above licensing objectives, particularly:
- the prevention of crime and disorder
 - the prevention of public nuisance

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(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.

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 this 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 In **Appendices 39 - 45** Members are given general advice, and also have explanations of the Council's Licensing Policy, Government advice and other legislation relating to the matters in the representations.

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 Schedule 1 Part 2 of the Act states that entertainment in churches, Morris dancing (and accompanying music if live and unamplified) and incidental music are not licensable activities-that is no conditions can be set for them.
- 7.3 Acts of religious worship, wherever performed are not licensable.
- 7.4 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."
- 7.5 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.
- 7.6 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	A copy of the current premises licence
Appendix 2	A copy of the application for variation
Appendix 3	Maps of the premises in the surrounding area
Appendix 4	Section 182 Advice by the DCMS concerning relevant, vexatious and frivolous representations
Appendix 5	Representation of Environmental Protection
Appendix 6	A list of residents making representations
Appendices 7 – 33	Individual representations of local residents
Appendix 34	A petition has been submitted by Prafula Copp, a local resident
Appendix 35	A second petition has been submitted by Prafula Copp, a local resident
Appendix 36	A petition in support of the premises
Appendix 37	Representation of Gareth Davies
Appendix 38	Representation of Andrew and Malini Luke
Appendix 39	Licensing Officer comments on noise while the premise is in use
Appendix 40	Licensing Officer comments on access/egress problems
Appendix 41	Licensing Officer comments on crime and disorder on the premises
Appendix 42	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 43	Section 182 Advice by the DCMS concerning public safety
Appendix 44	Planning
Appendix 45	Licensing Policy relating to hours of trading