

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	15/09/2020	Unclassified		

Report of : David Tolley Head of Environmental Health & Trading Standards Originating Officer: Corinne Holland Licensing Officer	Title: Licensing Act 2003 Application for variation of a Premises Licence for Wombats City Hostel, 7 Dock Street, London, E1 8LL Ward affected: Whitechapel
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1.0 Summary

Applicant:	Wombats London Ltd
Name and Address of Premises:	Wombats City Hostel 7 Dock Street London E1 8LL
Licence sought:	Licensing Act 2003 - Variation to Premises Licence <ul style="list-style-type: none"> • Remove conditions restricting sale of alcohol to guests only therefore allowing members of the public • Allow non-amplified music outdoors until 23:00 hours
Objectors:	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

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3.0 **Background**

- 3.1 This is an application for a variation of the premises licence for Wombats City Hostel, 7 Dock Street, London, E1 8LL
- 3.2 The existing Premise Licence was issued on 15th November 2014 and a copy is enclosed as **Appendix 1**.
- 3.3 The timings of the existing licence are detailed below for information only:-

The Supply of Alcohol (on premises only)

- Monday to Sunday from 12:00hrs (midday) to 01:30hrs (the following day)

The provision of Regulated Entertainment in the form of Live Music (indoors) and Recorded Music (indoors)

- Monday to Sunday from 12:00hrs (midday) to 01:30hrs (midnight)

- 3.4 The applicant has described the nature of the variation as follows:
'To remove the condition of sales of alcohol to hostel guests only and open the premises to members of the public until 1.30am. Furthermore, occasionally play non-amplified music outdoors until no later than 11pm.'
- 3.5 A copy of the variation application is enclosed as **Appendix 2**. There is no change to the timings for licensable activities. The applicant has described the variation as follows:

Remove conditions 5 & 6:

- 5) No non guests allowed into the bar area after 23:00hrs each night;
6) Non guests have to be signed into the premises by a guest;

Opening hours of the premises:

- Monday to Sunday from 12:00hrs (midday) to 01:30hrs (the following day)

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
Environmental Protection	7
Arabella Howell/Aaron Treyvaud	8
Andreas Lechthaler	9
Daniel Gleeson/ Philip Montgomery	10
Gordon Deas	11
Jake Moeller	12
Michael Pansters/Shannon Buck	13
Megan Raven	14
Natalie Moore/Emmet Coldrick	15
Paul & Frances Torrington	16
Rachel Baws	17

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 on the premises
- Crime & 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.

Conditions on existing Premises Licence:

The Committee may wish to note that the police 696 risk assessment (condition 7) no longer exists and may wish to remove this condition.

- 1) CCTV is to be installed.
 - a. A CCTV camera system covering both internal and external to the premise is to be installed;
 - b. The CCTV recordings are to be maintained for 31 days and to be provided upon request to either a Police Officer or an officer of any other Responsible Authority;
 - c. A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity;
 - d. At all times the premises is open, a person who can operate the CCTV system must be present on the premises. who can download the images and present them immediately on request by a police officer or other responsible authority;
- 2) That an incident report book be kept and record all incidents of crime and disorder associated with the premises;
- 3) Signs be prominently displayed both inside and in the outside asking customers to respect local residents, and to be quiet when leaving the premises;
- 4) A minimum of 2 SIA staff be on duty in the bar area from 20:00hrs until close of the bar on Thursday, Friday, Saturday and Sunday nights;
- 5) No non guests allowed into the bar area after 23:00hrs each night;
- 6) Non guests have to be signed into the premises by a guest;
- 7) All DJ events are to have a 696 risk assessment submitted to the MET's Proactive Licensing Intelligence at least 2 weeks prior to the event taking place;
- 8) Tower Hamlets Police Licensing are to be notified 2 weeks in advance of all private bookings of the bar area;
- 9) A Crime Prevention Plan will be agreed with Tower Hamlets Police;

- 10) Use Fire and Safety equipment will be installed to reasonable satisfaction of local Fire and Safety Officer;
- 11) The Premises are in the basement of the Hostel, there is not expected to be any noise or other nuisance problems;
- 12) The applicant will run a Challenge 25 Policy;
- 13) No unaccompanied persons under the age of 16 will be allowed to go into the Bar area.

Conditions consistent with Operating Schedule (others are existing conditions)

1. All staff directly involved with the in the the sale of alcohol is receiving appropriate training on their responsibility under the Licensing Act

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 18 - 25** 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 EP
Appendix 8-17	Resident Representations
Appendix 18	S182 on crime & disorder
Appendix 19	Licensing Policy advice on crime & disorder
Appendix 20	S182 advice re public nuisance
Appendix 21	Licensing Policy advice on public nuisance
Appendix 22	Advice re noise whilst the premises is in use
Appendix 23	Anti-social behaviour when on premises
Appendix 24	Framework hours
Appendix 25	Planning