

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	3 August 2010	Unclassified	LSC 15/011	

Report of Colin Perrins Head of Trading Standards and Commercial	Title Licensing Act 2003 Application for a new Premises Licence for Café Pont, Block D, Unit 5, 14 Hertsmere Road, E14 4AF
Originating Officer: Nick Kemp - Licensing Officer	Ward affected Millwall

1.0 Summary

Applicant: **Black Swan Leisure Ltd**

Name and
Address of Premises: **Block D, Unit 5,**
14 Hertsmere Road,
London E14 4AF

Licence sought: **Licensing Act 2003 variation**

Sale of alcohol
Provide regulated entertainment
(Recorded Music)

Objectors: **Local Resident**

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

020 7364 7446

3.0 **Background**

3.1 This is an application for a variation in a premises licence for:
Café Pont, Block D, Unit 5, 14 Hertsmere Road, E14 4AF

3.2 **A copy of the application is enclosed as Appendix 1.**

3.3 The applicant has described the nature of the application as:
(see page 7 of application form).

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

Sale of Alcohol (on and off sales)

Monday to Sunday 10:00 hours – 23:00 hours

The Provision of Regulated Entertainment:

For recorded music and anything like recorded music
Monday to Sunday 07:00 hours – 23:30 hours

Hours premises is open to the public:

Monday to Sunday 07:00 hours – 23:30 hours

3.5 A map showing the relevant premises is included as **Appendix 2.**

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 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 **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 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.
- 5.7 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following:
Local Resident
See Appendices 3
- 5.8 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 (Environmental Health)
 - Trading Standards
 - Child Protection
- 5.9 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

5.10 The objections cover allegations of:

- Noise while the premise is in use
- Close proximity to residential properties

5.11 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 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)
 - ❖ Mandatory conditions must be imposed (7.67) and censorship avoided (7.69).
 - ❖ Routine conditions about drink promotions are not permitted but can be imposed in an appropriate circumstances (7.79). The Office of Fair Trading’s Advice also needs to be considered, namely that minimum prices setting is not permitted.
- 6.3 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.
- 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 4** 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.

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 the application

Appendix 2 Maps of the area

Appendix 3 Representations of Local resident

Appendix 4- Licensing Officer comments on noise while the premises are in use