

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	3 August 2010	Unclassified	LSC 17/011	

Report of Colin Perrins Head of Trading Standards and Commercial	Title Licensing Act 2003 Application for a new Premises Licence for 118-122 Brick Lane, London, E1 6RL.
Originating Officer: Nick Kemp Licensing Officer	Ward affected: Spitalfields & Banglatown

1.0 Summary

Applicant: **Pushpita UK Limited**
Name and
Address of Premises: **118-122 Brick Lane, London, E1 6RL.**

Licence sought: **Licensing Act 2003**
Sale of alcohol by retail
Provide regulated entertainment
Late Night Refreshment

Objectors: **Local Residents**
Metropolitan Police
Planning Enforcement
Environmental Protection

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 new premises licence for 118 – 122 Brick Lane, London, E1 6RL.
- 3.2 A copy of the application is enclosed as **Appendix 1**.
- 3.3 The applicant has described the nature of the application as: “This is an Indian restaurant. We will serve the food and drinks”.
- 3.4 The hours that have been applied for are as follows:-

Sale of Alcohol (on and off sales)

Monday to Sunday 12:00 noon – 02:00 hours the following day.

The Provision of Regulated Entertainment:

Recorded music

Monday to Sunday 12:00 noon – 02:00 hours the following day.

Late Night Refreshment

Monday to Sunday 23:00 hours – 02:00 hours the following day.

Hours premises is open to the public:

Monday to Sunday 12:00 noon – 02:00 hours the following day.

Note:- Members may wish to note that in relation to the sale of alcohol this is the same as when the premises closes to the public. It is difficult to see how the licence holder will ensure that the licence conditions are met. The problem, of course, is that if sales continue until the last minute the premises cannot be emptied on time. Members are advised to consider a break between the end of the regulated activities and the time the premises closes to the public.

- 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 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.

5.2 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following:

- Local Residents
- Metropolitan Police
- Planning Enforcement
- Environmental Protection

See Appendices 6 - 29

5.3 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

5.4 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

5.5 The objections cover allegations of

- Anti social behaviour from patrons leaving the premises
- Disturbance from patrons leaving the premises on foot
- Close proximity to residential properties

5.6 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 31 - 354** 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 of the application
Appendix 2	Maps of the area
Appendix 3	Representations from the Police
Appendix 4	Representations from Planning Enforcement
Appendix 5	Representations from Environmental Protection
Appendix 6	List of representations of Local residents
Appendix 7	Representation from Alan Williams
Appendix 8	Representation from Carolyn Fuest
Appendix 9	Representation from Chris Dyson & Sarah Dyson
Appendix 10	Representation from Richard Wingate
Appendix 11	Representation from Sam Williams
Appendix 12	Representation from E-Sin Soong
Appendix 13	Representation from Fay Cattini
Appendix 14	Representation from Glen Mifsud & Selina Mifsud
Appendix 15	Representation from Jane Curtis
Appendix 16	Representation from Jenny Maslin
Appendix 17	Representation from John Critchley & Sandy Critchley
Appendix 18	Representation from Julia Stegeman
Appendix 19	Representation from Juliet McKoen
Appendix 20	Representation from Keith Bowler
Appendix 21	Representation from Lez Brotherston
Appendix 22	Representation from Martin Gallagher
Appendix 23	Representation from Matthew Piper
Appendix 24	Representation from Megan Williams & Roberto Massari
Appendix 25	Representation from Pascale Lacroix & Roy Adams
Appendix 26	Representation from Patrica Jones
Appendix 27	Representation from Philip Vracas
Appendix 28	Representation from Shila Whitaker
Appendix 29	Representation from Elana Overs
Appendix 30	Representation from Nemisk Patel
Appendix 31	Licensing Officers comments on anti social behaviour when leaving the premises
Appendix 32	Licensing Officers comments on problems in access and egress
Appendix 33	Licensing Officers comments on Hours of trade