

Committee: Licensing Sub-Committee	Date 16 March 2021	Classification Unclassified	Report No.	Agenda Item No.
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Report of: David Tolley Head of Environmental Health & Trading Standards Originating Officer: Mohshin Ali Senior Licensing Officer	Title: Licensing Act 2003 Application for a Premises Licence for (Morley's) 60-62 Brick Lane, London E1 6RF Ward affected: Spitalfields & Banglatown
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1.0 Summary

Applicant:	SA QSR LTD
Name and	Morley's
Address of Premises:	60 - 62 Brick Lane London E1 6RF
Licence sought:	Licensing Act 2003 – premises licence <ul style="list-style-type: none"> The sale by retail of alcohol (off sales only)
Representations:	Environmental Health Noise Police Licensing Licensing Authority Community Safety Other persons

2.0 Recommendations

- 2.1 That the Licensing Committee considers the application and representations 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

Mohshin Ali
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3.0 Background

3.1 This is an application for a premises licence for (Morley's) 60-62 Brick Lane, London E1 6RF.

3.2 The applicant has described the premises as follows:

"Restaurant for eat - in and take away comprising of ground floor, basement , and first floor areas. The basement contains the toilets and storage areas, while the ground & first floor areas are for licensable activities..."

3.3 A copy of the premises licence application form is enclosed as **Appendix 1.**

3.4 The applicant has applied for the following the licensable activities and times:-

The sale by retail of alcohol – On and off sales

- Monday to Sunday, from 11:00 hrs to 02:00 hrs the following day

The provision of late night refreshment - Indoors

- Monday to Sunday, from 23:00 hrs to 02:00 hrs the following day

The provision of regulated entertainment – Indoors

Live music and recorded music

- Monday to Sunday, from 23:00 hrs to 02:00 hrs the following day

The opening hours of the premises

- Monday to Sunday, from 11:00 hrs to 02:30 hrs the following day

4.0 Location and Nature of the premises

4.1 The site plan of the venue is included as **Appendix 2.**

4.2 Maps and photos showing the vicinity are included as **Appendix 3.**

4.3 Details of the nearest licensed venues are included as **Appendix 4.**

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, than 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 5**.
- 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 a relevant representation against the premises have been made by the following:

Responsible authority/other persons	Appendix
Environmental Health Noise - Nicola Cadzow	6
Police Licensing- Mark Perry	7
Licensing Authority - Lavine Miller-Johnson	8
Community Safety - John Fortune	9
Patrick Spottiswoode	10
Christelle Jager-Hafstad	11
Mrs L Baring	12
Joyce Fenton-Douglas	13

- 6.9 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
 - Health and Safety
 - Environmental Health Noise Team
 - Trading Standards
 - Child Protection
 - Public Health
 - Home Secretary (Home Office Immigration Enforcement)
- 6.10 In addition the application was required to be advertised in a local newspaper and by a blue poster. Only representations 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 Essentially, the relevant parties oppose the application because in their opinion, the applicant has not explained how within the context of the application they will meet the licensing objective of the prevention of public nuisance and the prevention of crime and 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.

7.0 Conditions consistent with Operating Schedule (as offered)

- 7.1 *Two Door Supervisors are to be on duty on Mondays to Sundays, when the Premises is carrying on Licensable activities after 20:00 hours until 30 minutes after the premises has closed*
- 7.2 *A CCTV camera system covering both internal and external to the premises is 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.*

- a) *A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained.*
- b) *The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity.*
- c) *At all times the premises are open, a person who can operate the CCTV system must be present on the premises who can download images and present them immediately on request to a police officer or other responsible authority.*

7.3 *An incident log shall be kept at the premises, and be made 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.*

7.4 *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 forensic investigation to be carried out by the police; and*
- d) *Such other measures are taken (as appropriate) to fully protect the safety of all persons present on the premises.*

7.5 *The venue is to conduct risk assessments for its licensable activities and events. The risk assessment will describe the nature of the licensable activity and, or event, the expected number of people attending, the time the event starts and finishes. If it is a promoted event, crime and disorder risks, and any other risk that would undermine the licensing objectives.*

7.6 *If the venue is using any musical artist or promoter, the venue must conduct relevant checks on the artist and promoter.*

- a) *These checks should include looking at the social media of artists and promoters.*
- b) *They will also contact venues that they have performed at previously to see if there were any issues, which will form part of the risk assessment.*

- c) *The assessment will also include all steps taken to mitigate any identified risks, such as SIA security numbers, searching policy, access and egress plans etc.*
 - d) *All risk assessments will be written down, stored at the venue and made available to Police or Local Authority on request*
- 7.7 *Notices shall be prominently displayed at all public exits requesting customers to respect the needs of local residents and leave the premises and area quietly.*
- 7.8 *No customers will be permitted to drink outside the premises.*
- 7.9 *All doors and windows of the premises shall be kept closed and shut at all times there is any music, live or recorded other than for entry or egress of customers.*
- 7.10 *Sales of alcohol will only be made when a personal licence holder is present at the premises.*
- 7.11 *No vertical drinking in the premises.*
- 7.12 *No more than 5 smokers allowed to smoke outside the premises at any one time.*
- 7.13 *Any 'off sales' of alcohol shall be provided in sealed containers and taken away from the Premises.*
- 7.14 *Incidence record book will be kept, updated, and produced on request to the Police or Officers of Tower Hamlets Licensing Authority.*
- 7.15 *Customers will have access to Phone Numbers of Licensed Taxis, and will be encouraged to pre-book before leaving the Premises to avoid lots of taxis parking.*
- 7.16 *In implementing the dispersal policy at the end of licensable activities each day the premises is open, door supervisors shall ensure patrons leave the premises quietly and promptly, and without congregation at the exit point.*
- 7.17 *Stock deliveries shall be made during the day time (10am - 4pm).*
- 7.18 *Unpleasant cooking odors by the use of an effective extractor will be installed and maintained by carrying out deep cleaning at frequent intervals.*
- 7.19 *Noise break-outs from the premises will be prevented by the Installation of Sound Proofing as recommended by Acoustic Engineers.*
- 7.20 *In addition, Noise breakouts from amplified music will be controlled by the installation of Noise Limiting Devices, which will be set by the Noise*

Nuisance Team of the Tower Hamlets Council's Environmental Health Department.

- 7.21 *Contact details of the DPS, shall be made available to the residents in the area in any event of complaint.*
- 7.22 *The area designated for smoking (outside) shall have not more than 5 Smokers at a time.*
- 7.23 *One of the door supervisors shall ensure noise levels are kept to the barest minimum during smoking.*
- 7.24 *A staff member will be assigned to clear debris / litter, cigarette butts, every 1 hour.*
- 7.25 *A 'Challenge 25' shall be adopted as the age verification policy at the premises.*
- 7.26 *Anyone purchasing alcohol, who appears under 25, will be challenged to produce a photographic ID. The acceptable forms of IDs will be; International Passport, Photo Card Drivers License, Photographic ID with the PASS Hologram. No ID No Sale Policy shall be implemented at the premises.*
- 7.27 *All refusals shall be documented and record of refusals will record the date, time of refusal, and the name of the staff that refused the sale.*
- 7.28 *Training records shall be kept on the premises and made available on request by the Police and authorised officers of Tower Hamlets Council.*

8.0 Conditions in consultation with the Responsible Authorities

8.1 None

9.0 Licensing Officer Comments

- 9.1 The Business & Planning Act 2020 came into force on Wednesday 22nd July 2020 and provides a temporary permission for businesses that have a premises licence that permits them to sell alcohol in regards to the ability to sell alcohol as an off sale, i.e. for consumption off the premises. The permission will end on 30th September 2021 unless the legislation is changed by the Secretary of State.

It will only apply to businesses that hold a Premises Licence up to 22nd July 2020 and that in the last 3 years preceding 22 July 2020 those licences have NOT:

- had a premises licence application where permission for off sales was refused;
- had a variation of a premises licence seeking permission for off sales refused

- had a variation seeking to exclude off sales permission granted
- had a premises licence varied or modified by a review hearing to exclude off sales.

9.2 The new off-sales permission will permit off-sales to be made at a time when the licensed premises are open for the purposes of selling alcohol for consumption on the premises, subject to a cut off time of 11pm or the cut off time of the current licensed hours stated on the licence, whichever is earlier. Measures also temporarily suspend existing licence conditions in so far as they are inconsistent with the new off-sales permission. Further Guidance on this can be found at

<https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill>

9.3 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.

9.4 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. 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.

9.5 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)
- 9.6 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.
- 9.7 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 9.8 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.
- 9.9 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)

9.10 The Council's Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

9.11 In **Appendices 14 - 22** 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 current application
Appendix 2	Site Plan
Appendix 3	Maps and photos of the surrounding area
Appendix 4	Other licensed venues in the area
Appendix 5	Section 182 Guidance by the Home Office
Appendices 6-13	Representations of against the premises
Appendix 14	Licensing Officer comments on noise while the premise is in use
Appendix 15	Licensing Officer comments on access/egress Problems
Appendix 16	Licensing Officer comments on crime and disorder on the premises
Appendix 17	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 18	Planning
Appendix 19	Licensing Policy relating to hours of trading
Appendix 20	Tower Hamlets Cumulative Impact Zone