

Committee: Licensing Sub-Committee	Date: 06 October 2010	Classification: Unclassified	Report No. LSC 36/011	Agenda Item No.
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Report of: Colin Perrins Head of Trading Standards and Environmental Health (Commercial) Originating Officer: Mohshin Ali Acting Senior Licensing Officer	Title: Licensing Act 2003 Application for a New Premises Licence for Zengi, 44 Commercial Street, London E1 6LT Ward affected: Spitalfields and Banglatown
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1.0 Summary

Applicant: **Mr Sam Neriman**

Name and **Zengi Restaurant**

Address of Premises: **44 Commercial Street
London
E1 6LT**

Licence sought: **Premises Licence under Licensing Act 2003**

- **The sale of alcohol**
- **The provision of regulated entertainment**
- **The provision of late night refreshment**

Representations: **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 premises licence for Zengi, 44 Commercial Street, London E1 6LT.

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

3.3 The licensable activities and timings are as follows:

Sale of alcohol (on sales)

- Monday to Sunday, from 11:00 hours to 23:30 hours

Provision of late night refreshment – Indoor and outdoor

- Monday to Sunday, from 23:00 hours to 23:30 hours

Provision of regulated Entertainment - Indoor

Live music, recorded music, performance of dance and anything of a similar description. Provision of facilities for making music, Provision of facilities for dancing and anything of a similar description

- Monday to Sunday, from 11:00 hours to 23:30 hours

Licensable activities non-standard timings:

- New Year's Eve, from 11:00 hours to 01:30 hours the following day

Hours premises are open to the public

- Saturday to Tuesday, from 07:00 hours to 23:30 hours
- Wednesday to Friday, from 07:00 hours to 00:30 hours

Non-standard timings:

- New Year's Eve, from 11:00 hours to 01:30 hours the following day

3.4 The applicant has agreed conditions with the Police. Please see **Appendix 2** for the agreements.

3.5 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 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
 - Environmental Protection
 - Trading Standards
 - Child Protection
- 5.11 This hearing is required by the Licensing Act 2003, because relevant representations have been made by local residents.
- 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 5** for a list of the residents making representations.
- 5.14 Please see **Appendices 6 - 24** for the individual representations.
- 5.15 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.
- 5.16 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

5.17 Essentially, the local residents oppose the application because the applicant has not explained how within the context of the application they will meet all the above licensing objectives.

5.18 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)

- 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 Members will find advice on the issues relating to conduct on the premises and egress as follows:

- Appendix 25** Licensing Officer comments on crime and disorder on the premises
- Appendix 26** Licensing Officer comments on crime and disorder from patrons leaving the premises
- Appendix 27** Licensing Officer comments on noise while the premise is in use
- Appendix 28** Licensing Officer comments on egress problems
- Appendix 29** Section 182 Advice by the DCMS concerning public safety
- Appendix 30** Section 182 Advice by the DCMS concerning public the protection of children from harm
- Appendix 31** Planning
- Appendix 32** Licensing Policy relating to hours of trading

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 Acts of religious worship, wherever performed are not licensable.
- 7.3 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.”
- 7.4 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.
- 7.5 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	Conditions agreed with the Police
Appendix 3	Maps of the area
Appendix 4	Section 182 Advice by the DCMS concerning relevant, vexatious and frivolous representations
Appendix 5	List of residents making representations
Appendices 6 - 24	Individual representations of the local residents
Appendix 25	Licensing Officer comments on crime and disorder on the premises
Appendix 26	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 27	Licensing Officer comments on noise while the premise is in use
Appendix 28	Licensing Officer comments on access and egress problems
Appendix 29	Section 182 Advice by the DCMS concerning public safety
Appendix 30	Section 182 Advice by the DCMS concerning public the protection of children from harm
Appendix 31	Planning
Appendix 32	Licensing Policy relating to hours of trading