Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub-committee	02 September 2021	**Unclassified**		

Report of: **David Tolley** **Head of Environmental Health and Trading Standards** Originating Officer: **Lavine Miller-Johnson** **Licensing Officer**	Title: **Licensing Act 2003** **Application for a premises licence variation for JL Coffee Ltd 178a Brick Lane London E1 6SA** Ward affected: **Spitalfields and Banglatown**

1.0 Summary

Applicant:	**JL Coffee Ltd**
Name and	**Tipi Coffee**
Address of Premises:	**178a Brick Lane** **London** **E1 6SA**
Licence sought:	**Licensing Act 2003 – Premises Licence Supply of alcohol (off sales)**
Representations:	**Licensing Authority (RA)** **Environmental Health**

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		Lavine Miller-Johnson 02073642665

3.0 Background

3.1 This is an application for a premises licence within the Brick Lane CIZ area for **Tipi Coffee 178a Brick Lane, London E1 6SA**

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

3.3 The hours applied for the premises are as follows:

Supply of Alcohol
Monday – Sunday from 11:00 hours to 23:00 hours

Hours Open to the Public
Monday – Sunday from 06:00 hours to 23:00 hours

3.4 The applicant has described the nature of the premises as:
Retail premises providing craft beers and wines

4.0 Location and Nature of the premises

4.1 Site plan of the premises included as **Appendix 2**

4.2 Photographs of the venue and immediate vicinity are included as **Appendix 3**

4.3 Maps showing the vicinity and CIZ map are included as **Appendix 4**

4.4 Details of the nearest licensed venues are included as **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 the 1st November 2013.

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 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 made by the following responsible authorities and local residents:

- Licensing Authority **Appendix 7**
- Environmental Health **Appendix 8**

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
- 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 Essentially, the relevant parties oppose the application because the applicant has not explained how within the context of the application, they will meet the licensing objectives, particularly the prevention of public nuisance.

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.

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7.0 Conditions consistent with Operating Schedule

1. An incident book to be used on site at all times Close circuit Television systems that capture with a head and shoulders of all points of sale will be installed operate and record no video images at all times the premises is open to the public.

2. All CCTV recordings made shall be retained for not less than 31 days and be made available to the police or authorised officer of any responsible authority within one hour upon request. In accordance with current data protection legislation.

3. Where a person is required to produce identification under the Challenge 25 Policy, a clear head and shoulders image and identification offered shall be recorded by the point of sale CCTV.

4. A member of staff capable of operating the CCTV system will be at the premises at all times the premises are open to the public.

5. All incidents of the following shall be recorded in the incident book within 24 hours and retained for a minimum of 12 months:

    a. incidents of violence by any person against another
    b. any refusal to sell alcohol

6. The incident book shall contain the date and time of the incident, a description of the customer, the name of the staff member concerned and on occasions where a sale of alcohol is refused, the reason the sale was refused.

7. Encouraging customers leave the premises in a respectful and quiet manner.

8. Challenge 25 scheme shall operate at the premises. Proof of age shall only comprise of a passport, a photo card driving licence, an industry approved proof of age identity card or a Ministry of Defence identity card

9. A record of all staff training in the Challenge 25 Policy, including dates that each member of staff is trained and retained for no less than 12 months, shall be maintained and made available within one hours on request by a police officer or an authorised officer of the Licensing Authority.

8.0 Conditions agreed in consultation with responsible authorities:

None

9.0 **Licensing Officer Comments**

9.1 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.

9.2 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 (See 6.2). 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.

9.3 <u>Guidance issued under section 182 of the Licensing Act 2003</u>

❖ As stated in the guidance it is "provided to licensing authorities in relation to the carrying out of their functions." It is a key mechanism

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.” (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.

- It is Government policy that facilities for people and performers with disabilities should be provided at places of entertainment.

- “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)

9.4 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.

9.5 In all cases the Members should make their decision on the civil burden of proof that is "the balance of probability."

9.6 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.

9.7 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)

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

9.9 In **Appendices 9- 13** Members are given general advice, and also have explanations of the Council's Licensing Policy, Government advice and other legislation relating to the matters in the representations.

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.

Appendices

Appendix 1	A copy of the Premises Licence application
Appendix 2	Site plan
Appendix 3	Photographs of the venue and immediate vicinity
Appendix 4	Maps showing vicinity of venue & Brick Lane CIZ
Appendix 5	Details of nearest licensed venues
Appendix 6	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 7	Representation from Licensing Authority
Appendix 8	Representation from Environmental Health
Appendix 9	Licensing Officer comments on Public Nuisance
Appendix 10	S182 advice on Public Nuisance
Appendix 11	Licensing Policy relating to hours of trading
Appendix 12	Licensing Policy on the CIZ
Appendix 13	Planning