

Committee: Licensing Sub Committee	Date 22 February 2022	Classification Unrestricted	Report No.	Agenda Item No.
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Report of: David Tolley Head of Environmental Health & Trading Standards	Title: Licensing Act 2003 Application for a new Premise Licence for Gopuff, 89 Hemming Street, London, E1 5BW
Originating Officer: Corinne Holland Licensing Officer	Ward affected: Spitalfields & Banglatown

1.0 Summary

Applicant: **Fancy Delivery UK Limited**

Name and Address of Premises: **Gopuff**
89 Hemming Street
London
E1 5BW

Licence sought: **Licensing Act 2003**
Sale by retail of Alcohol

Objectors: **Licensing Authority**

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
Section 182 Guidance
LBTH Licensing Policy

Corinne Holland
020 7364 3986

3.0 **Background**

- 3.1 This is an application for a new Premise Licence for Gopuff, 89 Hemming Street, London, E1 5BW.
- 3.2 The applicant has described the premises as: A grocery delivery company.
- 3.3 A copy of the application is shown in **Appendix 1**.
- 3.4 The hours applied for are as follows:

Sale of Alcohol (off sales)

Monday – Sunday – 24 hours

Opening times

Monday – Sunday – 24 hours

4.0 **Location and Nature of the premises**

- 4.1 The site plan of the venue is included as **Appendix 2**.
- 4.2 Maps showing the vicinity are included as **Appendix 3**.
- 4.3 Photographs of the premises are included in **Appendix 4**.
- 4.4 Details of other licensed venues in the immediate vicinity 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 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, 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.

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.

B. Wei / L. Harris	Appendix 7
C. DeStephano	Appendix 8
C. Lim	Appendix 9
C. Peaker	Appendix 10
D. Burrell	Appendix 11
D. Hoffman	Appendix 12
D. Queen	Appendix 13
E. Detisova	Appendix 14
G. Bexton	Appendix 15
G. Cashman	Appendix 16
G. Oluc	Appendix 17
H. Begum	Appendix 18
H. Lungmuss	Appendix 19
H. McWilliams	Appendix 20
J. Edirmanasinge	Appendix 21
J. Kwan	Appendix 22
J. Tatar	Appendix 23

L. Houston	Appendix 24
L. Jennings	Appendix 25
M. Armstrong	Appendix 26
M. Bancroft	Appendix 27
M. Sarifian	Appendix 28
M. Tanbir	Appendix 29
R. Ahmed	Appendix 30
R. Groenewoud	Appendix 31
R. Malone	Appendix 32
R. Tamsangan	Appendix 33
S. Clement	Appendix 34
S. McGee	Appendix 35
S. Paneda	Appendix 36
S. Tatar	Appendix 37
V. Cray	Appendix 38

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 (Environmental Health)
- Trading Standards
- Child Protection
- Public Health
- 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 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 The objections relate to:

- Public nuisance
- Crime & disorder
- Access & Egress
- Public safety

6.12 Essentially, the relevant parties oppose the application because the applicant has not explained how within the context of the application they will meet licensing objective of the prevention of public nuisance and the prevention of crime and disorder.

6.13 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.

6.14 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

1. All staff will be fully trained in their responsibilities and with regard to the promotion of the licensing objective in particular sale of alcohol, and will be retrained every six months, with recorded training records kept for inspection.
2. Members of the public shall not be allowed on the premises at any time.
3. The licence and premises are to fulfil internet generated sales for delivery and no direct sales shall take place to the general public from the site.
4. A CCTV system is in operation for the warehouse, to provide security and identify any culprit who is intent in causing trouble. All images are stored for a period of 31 days after which they can be erased or saved at the request of the police. All current security measures will remain in operation. All staff will be fully trained in the operation of the CCTV to ensure it is operational all the hours of trade. Images will be made available to the police or authorised licensing officer from the council on request.
5. All potential customers must verify on the payment page of the website that they are at least 18 years of age. If the applicant is in any doubt as to the age of the customer, they will only deliver the alcohol if the owner of the card that made the payment is present at the delivery address; Orders will only be despatched to bona fide addresses,
 - No deliveries will be made to an open space,
 - All sales of alcohol for delivery must be paid for by credit card, debit card (prepaid or otherwise) or electronic payment,
 - Details of the order (including the type, amount of alcohol, name and address of the customer and delivery address if different) must be included with the order. The detail shall be shown on the printout dispatched with the order,
 - All delivery drivers and riders must allow any police or authorised local authority officers to inspect any alcohol,

- Deliveries only made to those over the age of 18.
6. A Challenge 25 age verification scheme will be used. ID will be required for deliveries to customers who do not look 25 years old. They will be required to prove by way of photographic ID, either a passport or driving licence that they are at least 18. The card used for purchase will also be checked against the ID provided. If the business is in any doubt then the delivery of alcohol will not be made, and a full refund will be issued. Postal/ carriage deliveries will only be made once a verified payment method has been established, and the customer has confirmed they are 18 or over when making the purchase.

8.0 **Conditions Agreed/Requested by Responsible Authority**

Conditions agreed with the Police – **Appendix 39**

1. No idling of vehicles that are awaiting access to the premises or waiting to pick up a delivery

And amend proposed condition 5 (in operating schedule) to:

2. Alcohol shall only be delivered to a residential or business address and not to a public place”

9.0 **Licensing Officer Comments**

- 9.1 The following is intended 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.

9.2 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)

9.3 The Licensing Act 2003 permits children of any age to be on the premises which primarily sell alcohol providing they are accompanied by an adult. It is not necessary to make this a condition.

9.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”

- 9.5 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.
- 9.6 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)
- 9.7 The Council's Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 9.8 In **Appendices 40 - 48** 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 application
Appendix 2	Site Plan
Appendix 3	Maps of the surrounding area
Appendix 4	Photographs of the premises
Appendix 5	Other licensed venues in the area
Appendix 6	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 7 – 38	Representations from local residents
Appendix 39	Conditions agreed with the police
Appendix 40	Licensing Officer comments on public nuisance
Appendix 41	S182 advice on public nuisance
Appendix 42	Licensing Officer comments on crime & disorder
Appendix 43	S182 advice on crime & disorder
Appendix 44	Licensing Officer comments on public safety
Appendix 45	S182 advice on public safety
Appendix 46	Access and Egress
Appendix 47	Licensing Policy relating to hours of trading
Appendix 48	Planning