

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	13 September 2022	Unclassified		

Report of : David Tolley Head of Environmental Health & Trading Standards Originating Officer: Corinne Holland Licensing Officer	Title: Licensing Act 2003 Application for variation of a Premises Licence for Liberty Lounge, 1A Bell Lane, London, E1 7LA Ward affected: Spitalfields & Banglatown
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1.0 Summary

Applicant: **Andrew Kerr**

Name and Address of Premises: **Liberty Lounge
1A Bell Lane
London
E1 7LA**

Licence sought: **Licensing Act 2003 - Variation to Premise Licence**

- **Extend licensable hours for sale of alcohol/late night refreshments/ live music**
- **Allow recorded music**
- **Remove/Add conditions**

Objectors: **Residents
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

Section 182 guidance
Licensing Policy
File

Corinne Holland
020 7364 3986

3.0 Background

- 3.1 This is an application for a variation of the premises licence for 'Liberty Lounge', 1A Bell Lane, London, E1 7LA. This premises falls within the Brick Lane Cumulative Impact Area (CIA)
- 3.2 The existing Premise Licence was issued on 20th March 2007 and a copy is enclosed as **Appendix 1**.
- 3.3 The timings of the existing licence are detailed below for information purposes only:-

Sale of Alcohol (on sales only)

- Sunday to Tuesday from 12:00hrs (midday) to 23:30hrs
- Wednesday to Thursday from 12:00hrs (midday) to 00:00hrs (midnight)
- Friday to Saturday from 12:00hrs (midday) to 01:00hrs (the following day)

The Provision of Regulated Entertainment (in the form of Live Music)

- Sunday to Tuesday from 12:00hrs (midday) to 23:30hrs
- Wednesday to Thursday from 12:00hrs (midday) to 00:00hrs (midnight)
- Friday to Saturday from 12:00hrs (midday) to 01:00hrs (the following day)

Late Night Refreshment

- Sunday to Tuesday from 23:00hrs to 23:30hrs
- Wednesday to Thursday from 23:30hrs to 00:00hrs (midnight)
- Friday to Saturday from 23:30hrs to 01:00hrs (the following day)

Non-Standard Times

- Sundays before Bank Holidays 12:00hrs (midday) to 01:00hrs (the following day)
- New Year's Eve 12:00hrs to 09:00hrs (the following day)
- Morning British Standard Time commences to allow clock going back on hour
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The opening hours of the premises

- Sunday to Tuesday from 12:00hrs (midday) to 23:30hrs
- Wednesday to Thursday from 12:00hrs (midday) to 00:00hrs (midnight)
- Friday to Saturday from 12:00hrs (midday) to 01:00hrs (the following day)

Non-Standard Times:

- Sundays before Bank Holidays 12:00hrs (midday) to 01:00hrs (the following day)
- New Year's Eve 12:00hrs to 09:00hrs (the following day)
- Morning British Standard Time commences to allow clock going back on hour

- 3.4 The applicant has described the nature of the variation as follows:
- *To extend the sale of alcohol/live music by one hour Thursday - Saturday*
 - *To extend LNR by 1.5 hours Thursday - Saturday*
 - *To allow recorded music 23:00 – 23:30 hrs Sunday - Tuesday/ 00:00 hrs Wednesday / 01:00 Thursday / 02:00 Friday/Saturday*
 - *Remove Conditions in Annex 2 & 3*
 - *Replace conditions in Annex 2 with conditions listed in application Section 16*
- 3.5 A copy of the variation application is enclosed as **Appendix 2** together with an email from the applicant's agent regarding the proposed SIA condition in operating schedule (condition 7 in Section 8.0 below).
- 3.6 The variation/additional hours applied for:

The Supply of Alcohol (on sales)

- Sunday – Wednesday – no extension
- Thursday 12:00 – 01:00 hours (1 hour extension)
- Friday – Saturday 12:00 - 02:00 hours (1 hour extension)

Provision of Live Music (indoors)

- Sunday – Wednesday – no extension
- Thursday 23:00 – 01:00 hours (1 hour extension)
- Friday – Saturday 23:00 - 02:00 hours (1 hour extension)

Provision of Recorded Music (to include non-standard hours)

- Sunday – Tuesday 23:00 – 23:30 hours
- Wednesday 23:00 hours – 00:00 hours (midnight)
- Thursday 23:00 hours – 01:00 hours
- Friday /Saturday 23:00 hours - 02:00 hours

Provision of late-night refreshment – (Indoor and outdoor)

- Sunday – Wednesday – no extension
- Thursday 23:00 hours – 01:30 hours (1.5 hour extension)
- Friday – Saturday 23:00 hours – 02:30 hours (1.5 hour extension)

Non-Standard Times (As existing licence):

- Sundays before Bank Holidays 12:00hrs (midday) to 01:00hrs (the following day)
- New Year's Eve 12:00hrs to 09:00hrs (the following day)
- Morning British Standard Time commences to allow clock going back on hour

Opening hours

- Sunday – Tuesday 12:00 hours – 23:30 hours (no extension)
- Wednesday 12:00 hours – 00:00 hours (no extension)
- Thursday 12:00 hours – 01:30 hours (1.5 hour extension)
- Friday – Saturday 12:00 hours – 02:30 hours (1.5 hour extension)

4.0 Location and Nature of the premises

4.1 Photographs of the venue and immediate vicinity are enclosed in **Appendix 3**.

4.2 Maps showing the vicinity are included as **Appendix 4**.

4.3 Nearby Licensed Premises are shown in **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 received.

REPRESENTATION	APPENDIX
Nicola Cadzow	7
Randall Thiel (SPIRE)	8
Aaron Casey	9
Alan Williams	10
Consuelo Nuno	11
Edoardo Zarghetta	12
Katy & Andrew Parnell	13
Michael Howe	14
Susan Kay	15
Tony Thomas	16

- 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
- Immigration

- 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 cover allegations of

- Public nuisance
- Crime & Disorder
- Anti - social behaviour
- Protection of children from harm

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 on existing Premises Licence which variation has applied to remove:

Annex 2 - Conditions consistent with the operating Schedule

1. Notices shall be displayed requesting the customers to leave the premises quietly.
2. The licence holder shall have an account with the taxi firm next to the premises to ensure the customers are not causing a nuisance on the street.
3. Staff shall monitor the noise levels outside the premises to ensure no nuisance is caused.
4. There shall be a litter patrol to ensure no empty bottles are immediately outside the premises.
5. No children shall be allowed entrance to the premises.

Annex 3 - Conditions attached after a hearing by the licensing authority following the licensing subcommittee hearing of 19th August 2010:

1. A CCTV camera system covering both internal and external to the premises shall be installed
2. The CCTV recordings shall be maintained for 30 days and shall be provided upon request to either a Police Officer or an officer of any other Responsible Authority

3. At all times the premises is open, a person who can operate the CCTV system must be present on the premises
4. No drinks (alcoholic or non-alcoholic) shall be sold on the premises for consumption off the premises
5. There shall be no amplified live music at any time
6. A lobby system shall be installed to the entrance within 6 weeks

Conditions attached following the licensing subcommittee hearing of 16th June 2015:

7. No more than 5 smokers outside the premises at one time.

8.0 Conditions consistent with Operating Schedule

1. A CCTV system shall be installed at the premises, be maintained in good working order and be continually recording at all times the premises are in use. The CCTV System must be capable of capturing a clear facial image of every person who enters the premises;
2. That all CCTV footage be kept for a period of at least 31 days and shall be made immediately available to Officers of the Police and/or Council on request;
3. That a member of staff shall be on duty at all times the premises is open who is trained in the use of the CCTV system and who is able to view, and download to a removable device, CCTV footage at the request of Police and / or Council Officers.
4. An incident log shall be kept at the premises and made available on request to an authorised officer of the City Council or the Police. It must be completed within 24 hours of the 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.

5. 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.
6. The premise shall have a written security plan that shows how the venue will deal with issues of crime and disorder occurring at the venue, and how the venue will deal with intoxicated or vulnerable customers. This Policy is to be made available to Police upon request.
7. An SIA licensed door supervisor shall be on duty at the premises from 2100 hrs to the close of business and they must correctly display their SIA licence(s) when on duty so as to be visible.
8. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
9. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.
10. There shall be no admittance or re-admittance to the premises after 00.00 hours (midnight) except for patrons permitted to temporarily leave the premises.
11. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.
12. All waste is to be properly presented and placed out for collection no earlier than 30 minutes before the scheduled collection times.
13. Noxious smells are not to be permitted to cause a nuisance to nearby properties and the premises are to be properly ventilated.
14. No more than 5 customers shall be permitted to smoke outside the premises at one time.

15. A Challenge 21 or Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram, or other form of identification that complies with any mandatory condition that may apply to this licence.
16. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member(s) of staff who refused the sale. The record shall be available for inspection at the premises by the police or an authorised officer of the City Council at all times whilst the premises is open.
17. All staff concerned in the sale or supply of alcohol shall undergo a recognised training scheme for such duties. Records of such training should be kept for inspection, on request by the police or other authorised officer.
18. The premises manager and other persons in relevant management positions within the premises will be provided with welfare and vulnerability engagement training focused on identifying vulnerability and making appropriate interventions.
19. Persons under the age of 18 shall not be permitted in the bar area of the premises when it is open for the sale of alcohol.

9.0 Conditions agreed in consultation with the responsible authorities

None

10.0 Licensing Officer Comments

10.1 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.

10.2 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)
- ❖ 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.
- ❖ 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)

10.3 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.

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

10.5 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.

10.6 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)

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

10.8 In **Appendices 17 - 26** 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.

11.0 **Legal Comments**

11.1 The Council's legal officer will give advice at the hearing.

12.0 **Finance Comments**

12.1 There are no financial implications in this report.

13.0 **Appendices**

Appendix 1	A copy the existing licence
Appendix 2	A copy of the application for variation plus email
Appendix 3	Photographs
Appendix 4	Maps of the surrounding area
Appendix 5	Nearby licensed premises
Appendix 6	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 7	Representation from Environmental Protection
Appendix 8	Resident Association representation (SPIRE)
Appendix 9-16	Resident representations
Appendix 17	S182 advice re crime & disorder
Appendix 18	Licensing policy advice re crime & disorder
Appendix 19	S182 advice re public nuisance
Appendix 20	Licensing Policy advice on public nuisance
Appendix 21	Anti-social behaviour when leaving premises

Appendix 22	Section 182 Protection of Children from Harm
Appendix 23	Licensing Policy advice on Protection of Children from Harm
Appendix 24	Brick Lane CIZ
Appendix 25	Framework hours
Appendix 26	Planning