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| Committee : Licensing Sub-Committee | Date 8 th November 2022 | 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 To reconsider a Premises Licence application remitted back to the LSC following an appeal for (Oval Cafe) 11-12 The Oval, London E2 9DU Ward affected: Bethnal Green West |
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1.0 Summary

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| Applicant: | Illumination Venues Limited |
| Name and | Oval Cafe |
| Address of Premises: | 11- 12 The Oval London E2 9DU |
| Licence sought: | Licensing Act 2003 – premises licence <ul style="list-style-type: none"> • The sale by retail of alcohol (on sales only) • The provision of regulated entertainment • The provision of late night refreshment |
| Representations: | Met Police |

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 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|------------------------------------------------------|
| <ul style="list-style-type: none"> • Guidance Issued under Section 182 of the Licensing Act 2003 • Tower Hamlets Licensing Policy • File | | Mohshin Ali 020 7364 5498 |

3.0 Background

- 3.1 This is an application for a premises licence for (Oval Cafe) 11-12 The Oval, London E2 9DU which has been remitted back to the Licensing Sub Committee by the Court for reconsideration following an appeal.
- 3.2 The application was brought to the Licensing Sub Committee on 22nd February 2022 following representations made by the Police. A copy of the original premises licence application form is enclosed as **Appendix 1**.
- 3.3 The licensable activities and timings that were applied for are as follows:

The sale by retail of alcohol – (on sales only)

- *Monday to Wednesday, from 12:00 hrs to 00:00 hrs (midnight)*
- *Thursday to Saturday, from 12:00 hrs to 04:00 hrs the following day*
- *Sunday, from 12:00 hrs to 02:00 hrs the following day*

The provision of late night refreshment - Indoors

- *Monday to Wednesday, from 23:00 hrs to 00:00 hrs (midnight)*
- *Thursday to Saturday, from 23:00 hrs to 05:00 hrs the following day*
- *Sunday, from 23:00 hrs to 02:00 hrs the following day*

The provision of regulated entertainment – Indoors

(Recorded music)

- *Thursday, from 23:00 hrs to 04:00 hrs the following day*
- *Friday and Saturday, from 23:00 hrs to 06:00 hrs the following day*
- *Sunday, from 23:00 hrs to 02:00 hrs the following day*

Non-standard timings

- *New Year's Eve, above licensable activities from 08:00 hrs to 03:00 hrs on New Year's Day.*

The opening hours of the premises

- *Monday to Wednesday, from 08:00 hrs to 00:30 hrs the following day*
- *Thursday, from 08:00 hrs to 04:00 hrs the following day*
- *Friday and Saturday, from 08:00 hrs to 06:00 hrs the following day*
- *Sunday, from 08:00 hrs to 02:00 hrs the following day*

- 3.4 A licence existed prior to the application of which had lapsed following liquidation of the company. The previous licence has been included for members information (Please see **Appendix 2**).
- 3.5 Members granted the application with a variation on reduction of hours for the timings below, the full decision can be found in **Appendix 3**.

Sale of Alcohol (On Sales only)

Monday to Thursday from 12:00 hours to 23:30 hours

Friday and Saturday from 12:00 hours to 00:00 hours (midnight)
Sunday from 12:00 hours to 22:30 hours

The Provision of Late Night Refreshments (indoors)

Monday to Thursday from 23:00 hours to 23:30 hours
Friday and Saturday from 23:00 hours to 00:00 hours (midnight)

The Provision of Regulated Entertainment – indoors (Recorded Music)

Monday to Thursday from 12:00 hours to 23:30 hours
Friday and Saturday from 12:00 hours to 00:00 hours (midnight)
Sunday from 12:00 hours to 22:30 hours

Non-standard timings

New Years Eve, above licensable activities from 08:00 hours to 03:00 hours to 03:00 hours on New Year's Day.

Opening Hours

Monday to Thursday from 00:00 hours to 00:00 hours (midnight)
Friday and Saturday from 08:00 hours to 00:30 hours (the following day)
Sunday from 08:00 hours to 23:00 hours

4.0 A copy of the licence granted following the decision is detail in **Appendix 4**.

5.0 Location and Nature of the premises

5.1 The site plan of the venue is included as **Appendix 5**.

5.2 Maps and photos showing the vicinity are included as **Appendix 6**.

5.3 Details of the nearest licensed venues are included as **Appendix 7**.

6.0 Licensing Policy and Government Advice

6.1 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. It was last revised in November 2021.

6.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.

6.3 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.

- 6.4 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.

7.0 Consideration

- 7.1 This application is to be reconsidered following a consent order made by the Magistrates Court to remit this matter back to the Licensing sub Committee for specific reconsideration as to the permitted hours for the carrying on of licensable activity. The Sub Committee is not able to reconsider any other aspect of the licence.

A copy of the consent order is detailed in **Appendix 8**

A copy of the representations by the Police are detailed in **Appendix 9**

8.0 Licensing Officer Comments

- 8.1 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.
- 8.2 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. 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.
- 8.3 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)
- 8.4 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.
- 8.5 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 8.6 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.

- 8.7 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)
- 8.8 The Council's Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 8.9 In **Appendices 10 - 16** 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.

9.0 **Legal Comments**

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

10.0 **Finance Comments**

- 10.1 There are no financial implications in this report.

11.0 Appendices

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| Appendix 1 | A copy of the application |
| Appendix 2 | A copy of the old lapsed licence |
| Appendix 3 | Licensing Sub Committee decision |
| Appendix 4 | Premises Licence Issued |
| Appendix 5 | Site Plan |
| Appendix 6 | Maps of the surrounding area |
| Appendix 7 | Other licensed venues in the area |
| Appendix 8 | Consent Order |
| Appendix 9 | Representation of Police Licensing |
| Appendix 10 | Licensing Officer comments on noise while the premise is in use |
| Appendix 11 | Licensing Officer comments on access/egress |
| Appendix 12 | Licensing Officer comments on crime and disorder on the premises |
| Appendix 13 | Licensing Officer comments on crime and disorder from patrons leaving the premises |
| Appendix 14 | Licensing Officer comments on public safety |
| Appendix 15 | Planning |
| Appendix 16 | Licensing Policy relating to hours of trading |