

Committee: Licensing Sub Committee	Date 8 th November 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 KFC, Unit 41 Cannon Workshops, Cannon Drive, London, E14 4AS
Originating Officer: Corinne Holland Licensing Officer	Ward affected: Canary Wharf

1.0 Summary

Applicant:	Kentucky Fried Chicken (GB) Ltd
Name and Address of Premises:	Kentucky Fried Chicken Unit 41 Cannon Workshops Cannon Drive London E14 4AS
Licence sought:	Licensing Act 2003 Provision of Late-Night Refreshments
Objectors:	Environmental Health 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
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 KFC, Unit 41 Cannon Workshops, Cannon Drive, London, E14 4AS.
- 3.2 The applicant has described the premises as: Dark kitchen – no customer attendance.
- 3.3 A copy of the application is shown in **Appendix 1**.
- 3.4 The hours applied for are as follows:

Provision of Late-Night Refreshments (indoors & outdoors)

Monday to Sunday – 23:00 hours – 05:00 hours

Opening times

Monday to 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.

O. Olere – Environmental Health (noise team)	Appendix 7
M. Webster	Appendix 8
K. Kaminski	Appendix 9
K. Leung	Appendix 10
R. Metcalfe	Appendix 11
N. Moore	Appendix 12
S.Tzenov / K.Tzenova	Appendix 13
V. Giovagnetti	Appendix 14

- 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
- Access & Egress

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. The premises licence holder shall train all staff for their job and function on the premises in a suitable manner. This training shall be written into a programme of ongoing review and will be made available to relevant responsible authority upon request. In addition to this, training shall be provided to all staff engaged, or to be engaged, related to: -
 - General safety
 - Fire and other emergencies
 - Allergens policy
 - Supply of alcohol

2. A properly specified and fully operational CCTV recording system shall be installed, operated and maintained. The system shall incorporate a camera covering each entrance/exit door and be capable of providing an image which is regarded as identification standard of all persons entering and/or leaving the premises. The CCTV system shall be in operation at the premises at all times when the premises are used for the provision of licensable activity. All CCTV recordings shall be securely stored for a minimum of thirty-one days.
3. A staff member from the premises shall be able to operate the CCTV system and shall be able to show Police recent data or footage with the absolute minimum of delay when requested, subject to data protection guidance and legislation.
4. Signage indicating that a CCTV recording system is in operation shall be displayed prominently in the premises.
5. All exit routes and high traffic areas shall be kept unobstructed, shall have non slippery and even surfaces, shall be free of trip hazards and shall be clearly signed.
6. No accumulation of combustible rubbish, dirt, surplus material or stored goods shall be permitted to remain in any part of the premises except in an appropriate place and of such quantities so as not to cause a nuisance, obstruction or other safety hazard.
7. Regular checks and maintenance shall be carried out on all ventilation, extraction and filter systems to ensure that odours or noise caused in connection with a licensable activity are suitably restricted.
8. All deliveries shall be made by a reputable carrier, e.g. Deliveroo, Uber Eats, Just Eat etc.
9. No customers shall be permitted to call at the premises.
10. Delivery drives/riders shall be given clear written instructions to secure their vehicles (cars, mopeds, cycles etc) in a responsible manner so as not to cause a nuisance in the vicinity of the licensed premises or the delivery location, not to leave engines running when vehicles are parked and not to obstruct the highway or footway. Drivers/riders who do not comply with the instructions will not be permitted to make deliveries on behalf of the licensee.
11. All delivery orders shall be to a registered residential or business address.
12. There shall be a dedicated area for delivery personnel to safely park their vehicle and collect the customer order.

- 13.A 'Staff Safe' tannoy and panic button system will be fitted at the premises. These will be linked to a 24 hour monitoring service.
14. An online log for all incidents is to be kept and maintained. This log will be available to Police or Council Officers on request. Relevant offences will be reported to Police in good time.
15. The premises comply with the DEFRA voluntary code of practice on reducing litter caused by 'food on the go' – specifically conducting daily litter picking.

8.0 Conditions Agreed/Requested by Responsible Authority

None

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 15 - 19** 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	Representation from EP
Appendix 8 -14	Representations from residents
Appendix 15	Licensing Officer comments on public nuisance
Appendix 16	S182 advice on public nuisance
Appendix 17	Access & Egress
Appendix 18	Licensing Policy relating to hours of trading
Appendix 19	Planning