

Committee : Licensing Sub-Committee	Date	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 Application for a Premises Licence for (Jack the Chipper) 96 Whitechapel High Street, London E1 7RA Ward affected: Spitalfields and Banglatown
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1.0 Summary

Applicant: **Recep Turhan**

Name and **Jack the Chipper**

Address of Premises: **96 Whitechapel High Street
London
E1 7RA**

Licence sought: **Licensing Act 2003 – premises licence**

- **The sale by retail of alcohol (on sales only)**
- **The provision of late night refreshment**

Representations: **Licensing Authority (RA)
Resident's Association**

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 (Jack the Chipper) 96 Whitechapel High Street, London E1 7RA.
- 3.2 The applicant has described the premises as:
“Restaurant providing on-sale alcohol only with substantial meal to seated customers”.
- 3.3 The previous business (Fine Catering Ltd) has an existing licence for the ground floor only with following timings:
The provision of late night refreshment - indoors
- *Sunday to Thursday from 23:00 hours to 23:15 hours*
 - *Friday to Saturday, from 23:00 hours to 00:30 hours the following day*

Non-standard timings

- *Christmas Eve and New Year’s Eve, from 23:00 hours to 02:00 hours the following day*

The opening hours of the premises

- *Sunday to Thursday from 08:00 hours to 23:45 hours*
- *Friday to Saturday, from 08:00 hours to 01:00 hours the following day*

Non-standard timings

- *Christmas Eve and New Year’s Eve, from 08:00 hours to 02:00 hours the following day*

- 3.4 A copy of the new premises licence application form is enclosed as **Appendix 1**. The licensable activities and timings that have been applied for the the basement, ground and first floor as follows:

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

- *Monday to Saturday, from 11:00 hrs to 23:30 hrs*
- *Sunday, from 11:00 hrs to 22:30 hrs*

Non-standard timings for the sale of by retail of alcohol

- *New years eve, from 11:00 hrs to 00:30 the following day*

The provision of late night refreshment - Indoors

- *Monday to Saturday, from 23:00 hrs to 23:30 hrs*
- *(Sunday, no late night refreshment)*

The opening hours of the premises

- *Monday to Saturday, from 07:00 hrs to 00:00 hrs (midnight)*
- *Sunday, from 07:00 hrs to 23:00 hrs*

Non-standard timings

- *New years eve, from 11:00 hrs to 01:00 the following day*

LICENSING OFFICER'S COMMENT: It should be noted that for New Year's Eve, the applicant has applied to only extend the sale of alcohol but not for the provision of late night refreshment (hot food and hot drinks).

4.0 Location and Nature of the premises

4.1 The site plan of the venue is included as **Appendix 2**.

4.2 Maps and photos showing the vicinity are included as **Appendix 3**.

4.3 Details of the nearest licensed venues are included as **Appendix 4**.

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 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 15**.
- 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:
- Licensing Authority (acting as a Responsible Authority) (See **Appendix 5**).
 - Resident's Association (See **Appendix 6**).
- 6.9 Since the representations were made, there has been some communication between the applicant and the objectors. At the time of writing this report, they did not reach an agreement.
- 6.10 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
 - Environmental Protection (Noise)
 - Trading Standards
 - Child Protection
 - Public Health
 - Home Secretary (Home Office Immigration Enforcement)
- 6.11 In addition the application was required to be advertised in a local newspaper and by a blue poster. Only representations 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
- 6.12 Essentially, the relevant parties oppose the application because in their opinion, the applicant has not explained how within the context of the application they will meet the licensing objective of the prevention of crime and disorder and the prevention of public nuisance.

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 (offered by the applicant)

7.1 *Alcohol shall only be sold and served to seated customers with a meal.*

7.2 *There will be a maximum of 4 people at any one time in the designated area at the front of the premises for smoking purposes. This will be monitored by staff.*

7.3 *The Licence holder shall ensure that a CCTV system is installed at the premises of a standard acceptable to the metropolitan police.*

a) *The system shall be maintained in good working order and fully operational covering all internal licensable areas of the premises to which the public have access.*

b) *All entry and exit points shall be covered enabling frontal identification (full head and shoulders images) of every person entering the premises in any light condition to an evidential standard.*

c) *Management and permanent members of staff will be trained in the operation of the system with at least one member of this CCTV competent staff on duty each day.*

d) *The CCTV system will have the capability to either download footage onto disc or memory stick.*

e) *The footage on the CCTV system will be retained for a minimum period of 31 days before rewriting itself with correct date and time showing.*

f) *The footage shall be made available to police or local authority officers upon request.*

g) *If the CCTV system is broken the Licence holder get the fault rectified as soon as practicable.*

- h) The Licence holder shall ensure that a log is kept with details of the dates of all work/repairs carried out on the CCTV system including the name and phone number of the engineer.*
- i) The installation or upgrading of any CCTV system shall comply with current best practice.*

7.4 There shall be "CCTV in Operation" signs prominently displayed at the premises.

7.5 An incident book shall be kept and maintained at the premises and shall be made available for inspection by police and council officers upon request.

7.6 A training log is to be kept for all staff members, in which staff sign that they have received the relevant training especially regarding the licensing objectives and Licensing Act 2003.

- a) In particular, the staff training shall include a section in relation to underage sales to ensure all staff is fully briefed.*
- b) Staff shall be briefed on current recognised proof of age schemes and other forms of identification deemed to be acceptable as proof of age.*
- c) Staff training shall emphasise drug awareness and vigilance in monitoring customer activity in and around the premises to minimize possible crime and disorder.*
- d) Staff training includes steps to be taken to ensure the safety of customers in and around the perimeter of the premises, where applicable.*
- e) Any new employee will be trained before starting the sale of alcohol.*
- f) All staff training will be repeated every six months to ensure their knowledge is refreshed and kept up-to-date. All training will be recorded.*

7.7 A log shall be kept detailing all refused sales of alcohol.

- a) The log will include the date and time of the refused sale and the name of the member of staff who refused the sale, and all staff will be trained in the use of the refusal book.*
- b) The refusals book will be examined on a regular basis (at least weekly) by the licensee and date and time of each examination to be endorsed in the book.*

- c) *Analysis of staff refusals and data such as the time/day of refusals to be carried out by the licensee on a regular basis in order to predict trends and identify staff training and compliance issues.*
 - d) *The refusal / incident / training logs are to be kept on the licensed premises and made available for inspection by the Licensing Officer, Trading Standards or the Police.*
- 7.8 *In an incident log we will record the following:*
- a) *all crimes reported to the venue*
 - b) *any complaints received*
 - c) *any incidents of disorderly conduct*
 - d) *any faults in the CCTV system or searching equipment*
 - e) *any visit by a relevant authority or emergency service.*
- 7.9 *Notice will be put up at the entrance/ exit to remind customers to leave quietly.*
- 7.10 *Incident logbook will include any complaints, including nuisance related complaints.*
- 7.11 *There will be no deliveries between the hours of 23:00 and 07:00 to the premises.*
- 7.12 *Any waste removed from the premises at close time will be done in consideration of the neighbours, in regard to noise and disturbance.*
- 7.13 *Loudspeakers shall not be located in the entrance lobby or outside the premises.*
- 7.14 *A written dispersal policy shall be in place and implemented at the premises to disperse customers from the premises and the immediate vicinity in such a way as to cause minimum disturbance or nuisance to neighbours.*
- 7.15 *Customers will be permitted to temporarily leave and then re-enter the premises e.g. to smoke, but shall not be permitted to take alcohol with them.*
- 7.16 *No entertainment, performance, service, or exhibition involving nudity or sexual stimulation shall be permitted.*
- 7.17 *The licence holder/DPS shall operate a strict Challenge 25 policy at the premises. Posters shall be displayed inside the venue informing customers. Examples of acceptable ID include:*
- a) *photo card driving licences*
 - b) *passports or proof of age cards bearing the PASS hologram*
 - c) *military ID cards*
 - d) *other forms of ID which meet the criteria laid out above are also acceptable*

7.18 *Staff who work in this venue shall be made aware of the existence and content of the age verification policy. This will include NO ID NO SALE*

8.0 **Conditions in consultation with the Responsible Authorities**

Conditions agreed in consultation with Environmental Protection (Appendix 7):

8.1 *Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall be limited to 4 (four) persons at any one time.*

8.2 *No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises, which gives rise to a public nuisance.*

9.0 **Licensing Officer Comments**

9.1 The Business & Planning Act 2020 came into force on Wednesday 22nd July 2020 and provides a temporary permission for businesses that have a premises licence that permits them to sell alcohol in regards to the ability to sell alcohol as an off sale, i.e. for consumption off the premises. The permission will end on 30th September 2023 unless the legislation is changed by the Secretary of State.

It will only apply to businesses that hold a Premises Licence up to 22nd July 2020 and that in the last 3 years preceding 22 July 2020 those licences have NOT:

- had a premises licence application where permission for off sales was refused;
- had a variation of a premises licence seeking permission for off sales refused
- had a variation seeking to exclude off sales permission granted
- had a premises licence varied or modified by a review hearing to exclude off sales.

9.2 The new off-sales permission will permit off-sales to be made at a time when the licensed premises are open for the purposes of selling alcohol for consumption on the premises, subject to a cut off time of 11pm or the cut off time of the current licensed hours stated on the licence, whichever is earlier. Measures also temporarily suspend existing licence conditions in so far as they are inconsistent with the new off-sales permission. Further Guidance on this can be found at <https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill>

9.3 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.

9.4 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.

9.5 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)

- 9.6 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.
- 9.7 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 9.8 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.
- 9.9 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)
- 9.10 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 9.11 In **Appendices 8 - 15** 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	Other licensed venues in the area
Appendix 5	Representation of Licensing Authority (RA)
Appendix 6	Representation of Resident's Association
Appendix 7	Conditions agreed with Environmental Protection
Appendix 8	Licensing Officer comments on noise while the premise is in use
Appendix 9	Licensing Officer comments on access/egress Problems
Appendix 10	Licensing Officer comments on crime and disorder on the premises
Appendix 11	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 12	Planning
Appendix 13	Licensing Policy relating to hours of trading
Appendix 14	Tower Hamlets Cumulative Impact Zone
Appendix 15	Home Office concerning relevant, vexatious and frivolous representations