

Committee: Licensing Sub Committee	Date	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 Kilikya's Café Bar Restaurant, Unit C4 Ivory House, St Katharine's Dock, London, E1W 1AT
Originating Officer: Corinne Holland Licensing Officer	Ward affected: St.Katharine's and Wapping

1.0 **Summary**

Applicant: **Kemal Seckin Balikel**

Name and Address of Premises: **Kilikya's Café Bar Restaurant
Unit C4 Ivory House
St Katharine's Dock
East Smithfield
London
E1W 1AT**

Licence sought: **Licensing Act 2003
Sale by retail of Alcohol (on sales)**

Objectors: **Residents/ Resident Association**

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 Kiliya's Café Bar Restaurant, Unit C4 Ivory House, St Katharine's Dock, London, E1W 1AT.
- 3.2 The applicant has described the premises as: Café, restaurant, bar
- 3.3 This premise currently holds a premises licence under units C3 & C4 and for information purposes it is licensed for the following.

Internal Premises – sale/supply by retail of alcohol - on sales – (off sales currently under the BPA 2020 – see Section 9.1 below)

- Monday to Saturday, from 12:00 hours to 23:00 hours
- Sunday, from 12:00 hours to 22:30 hours

External Premises – sale/supply by retail of alcohol

- Sunday to Thursday, from 12:00 hours to 21:00 hours
- Friday and Saturday, from 12:00 hours to 21:30 hours

The opening hours of the premises

- Monday to Sunday, from 07:00 hours to 23:30 hours

- 3.4 A copy of the existing Premise Licence is shown in **Appendix 1**.

- 3.5 The hours applied for are as follows:

Sale of Alcohol (on & off sales)

Monday to Saturday 12:00 hours – 23:00 hours
Sunday 12:00 hours – 22:30 hours

Hours for External area:

Sunday – Thursday 12:00 hours – 21:00 hours
Friday – Saturday 12:00 hours – 21:30 hours

Opening times

Monday to Sunday – 07:00 hours – 23:30 hours

- 3.6 A copy of the application is shown in **Appendix 2**

4.0 **Location and Nature of the premises**

- 4.1 The site plan of the venue is included as **Appendix 3**.
- 4.2 Maps showing the vicinity are included as **Appendix 4**.
- 4.3 Photographs of the premises are included in **Appendix 5**.
- 4.4 Details of other licensed venues in the immediate vicinity are included as **Appendix 6**.

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 21**.
- 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.

C & L Mitchell	Appendix 7
C. Thomas	Appendix 8
C. Tunstall	Appendix 9
D. Leonard (FOSKD)	Appendix 10
M & H Wilshire	Appendix 11
N. Penfold	Appendix 12
R. Williams	Appendix 13
S. Hughes	Appendix 14
S. Spinks	Appendix 15

6.9 In addition, relevant representations in support of the premises have been made by the following:

C. Balasa	Appendix 16
B.Yalcin/H. Djemil / P.Patterson	Appendix 17
E. Tseka	Appendix 18

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
- Noise (Environmental Health)
- Trading Standards
- Child Protection
- Public Health
- 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 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

6.12 The objections relate to:

- Public nuisance
- Crime and Disorder
- ASB
- Access & Egress

- 6.13 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.
- 6.14 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.
- 6.15 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. Alcohol sold for consumption off the premises shall only be sold with food and when for delivery shall only be delivered to a residential or business address and not to a public place.
2. All off sales to be in sealed containers.
3. Alcohol may be supplied only by waiter/waitress service to persons seated at tables for consumption by person so seated.
4. Alcohol sold to persons arriving after 21:30 will be sold with food.
5. CCTV condition as set out by police (see Appendix 19)
6. Challenge 25 age verification (see Appendix 19)
7. The terminal hours for the external areas marked on the plan indicate times during which alcohol must be consumed between Sunday – Thursday 12:00-21:00 hours, Friday – Saturday 12:00- 21:30 hours.

8.0 Conditions Agreed/Requested by Responsible Authority

Conditions agreed with the Police – Appendix 19

1. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Tower Hamlets Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.

2. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
3. An incident log shall be kept at the premises, and be available on request to the Police or an authorised officer. It must be completed within 24 hours of any 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.
4. A 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.

Conditions agreed with Environmental Protection – Appendix 20

1. No Music or Amplified Sound shall be generated on the premises to give rise to a public nuisance to neighbouring residents.
2. Loudspeakers shall not be located in the entrance lobby, or outside the premise building.
3. All windows and external doors shall be kept closed when regulated entertainment takes place, except for the immediate access & egress of persons.
4. After 21:00 hours when the Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall be limited to 5 persons at any one time.

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 has been extended to 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 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 sell 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 21 - 29** 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	Copy of existing licence
Appendix 2	A copy of the application
Appendix 3	Site Plan
Appendix 4	Maps of the surrounding area
Appendix 5	Photographs of the premises
Appendix 6	Other licensed venues in the area
Appendix 7-15	Representations from residents
Appendix 16-18	Supporting Representations
Appendix 19	Conditions agreed with police
Appendix 20	Conditions agreed with Environmental Health
Appendix 21	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 22	Licensing Officer comments on public nuisance
Appendix 23	S182 advice on public nuisance
Appendix 24	Licensing Officer comments on crime & disorder
Appendix 25	S182 advice on crime & disorder
Appendix 26	ASB leaving the premises
Appendix 27	Access & Egress
Appendix 28	Licensing Policy relating to hours of trading
Appendix 29	Planning