

Committee :	Date	Classification	Report No.	Agenda Item No.
<b>Licensing Sub Committee</b>		<b>Unclassified</b>		

Report of : <b>David Tolley</b> <b>Head of Environmental Health &amp; Trading Standards</b>	Title: <b>Licensing Act 2003 Application for a Premises Licence for Second Home Ltd, 68-80 Hanbury Street, London E1 5JL</b>
Originating Officer: <b>Kathy Driver</b> <b>Principal Licensing Officer</b>	Ward affected: <b>Spitalfields and Banglatown</b>

## 1.0 Summary

Applicant: **Second Home Ltd**  
Name and Address of Premises: **Rooftop**  
**68-80 Hanbury Street**  
**London E1 5JL**

Licence sought: **Licensing Act 2003**  
**The Sale of Alcohol**  
**Provide regulated entertainment**

Objectors: **Environmental Health**  
**Licensing Authority**  
**Local Residents**  
**Residents Group**

## 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

Kathy Driver  
020 7364 5171

### 3.0 **Background**

- 3.1 This is an application for a premises licence for Rooftop, 68-80 Hanbury Street, London E1 5JL.
- 3.2 A copy of the application is enclosed as **Appendix 1**.
- 3.3 The applicant has described the nature of the variation as:  
The sale of alcohol  
Providing regulated entertainment
- 3.4 The hours that have been applied for are as follows:-  
(Note these have been reduced since the application was made)

#### **Sale of Alcohol (on sales)**

Monday to Sunday from 17:00 hours to 22:30 hours

#### **The Provision of Regulated Entertainment in the form of (indoors):**

##### **Films:**

Monday to Sunday 11:00 hours to 22:00 hours

##### **Live Music, performance of dance**

Monday to Sunday from 11:00 hours to 23:00 hours

#### **Hours premises is open to the public:**

Monday to Sunday 24 hours a day

### 4.0 **Location and Nature of the premises**

- 4.1 There is currently a premise licence in place for the ground floor and enclose a copy of the licence for Members information in **Appendix 2**.
- 4.2 Photographs of the venue and immediate vicinity is in **Appendix 3**
- 4.3 The site plan and maps of the venue is included as **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 1<sup>st</sup> November 2018 with an update on the CIZ policy in November 2021.
- 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](http://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:

Environmental Health -	See <b>Appendix 7</b>
Licensing Authority –	See <b>Appendix 8</b>
Metropolitan Police –	See <b>Appendix 9</b>
Petition from local residents –	See <b>Appendix 10</b>

Local Resident Association –		See <b>Appendix 11</b>
Local Resident representations are detailed below;		
Gerald	Collins	<b>Appendix 12</b>
Sandy	Critchley	<b>Appendix 13</b>
Alex	Gordon Shute	<b>Appendix 14</b>
Caroline	Hamilton	<b>Appendix 15</b>
Dr Zoe	Hudson	<b>Appendix 16</b>
Mohammed Mohibul	Kamali	<b>Appendix 17</b>
Rajia	Kamali	<b>Appendix 18</b>
Susan	Kay	<b>Appendix 19</b>
Erki	Kilu	<b>Appendix 20</b>
Maisha	Mahfuza	<b>Appendix 21</b>
Toby	Stevens	<b>Appendix 22</b>
Edward	Tyrell	<b>Appendix 23</b>
Lyn	Williams	<b>Appendix 24</b>

- 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
  - Primary Care Trust (Public Health England)
  - 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 cover allegations of
- Anti-social behaviour on the premises
  - Anti social behaviour from patrons leaving the premises
  - Noise while the premise is in use
  - Disturbance from patrons leaving the premises on foot
  - Close proximity to residential properties
  - Noise leakage from the premises
  - The LBTH Cumulative Impact Zone

- 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 consistent with Operating Schedule**

- 7.1 None offered, the applicant has advised cctv is in operation, therefore Members may wish to consider the standard CCTV condition, if Members decide to grant.

## **8.0 Conditions Agreed with Trading Standards**

- 8.1 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.

## **9.0 Licensing Officer Comments**

- 9.1 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.

- 9.2 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.

- 9.3 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)

- 9.4 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.
- 9.5 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 9.6 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.
- 9.7 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)
- 9.8 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 9.9 In **Appendices 25-30** 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 Exemptions

- 10.1 There are a number of statutory exemptions from the operation of the Licensing Act 2003, and Members need to bear these in mind.
- 10.2 Section 177A, (1) and (2) of the Act provides that where a premises (or club) is licensed for alcohol consumption on the premises ; is open for the purposes of doing so; if the music is amplified, that the audience is no more than 500; and the music takes place between 8am and 11pm, any conditions do not have effect.
- 10.3 Section 177A can be disapplied on a licence review if it is proportionate to do so, a review can also add conditions relating to music.

## 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

<b>Appendix 1</b>	A copy of the application
<b>Appendix 2</b>	Premises Licence for Ground Floor
<b>Appendix 3</b>	Photographs of venue and surrounding
<b>Appendix 4</b>	Site Plan and Maps of the surrounding area
<b>Appendix 5</b>	Other licensed venues in the area
<b>Appendix 6</b>	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
<b>Appendix 7</b>	Representation from Environmental Health
<b>Appendix 8</b>	Representation from Licensing Authority
<b>Appendix 9</b>	Representation from Metropolitan Police
<b>Appendix 10</b>	Petition from local residents
<b>Appendix 11</b>	Representations from Residents Association
<b>Appendix 12-24</b>	Representations from local residents
<b>Appendix 25</b>	Licensing officer comments on anti-social behaviour patrons leaving the premises
<b>Appendix 26</b>	Licensing officer comments on Access and egress problems
<b>Appendix 27</b>	Licensing officer comments on Noise when the premises is in use
<b>Appendix 28</b>	Planning
<b>Appendix 29</b>	Licensing Policy relating to hours of trading.
<b>Appendix 30</b>	Cumulative Impact Area