

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee		Unclassified		

Report of : David Tolley Head of Environmental Health & Trading Standards Originating Officer: Lavine Miller-Johnson Licensing Officer	Title: Licensing Act 2003 Application for a Premises Licence The Shell French Seafood Restaurant Ltd, ground floor & basement 3 Discovery Dock East South Quay Square London E14 9RU Ward affected: Canary Wharf
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1.0 Summary

Applicant: **The Shell French Seafood Restaurant Ltd**
 Name and **Ground Floor & Basement 3 Discovery Dock**
East, South Quay Square London

Address of Premises: **E14 9RU**

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

Objectors: **Local 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

Lavine Miller-Johnson
 020 7364 2665

3.0 **Background**

3.1 This is an application for a premises licence for, The Shell French Seafood Restaurant Ltd, Ground floor & Basement 3 Discovery Dock East South Quay Square London E14 9RU

3.2 A copy of the application is enclosed as **Appendix 1**.

3.3 The applicant has described the nature of the variation as:
A restaurant, serving fresh seafoods and alcohol.

3.4 The hours that have been applied for are as follows:-

Sale of Alcohol (on sales)

Monday to Saturday from 11:00 hours to 24:00 hours (Midnight)

Sunday from 11:00 hours to 23:00 hours

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

Recorded music (Indoors)

Monday to Saturday from 11:00 hours to 24:00 hours (Midnight)

Sunday from 11:00 hours to 23:00 hours

Hours premises is open to the public:

Monday to Saturday from 11:00 hours to 24:00 hours (Midnight)

Sunday from 11:00 hours to 23:00 hours

3.5 Subsequently to the application the following timing have been agreed with some of the objecting residents and has been amended as follows:

Sale of Alcohol (on sales)

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

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

Recorded music (Indoors)

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

Hours premises is open to the public:

Monday to Sunday from 22:30 hours

4.0 **Location and Nature of the premises**

4.1 Photographs of the venue and immediate vicinity will be provided at the hearing.

4.2 The site plan and maps of the venue is included as **Appendix 2**.

4.3 Details of other licensed venues in the immediate vicinity are included as **Appendix 3**.

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 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. 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 4**.

- 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:

Local Resident representations are detailed below;

Bipin Hulman	Resident	Appendix 5
Bayan Uralbayeva	Resident	Appendix 6
Henry Polin	Resident	Appendix 7
Igor Perekolski	Resident	Appendix 8
Ivana Ng	Resident	Appendix 9
Lise jacquens	Resident	Appendix 10
Gareth Caple & Maria Arias	Resident	Appendix 11

- 6.9 The applicant has been in contact with the objectors and since this time, some objectors have now withdrawn their objections. An agreement has been reached to reduce the timings for licensable activities Please see **Appendix 12**

- 6.10 All of the responsible authorities have been consulted about this application. They are as follows:

- The Licensing Authority
- The Metropolitan Police
- The LFEP (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

- 6.11 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 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
- 6.13 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. CCTV will be use at the premises, it shall be to an appropriate standard as agreed with the Licensing Authority in consultation with the Police.
2. The CCTV equipment shall be maintained in good working order and continually record when licensable activity takes place and for a period of two hours afterwards. The premises licence holder shall ensure images from the CCTV are retained for a period of 31 days.
3. This image retention period may be reviewed as appropriate by the Licensing Authority.
4. The correct time and date will be generated onto both the recording and the real time image screen. If the CCTV equipment (Including any mobile units in use at the premises) breaks down the Premises Licence Holder shall ensure the designated premises supervisor, or in his/her absence other responsible person, verbally informs the Licensing Authority and the Police as soon as is reasonably practicable.
5. The premises Licence holder shall ensure that there are trained members of staff available during licensable hours to be able to reproduce and download CCTV images into a removable format at the request of an authorised officer of the Licensing Authority or a constable.
6. The DPS will keep an up to date DPS Authorisation sheet which will show the list of staff members who have been given the authority to sell alcohol on the premises.

7. An incident record will be kept in a bound book, as will all refusals for the sale of alcohol. These books will be made available to the police and officer from the council on request.
8. Evening events will be pre booked events with numbers carefully controlled along with those who are invited guests only.
9. Only photographic ID is accepted (passport, driving licence, proof of age card with PASS hologram, or military ID). Anyone who appears to be under the age of 25 is challenged to provide ID. If the customer is unable to provide identification then no sale is made. No ID no sale.
10. All refused sales will be recorded in a refusals book, which will be made available for inspection by Police or Licensing Officers of the council on request.
11. All children on the premises will be supervised/ accompanied by an adult after 21:00 hours in the bar area.

8.0 Conditions Agreed with police – See Appendix 13

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. In the event that a serious assault is committed on the premises (or appears to have been committed) the management will immediately ensure that:
- a) the police (and, where appropriate, the London Ambulance Service) are called without delay;
 - b) all measures that are reasonably practicable are taken to apprehend any suspects pending the arrival of the police;
 - c) the crime scene is preserved so as to enable a full forensic investigation to be carried out by the police; and
 - d) such other measures are taken (as appropriate) to fully protect the safety of all persons present on the premises.
5. 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.
6. The premises shall only operate as a restaurant where the sale of alcohol is ancillary to the sale of alcohol.

9.0 Conditions agreed with Licensing Authority- See Appendix 14

1. The supply of alcohol at the premises shall only be to a person seated taking a table meal there and for consumption by such a person as ancillary to their meal.
2. An incident log shall be kept at the premises, and made available on request to an authorised officer of the Council or the Police, which will record the following:
 - (a) All crimes reported;
 - (b) All ejections of patrons;
 - (c) Any complaints received concerning crime & disorder;
 - (d) Any incidents of disorder;
 - (e) All seizures of drugs or offensive weapons;
 - (f) Any faults in the CCTV system;
 - (g) Any refusal of the sale of alcohol;
 - (h) Any visit by a relevant authority or emergency service.
3. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.

- Monday – Saturday 23:30 and Sunday 22:30 to allow for the 30 minutes drinking up time.

10.0 Conditions agreed with Environmental Health – See Appendix 15

1. Loudspeakers shall not be located in the entrance lobby, or outside the premise building.
2. All windows and external doors shall be kept closed when regulated entertainment takes place, except for the immediate access & egress of persons.
3. Patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, shall be limited to 8 persons at any one time.
4. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises, which gives rise to a public nuisance.

11.0 Licensing Officer Comments

11.1 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.

11.2 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.

11.3 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)

12.0 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.

- 12.1 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 12.2 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.
- 12.3 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)
- 12.4 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 12.5 In **Appendices 16-20** 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.

13.0 Exemptions

- 13.1 There are a number of statutory exemptions from the operation of the Licensing Act 2003, and Members need to bear these in mind.
- 13.2 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.
- 13.3 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.

14.0 Legal Comments

- 14.1 The Council’s legal officer will give advice at the hearing.

15.0 Finance Comments

- 15.01 There are no financial implications in this report.

16.0 Appendices

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| Appendix 1 | A copy of the application |
| Appendix 2 | Site Plan and Map of the surrounding area |
| Appendix 3 | Other licensed venues in the area |
| Appendix 4 | Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations |
| Appendix 5-11 | Representation from residents |
| Appendix 12 | Mediation between resident and agent/applicant |
| Appendix 13 | Agreed conditions with Police |
| Appendix 14 | Agreed condition with Licensing Authority |
| Appendix 15 | Agreed conditions with Environmental Health |
| Appendix 16 | Licensing officer comments on anti-social behaviour patrons leaving the premises |
| Appendix 17 | Licensing officer comments on Access and egress problems |
| Appendix 18 | Licensing officer comments on Noise when the premises is in use |
| Appendix 19 | Planning |
| Appendix 20 | Licensing Policy relating to hours of trading. |