

Committee: Licensing Sub Committee	Date 18 June 2024	Classification Unrestricted	Report No.	Agenda Item No.
--	----------------------	---------------------------------------	------------	-----------------

Report of: Tom Lewis Service Manager Regulatory Services (Commercial)	Title: Licensing Act 2003 Application for a new Premise Licence for Unit 2a, Queens Yard, 43 White Post Lane, London, E9 5EN
Originating Officer: Corinne Holland Licensing Officer	Ward affected: Bow East

1.0 **Summary**

Applicant:	Hatton Garden Properties Ltd
Name and Address of Premises:	The Yard Theatre Unit 2a Queens Yard 43 White Post Lane London E9 5EN
Licence sought:	Licensing Act 2003 Sale by retail of Alcohol (on sales) Regulated entertainment (plays, films, live & recorded music, dance) Provision of Late-Night Refreshments
Objectors:	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 The Yard Theatre, Unit 2a Queens Yard, 43 White Post Lane, London, E9 5EN.
- 3.2 The applicant has described the premises as: *An application for a shadow licence under the same terms, plans and conditions as the granted licence 19537.*

A 'shadow licence' is a term used to hold a duplicate licence on exactly the same terms as the existing licence, usually by the landlord of the premises as a security against the existing licence lapsing.

- 3.3 A copy of the application is shown in **Appendix 1**
- 3.4 The hours applied for are as follows:

Sale of Alcohol (On sales only)

Sunday – Wednesday 12:00 – 00:00 hours (midnight)

Thursday 12:00 – 02:00 hours the following day

Friday – Saturday 12:00 – 03:00 hours the following day

Regulated Entertainment

Plays, Films, Dance (indoors)

Monday – Sunday 12:00 – 23:00 hours

Live Music & recorded music (indoors)

Sunday – Wednesday 18:00 – 00:00 hours (midnight)

Thursday 18:00 – 02:00 hours the following day

Friday – Saturday 18:00 – 03:00 hours the following day

Late Night Refreshments

Sunday – Wednesday 23:00 – 00:00 hours (midnight)

Thursday 23:00 – 02:00 hours the following day

Friday – Saturday 23:00 – 03:00 hours the following day

Non-Standard Hours for sale of alcohol, recorded music, late-night refreshments

40 nights a year the opening times and licensable activities extended until 06:00 hours the following day

Opening times

Sunday – Wednesday 12:00 – 00:00 hours (midnight)

Thursday 12:00 – 02:00 hours the following day

Friday – Saturday 12:00 – 03:00 hours the following day

Non-Standard Hours

40 nights a year the opening times and licensable activities extended until 06:00 hours the following day

- 3.5 A copy of the existing licence is in **Appendix 2**

4.0 **Location and Nature of the premises**

- 4.1 The site plan of the venue and application summary 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 2023.
- 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 December 2023.
- 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 11**
- 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.

Dara MacMichael	Appendix 7
Jomard Kurdi	Appendix 8
Lucie Ashworth	Appendix 9

- 6.9 Applicants' response to objectors – **Appendix 10**
- 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
- ASB
- Crime & Disorder

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

As per licence number 19537 – **Appendix 2**

8.0 Conditions Agreed/Requested by Responsible Authority

None

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 11-** 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	Existing licence No. 19537
Appendix 3	Site Plan & application summary
Appendix 4	Maps of the surrounding area
Appendix 5	Photographs of the premises
Appendix 6	Other licensed venues in the area
Appendix 7 - 9	Resident Representations
Appendix 10	Applicants' response to representations
Appendix 11	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 12	Licensing Officer comments on public nuisance
Appendix 13	S182 advice on public nuisance
Appendix 14	Licensing Officer comments on crime and disorder nuisance
Appendix 15	S182 advice on crime & disorder
Appendix 16	ASB on leaving the premises
Appendix 17	Licensing Policy relating to hours of trading
Appendix 18	Planning