

Committee: Licensing Sub Committee	Date 18 July 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 Fabwick, Unit 4a, Queens Yard, 43 White Post Lane, London, E9 5EN
Originating Officer: Corinne Holland Licensing Officer	Ward affected: Bow East

1.0 Summary

Applicant: **Kenan Balli**

Name and Address of Premises: **Fabwick
Unit 4a Queens Yard
43 White Post Lane
London
E9 5EN**

Licence sought: **Licensing Act 2003
Sale by retail of Alcohol (on sales)
Regulated entertainment (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 Fabwick, Unit 4a Queens Yard, 43 White Post Lane, London, E9 5EN.
- 3.2 The applicant has described the premises as: *A restaurant, lounge, bar and entertainment venue including outside seating.*
- 3.3 A copy of the application is shown in **Appendix 1**
- 3.4 The hours applied for are as follows:

After negotiations with the London Legacy Development Corporation Films and Plays were withdrawn from the application

Sale of Alcohol (On sales only)

Sunday – Wednesday 10:00 – 00:00 hours (midnight)

Thursday – Saturday 10:00 – 01:00 hours the following day

Regulated Entertainment

Live Music, Recorded music, Dance (indoors)

Sunday – Saturday 10:00 – 00:00 hours (midnight)

Late Night Refreshments (indoors)

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

Thursday – Saturday 23:00 – 01:00 hours the following day

Opening times

Sunday – Wednesday 10:00 – 00:00 hours (midnight)

Thursday – Saturday 10:00 – 01:00 hours the following day

- 3.5 The applicant already holds a Premise Licence for this venue but it is for an ‘off sales’ delivery service only. For information purposes 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 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 12**
- 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.

This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following.

Adrienne Mitchell	Appendix 7 (video also provided)
Vanessa Fullerton	Appendix 8

- 6.8 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)
- 6.9 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
- 6.10 The objections relate to:
- Public nuisance
 - ASB
 - Crime & disorder
- 6.11 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.
- 6.12 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

1. The premises will operate as a restaurant, where, save for the area marked on the plan, the sale of alcohol will be on the premises only, whole of premises and outside seating areas. (amended in response to LDDC representation)
2. 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.
3. 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.
4. 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.
5. 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.

6. The licence holder shall ensure that any queue to enter the premises which forms outside the premises is orderly and supervised by door staff so as to ensure that there is no public nuisance or obstruction to the public highway.
7. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record must show the outcome of the person who was intoxicated. The record shall be available for inspection at the premises by the police or an authorised officer at all times whilst the premises is open.
8. A written dispersal policy shall be in place and implemented at the premises to move customers from the premises and the immediate vicinity.
9. The premises shall operate primarily as a restaurant and sale of alcohol and regulated entertainment shall be ancillary to the sale of food.
10. The premises shall have a security plan that will include an ejection policy, SIA security levels and where appropriate a search policy.
11. Any promoted music events will be risk assessed by the venue management, all risks will be identified and sufficient measures put in place to mitigate them. Both the risks identified and the mitigating steps, including the rationale for them will be written in the risk assessment which will be stored for 1 year and made available to Police or relevant authority upon request.
12. Appropriate fire safety procedures are in place including fire extinguishers, internally illuminated fire exit signs, numerous smoke detectors and emergency lighting (see enclosed plan for details of locations). All appliances are inspected annually. All emergency exits shall be kept free from obstruction at all times.
13. All customers will be asked to leave quietly. Clear and legible notices will be prominently displayed to remind customers to leave quietly and have regard to our neighbours.
14. The licensee and staff will ask persons who appear to be under the age of 25 for photographic ID such as proof of age cards, the Connexions Card and Citizen Card, photographic driving licence or passport, an official identity card issued by HM Forces or by an EU country, bearing the photograph and date of birth of bearer. All staff will be trained for UNDERAGE SALES PREVENTION regularly. A register of refused sales shall be kept and maintained on the premises.

8.0 Conditions Agreed/Requested by Responsible Authority

- **Conditions agreed with the police – Appendix 9**

Agreed police conditions and hours were incorporated into the application and shown in conditions 2-14 in section 7.

- **Applicants' response to LDDC representation and amendments – Appendix 10**

For the avoidance of any doubt, we can confirm provisions of plays and films is withdrawn from the application.

Condition 1 can be amended, "bar lounge" can be removed from the condition.

"The premises will operate as a restaurant, where, save for the area marked on the plan, the sale of alcohol will be on the premises only, whole of premises and outside seating areas".

- **Agreements with Environmental Protections – Appendix 11**

1. *Loudspeakers shall not be located in the entrance lobby, or outside the premises building nor on ceilings. And anti-vibration mounts used is speakers attached to the walls.*
2. *All windows and external doors shall be kept closed after 22:00 hours, or at any time. When regulated entertainment takes place, except for the immediate access & egress of persons.*
3. *No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises, which gives rise to a public nuisance.*
4. *The external area shall not be used after 22:00 hours, except for patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, and shall be limited to 8 persons at any one time.*

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 12 - 19** 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. 166228
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 - 8	Resident Representations
Appendix 9	Hours and Conditions agreed with police
Appendix 10	Agreements made with the LDDC
Appendix 11	Conditions agreements with environmental Protection
Appendix 12	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 13	Licensing Officer comments on public nuisance
Appendix 14	S182 advice on public nuisance
Appendix 15	Licensing Officer comments on crime and disorder nuisance
Appendix 16	S182 advice on crime & disorder
Appendix 17	ASB on leaving the premises
Appendix 18	Licensing Policy relating to hours of trading
Appendix 19	Planning