

Committee: <b>Licensing Sub Committee</b>	Date 08 October 2024	Classification <b>Unrestricted</b>	Report No.	Agenda Item No.
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Report of: <b>Tom Lewis</b> <b>Service Manager</b> <b>Regulatory Services (Commercial)</b>	Title: <b>Licensing Act 2003 Application for a new Premise Licence for Rotunda Café, Island Gardens, Saunders Ness Road, London, E14 3EA</b>
Originating Officer: <b>Corinne Holland</b> <b>Licensing Officer</b>	Ward affected: <b>Island Gardens</b>

## 1.0 Summary

Applicant: **Bocca Bocca Ltd**

Name and Address of Premises: **Rotunda Cafe  
Island Gardens  
Saunders Ness Road  
London  
E14 3EA**

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

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 Rotunda Café, Island Gardens, Saunders Ness Road, London, E14 3EA.
- 3.2 The applicant has described the premises as: *A coffee shop in Island Gardens Park.*
- 3.3 A copy of the application is shown in **Appendix 1**
- 3.4 The hours that were applied for were as follows (now reduced):

#### **Sale of Alcohol (On & off sales)**

Monday – Sunday 08:00 – 23:00 hours

#### **Opening times**

Monday – Sunday 08:00 – 23:00 hours

**The applicant has agreed with the police to reduce the licensable hours to Monday – Sunday 08:00 hours – 17:00 hours – See Appendix 8**

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

- 4.1 The site plan of the venue is included as **Appendix 2.**
- 4.2 Maps showing the vicinity are included as **Appendix 3.**
- 4.3 Photographs of the premises are included in **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 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](http://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, than 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.

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

Curt Fahndrich	<b>Appendix 6</b>
Ralph Hardwick	<b>Appendix 7</b>

- 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
- 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**

*A number of conditions were offered but few were relevant and enforceable. Some have been superseded by agreed conditions with the responsible authorities. The Committee may feel that now the hours have been reduced to 17:00 hours some proposed conditions may not now be necessary if the licence is granted.*

1. Windows are all lockable with toughened glass and a shutter will be fitted at the front door.
2. Windows and doors will be kept closed except for access/exit.
3. Provide acoustically treated ventilation/air conditioning.
4. Use of a sound lobby at the entrance/exit of the premises.
5. Provide sound insulation to emergency exit doors and extractor fans.
6. Carry out regular monitoring checks to ensure noise is being adequately controlled.
7. To control waste odour sealed waste bins will have close fitting lids.
8. Waste will be collected by a reputable/licensed waste carrier.
9. A professional extractor system will be installed to prevent cooking smells

## 8.0 Conditions Agreed/Requested by Responsible Authority

**Conditions agreed with the police – Appendix 8** (reduced hours agreement included in appendix)

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 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.
5. 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.

## **Conditions agreed with the Licensing Authority – Appendix 9**

6. 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.
7. The sales of alcohol on the premises shall be by waiter / waitress service only.
8. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises. save for those customers seated directly outside of the premises in the seated gravel area, where tables and chairs have been provided by the premises.
9. There shall be no vertical drinking inside or directly outside, in the immediate vicinity of the premise.
10. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.

## **Conditions agreed with Environmental Protection – Appendix 10**

11. Loudspeakers shall not be in the entrance lobby, or outside the premise building nor on ceilings. And anti-vibration mounts used is speakers attached to the walls.
12. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
13. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises, which gives rise to a public nuisance.

### **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 – 16** 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

<b>Appendix 1</b>	A copy of the application
<b>Appendix 2</b>	Site Plan
<b>Appendix 3</b>	Maps of the surrounding area
<b>Appendix 4</b>	Photographs of the premises
<b>Appendix 5</b>	Other licensed venues in the area
<b>Appendix 6-7</b>	Resident Representations
<b>Appendix 8</b>	Hours and Conditions agreed with Police
<b>Appendix 9</b>	Conditions agreed with the LA
<b>Appendix 10</b>	Conditions agreed with EP
<b>Appendix 11</b>	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
<b>Appendix 12</b>	Licensing Officer comments on public nuisance
<b>Appendix 13</b>	S182 advice on public nuisance
<b>Appendix 14</b>	ASB on leaving the premises
<b>Appendix 15</b>	Licensing Policy relating to hours of trading
<b>Appendix 16</b>	Planning