

Committee : Licensing Sub Committee	Date 9 April 2013	Classification Restricted Appendix Document	Report No. LSC 110/123	Agenda Item No.
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Report of Colin Perrins Head of Trading Standards and Commercial Originating Officer: Kathy Driver Principal Licensing Officer	Title Licensing Act 2003 Application to Vary the Premises Licence for Preem Restaurant & Balti House, 118-122 Brick Lane, London E1 6RL Ward affected Spitalfields & Banglatown
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1.0 Summary

Applicant: **Mr. Azmal Hussain**
Name and **Preem Restaurant & Balti House**
Address of Premises: **118-122 Brick Lane**
London E1 6RL

Licence sought: **Licensing Act 2003 variation**
Extending the hours for the sale of alcohol
Extending Recorded Music
Extending Late Night Refreshment

Objectors: **Metropolitan Police**
Licensing Authority
Resident Community Groups
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 Only

Kathy Driver

020 7364 5171

3.0 **Background**

3.1 This is an application for a variation in a premises licence for Preem restaurant & Balti House, 118-122 Brick Lane, London E1 6RL.

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

3.3 The applicant has described the nature of the variation as:
Extending the hours for the sale of alcohol, recorded music and late night refreshment

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

Sale of Alcohol

Monday to Sunday from 12:00 hours to 02:00 hours

Recorded music

Monday to Sunday from 12:00 hours to 02:00 hours

Hours open to the public:

Monday to Sunday from 12:00 hours to 02:30 hours

3.5 A copy of the existing licence is enclosed as **Appendix 2**.

The current hours are as follows:

Sale of Alcohol

Monday to Saturday from 12:00 hours to 23:00 hours

Sunday from 12:00 hours to 22:30 hours

Recorded music

Monday to Saturday from 12:00 hours to 23:00 hours

Sunday from 12:00 hours to 22:30 hours

Hours open to the public:

Monday to Saturday from 12:00 hours to 23:30 hours

Sunday from 12:00 hours to 23:00 hours

3.6 Members should note that background music is not licensable, where music is only being played in the premises at a low level and not overriding conversations, recorded music may not be required.

3.7 The Live Music Act came into force on 1st October 2012 whereby the licensing requirement for amplified live music between 8am and 11pm before audiences of no more than **200** people on premises authorised to sell alcohol for consumption on the premises, is no longer required.

3.8 A map showing the relevant premises is included as **Appendix 3**.

4.0 Licensing Policy and Government Advice

- 4.1 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 the 8th December 2010.
- 4.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.
- 4.3 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 October 2012.
- 4.4 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.
- 4.5 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following:
Metropolitan Police – See **Appendix 4**
Licensing Authority – See **Appendix 5**
Residents Association - See **Appendices 6 to 8**
Local Residents – See **Appendix 9** for list
Residents Representations – See **Appendices 10 to 16**
- 4.6 The Licensing Authority have attached three witness statements in relation to breaches of the licence, these are restricted to the public as currently there is a pending prosecution in relation to the matters. The statements are attached in **Appendix 21**.
- 4.7 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
- 4.8 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

4.9 The objections cover allegations of

- Anti social behaviour from patrons leaving the premises
- Drinking beyond the permitted hours
- Noise while the premise is in use
- Disturbance from patrons leaving the premises on foot
- Close proximity to residential properties
- Touting

4.10 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.

4.11 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.

5.0 Licensing Officer Comments

5.1 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.

5.2 Guidance issued under section 182 of the Licensing Act 2003

- ∇ As stated in the guidance it is "provided for licensing authorities carrying out their functions." It is a key medium for promoting best practice, ensuring consistent application and promoting fairness equal treatment and proportionality(1.7).
- ∇ Also "so long as the guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so." When doing so 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)

- ∇ Conditions may not be imposed for the purpose other than the licensing objectives.
 - ∇ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.7).
 - ∇ The Licensing Authority may only impose such conditions as are necessary for meeting the licensing objectives.
 - ∇ It is Government policy that facilities for people and performers with disabilities should be provided at places of entertainment. (S. 10.24).
 - ∇ The Government has stated “there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested.” (10.20)
 - ∇ Mandatory conditions must be imposed (10.43) and censorship avoided (10.31).
 - ∇ Routine conditions about drink promotions are not permitted but can be imposed in an appropriate circumstances (10.38). The Office of Fair Trading’s Advice also needs to be considered, namely that minimum prices setting is not permitted.
- 5.3 The Licensing Act 2003 permits children of any age to be on the premises which primarily sells alcohol providing they are accompanied by an adult. It is not necessary to make this a condition.
- 5.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 5.5 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.
- 5.6 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)

- 6.7 The Council's Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 6.8 In **Appendices 17-20** 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.

6.0 Exemptions

- 6.1 There are a number of statutory exemptions from the operation of the Licensing Act 2003, and Members need to bear these in mind.
- 6.2 Schedule 1 Part 2 of the Act states that entertainment in churches, Morris dancing (and accompanying music if live and unamplified) and incidental music are not licensable activities-that is no conditions can be set for them.
- 6.3 Acts of religious worship, wherever performed are not licensable.
- 6.4 Section 177, (1) and (2) of the Act provides that where a premises (or club) is licensed for alcohol consumption on the premises and is primarily thus used, and the permitted capacity does not exceed 200, additional conditions relating to the music should only relate to public safety or the prevention of crime (or both). That is they should not relate to any "noise nuisance."
- 6.5 Section 177 (4) provides that where a premises licence (or club) has a capacity of not more than 200 and the only music is unamplified live music between 08 00 hrs and midnight, no additional conditions should be set relating to the music.
- 6.6 Section 177 can be disapplied on a licence review if it is proportionate to do so.

7.0 Legal Comments

- 7.1 The Council's legal officer will give advice at the hearing.

8.0 Finance Comments

- 8.1 There are no financial implications in this report.

9.0 Appendices

Appendix 1	A copy of the application for variation.
Appendix 2	A copy the existing licence.
Appendix 3	Maps of the area
Appendix 4	Representations from Metropolitan Police
Appendix 5	Representations from the Licensing Authority
Appendix 6-8	Representations of Local Resident Groups
Appendix 9	List of resident objectors
Appendix 10-16	Representations of Local residents
Appendix 17	Licensing Officer comments on anti social behaviour on the premises
Appendix 18	Licensing Officer comments on Access & Egress
Appendix 19	Licensing Officer comments on Touting
Appendix 20	Licensing Policy on hours of trading
Appendix 21	RESTRICTED - Witness statements