

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	20 August 2013	Unclassified	LSC 12/134	

Report of : David Tolley Head of Consumer and Business Relations	Title: Licensing Act 2003 Application for a new Premises Licence for First Floor, Ferry House, 26 Ferry Street, London, E14 3DT
Originating Officer: Andrew Heron Licensing Officer	Ward affected: Millwall

1.0 Summary

Applicant: **Mr B Allali**
Name and Address of Premises: **The Ferry House (1st Floor)**
26 Ferry Street
London
E14 3WE

Licence sought: **Licensing Act 2003**
The sale of alcohol
Provide Regulated Entertainment,

Objectors: **Environmental Health**
The Licensing Authority
Local Residents (and Freeholders)

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		Andrew Heron 020 7364 2665

3.0 **Background**

- 3.1 This is an application for a new Premises Licence for (The First Floor), Ferry House, 26 Ferry Street, London, E14 3DT.
- 3.2 The premises already has a licence in place on the ground floor. A copy of the existing licence is enclosed for information in **Appendix 1**. This is not a variation application, but an application for a separate licence as the applicant wishes to create a separate franchisable business.

The current hours on the ground floor are as follows:-

Alcohol and Regulated Entertainment (Indoor Sporting Events, Live Music, Recorded Music, Performance of Dance, Provision of Facilities for Making Music, Provision of Facilities for Dancing)

- Monday to Saturday 11:00 hours to 00:00 hours
- Sunday 11:00 hours to 23:00 hours

Non-standard times

12 events per annum until 02:00 hours, inclusive of Bank Holidays, with seven clear days' notice given to the Police and Environmental Health.

Note: The premises may remain open for the twelve hours between 11pm on New Year's Eve and 11am on New Year's Day.

- 3.3 A copy of the application is enclosed as **Appendix 2**. The applicant has described the nature of the application as follows:
- The supply of alcohol
 - Provide regulated entertainment
- 3.4 The hours that have been applied for are as follows:-

Sale of Alcohol (on and off sales)

- Monday to Sunday from 11:00hrs to 23:00hrs

The Provision of Regulated Entertainment (in the form of recorded music only):

- Monday to Sunday from 11:00hrs to 23:00hrs

Hours premises is open to the public:

- Monday to Sunday from 11:00hrs to 23:00hrs

- 3.5 Members may wish to note that in relation to the sale of alcohol this is the same as when the premises closes to the public. It is difficult to see how the licence holder will ensure that the licence conditions are met. The problem, of course, is that if sales continue until the last minute the premises cannot be emptied on time. Members are advised to consider a break between the end of the regulated activities and the time the premises closes to the public.

- 3.6 A map showing the relevant premises is included as **Appendix 3**.
- 3.7 The application has been **amended** through negotiation with the Tower Hamlets Weights and Measures Authority to also include a 'Challenge 21 Policy' condition which was absent from the original application.
- 3.8 The Metropolitan Police have not made representation to the application, however, the applicant has been requested by the Police to also place additional conditions on the licence. This has not been formally agreed, but the wording requested is as follows:

1) The sale of alcohol is ancillary to the sale of food. Alcohol can only be sold to customers who have ordered a meal from the restaurant.

2) A travel management plan be agreed with the Police and Tower Hamlets Environmental Health to ensure that large groups of customers leaving the restaurant do not cause a disturbance to local residents.

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 7th January 2008.
- 4.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.
- 4.3 The Government Minister, the Secretary of State for Culture, Media and Sport has issued Guidance under Section 182 of the Licensing Act 2003. This is available on the Government's website, www.culture.gov.uk. It will also be available at the hearing. It was substantially revised on the 28 June 2007.
- 4.4 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.

5.0 Representations

- 5.1 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following responsible authorities:
- Environmental Health (**See Appendix 5**)
 - The Licensing Authority (**See Appendix 6**)
 - Local Residents (and Freeholders) (**See Appendices 7-9**)

- 5.2 It should also be noted that the application received an invalid representation from an email address named 'Ferry Street and Felstead Wharf Residents'. The objector was written to asking them to identify themselves as an organisation as the Authority is unable to accept anonymous representations, but no proper response was received.
- 5.3 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
- 5.4 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.
- 5.5 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.
- 5.6 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.
- 5.7 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 5.8 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 4**.
- 5.9 All the representations in this report have been considered by the relevant officer (Trading Standards and Licensing Manager) and determined to have met the requirements of the Licensing Act 2003.
- 5.10 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following:
- Local Residents / Freeholders(**See Appendices 7-10**)
- 5.11 Members should notes that 13 residents made representation using the same template letter. **Appendix 7** gives an example as the representation of Ms D Butterfield. This format has also been sent to the authority by the following objectors:
- Mr M L Diamant (Land Commercial)
 - Mr R Wilkinson
 - Mr G Berthier
 - Mr P Hansen
 - Ms M Zolkiewicz

- Ms P Jannadagni
- Mr A Kumar
- Ms A Parshal
- Mr C Funston
- Mr K Ahmed-Ali
- Mr H Hatzakis
- Mr R Horn

5.12 Members should note that Mr M L Diamant (Land Commercial) also made separate representation (**see Appendix 8**).

5.13 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

5.14 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

5.15 The objections cover (for example) allegations of

- Anti-social behaviour on the premises
- 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
- Noise leakage from the premises

5.16 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.

5.17 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.

6.0 Licensing Officer Comments

6.1 The Licensing Section is not a responsible authority and therefore has no ability to make any relevant representations. The following therefore is intended simply 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.

6.2 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 mechanism for promoting best practice, ensuring consistent application and promoting fairness (1.6).

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 (1.7).

- 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.” (1.10)
- 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)

- 6.3 The Licensing Act 2003 permits children of any age to be on the premises providing they are accompanied by an adult. It is not necessary to make this a condition.
- 6.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 6.5 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.
- 6.6 The Government has advised that “In the context of preventing public nuisance it is again essential that conditions are focused on measures within the direct control of the licence holder. Conditions relating to public nuisance caused by anti-social behaviour of customers once they are beyond the control of the licence holder or premises management cannot be justified and will not serve the licensing objectives.” (2.38)
- 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 Members will find advice on the issues relating to conduct on the premises and egress as follows the comments of the Association of Chief Police Officers on non-standard times is also included:

Appendix 11 Licensing Officer comments on Crime and Disorder on the Premises

Appendix 12 Licensing Officer comments on Crime and Disorder from Patrons Leaving The Premises

Appendix 13 Licensing Officer comments on Noise While The Premise Is In Use

Appendix 14 Licensing Officer comments on Egress Problems

Appendix 15 ACPO comments on irregular times

Appendix 16 Planning

Appendix 17 Licensing Policy relating to hours of trading

Appendix 18 Licensing Officer Comments on Drinking Beyond the

Permitted Hours

7.0 Exemptions

- 7.1 There are a number of statutory exemptions from the operation of the Licensing Act 2003, and Members need to bear these in mind.
- 7.2 Acts of religious worship, wherever performed are not licensable.
- 7.3 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.”
- 7.4 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.
- 7.5 Section 177 can be disapplied on a licence review if it is proportionate to do so.

8.0 Legal Comments

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

9.0 Finance Comments

- 9.1 There are no financial implications in this report.

10.0 Appendices

Appendix 1	A Copy of the Existing Ground Floor Premises Licence
Appendix 2	A Copy of the Application
Appendix 3	Maps showing the surrounding area
Appendix 4	Section 182 Advice by the Home Office
Appendix 5	Representation by Environmental Health (Ian Wareing)
Appendix 6	Representation by Licensing Authority (Alex Lisowski)
Appendix 7	Representation by Local Resident Ms D Butterfield (note too that the format is replicated by 12 other Local Residents)
Appendix 8	Representation by Mr L M Diamant of Land Commercial (Freeholders)
Appendix 9	Representation by Local Resident Mr A Ferguson
Appendix 10	Representation by PBC Licensing (Freeholders)
Appendix 11	Licensing Officer comments on Crime and Disorder on the Premises
Appendix 12	Licensing Officer comments on Crime and Disorder from Patrons Leaving The Premises
Appendix 13	Licensing Officer comments on Noise While The Premise Is In Use
Appendix 14	Licensing Officer comments on Egress Problems
Appendix 15	ACPO comments on irregular times
Appendix 16	Planning
Appendix 17	Licensing Policy relating to hours of trading
Appendix 18	Licensing Officer Comments on Drinking Beyond the Permitted Hours