

Committee :	Date	Classification	Report No.	Agenda Item No.
<b>Licensing Sub Committee</b>	17 September 13	<b>Unclassified</b>	LSC 17/134	

Report of <b>Colin Perrins</b> <b>Head of Trading Standards and Commercial</b>  Originating Officer: <b>Kathy Driver</b> <b>Principal Licensing Officer</b>	Title <b>Licensing Act 2003</b> <b>Application for Time Limited Premises Licence</b> <b>for Millwall Park, Manchester Road, London E14</b>  Ward affected <b>Millwall</b>
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## 1.0 Summary

Applicant: **London Oktoberfest Ltd**  
 Name and **Millwall Park**  
 Address of Premises: **Manchester Road**  
**London E14**

Licence sought: **Licensing Act 2003**  
**Sale of alcohol**  
**Provision of regulated entertainment**

Objectors: **Local Resident Group**  
**Local residents**  
**Local Councillor**

## 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 time limited premises licence for Millwall Park, Manchester Road, London E14.
- 3.2 A copy of the application is enclosed as **Appendix 1**.
- 3.3 The application was amended to reduce the number of days applied for; this was to incorporate the days when licensable activities are taking place. The time limited period is from 3<sup>rd</sup> to 6<sup>th</sup> October 2013.
- 3.4 The Regulated Entertainment hours have been amended following agreement with Environmental Health, (see Appendix 15) the hours are as follows:

#### **Sale of Alcohol**

Thursday and Friday from 16:00 to 22:30 hours

Saturday from 12:00 to 22:30 hours

Sunday from 12:00 to 18:30 hours

#### **The Provision of Regulated Entertainment:**

##### **Live Music**

Thursday and Friday from 17:00 to 22:00 hours

Saturday from 13:00 to 22:00 hours

Sunday from 13:00 to 18:00 hours

##### **Recorded Music**

Thursday and Friday from 16:00 to 22:30 hours

Saturday from 13:00 to 22:30 hours

Sunday from 13:00 to 19:00 hours

#### **Hours premises is open to the public:**

Thursday and Friday from 16:00 to 23:00 hours

Saturday from 13:00 to 23:00 hours

Sunday from 13:00 to 19:00 hours

- 3.5 A map of the site and the area of the park are included as **Appendix 2**.

### 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 8<sup>th</sup> 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](http://www.homeoffice.gov.uk). It was last revised in June 2013.

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 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

5.2 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.

5.3 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.

5.4 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.

5.5 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.

5.6 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 3**.

5.7 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.

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

Local Resident Group See **Appendix 4**

Local Councillor See **Appendix 5**

Local Residents See **Appendices 6 - 13** for representations

5.9 I attach a page of the petition whereby elements of the content are borderline and the advice given in 5.6 applies in this case. The petition consisted of 45 signatures. See **Appendix 14**

- 5.10 A petition of 114 signatures was received in time but did not meet the licensing objective test as given in 5.3.
- 5.11 Environmental Health has agreed conditions and amendments to hours with the applicant. Those are attached in **Appendix 15**.
- 5.12 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
- 5.13 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
- 5.14 The objections cover 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
  - Safety problems
- 5.15 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.
- 5.16 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 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.

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 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.
- 6.3 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.
- 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 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 16-21** 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.
- 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.

## **Appendices**

- Appendix 1** A copy of the application
- Appendix 2** Maps of the area
- Appendix 3** Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
- Appendix 4** Representation from Lorraine Cavanagh, Millwall Park User Group
- Appendix 5** Representation from Cllr Gloria Thienel
- Appendix 6** Representation from Gareth Hargreaves
- Appendix 7** Representation from Andrew Hesselden
- Appendix 8** Representation from Mr. B. Mahil
- Appendix 9** Representation from Mrs P. Mahil
- Appendix 10** Representation from Lawrence McCabe
- Appendix 11** Representation from Glen McCarty
- Appendix 12** Representation from B.J Smith
- Appendix 13** Representation from Frank Thienel
- Appendix 14** Petition
- Appendix 15** Environmental Health agreed conditions/hours
- Appendix 16** Licensing Officer comments on anti social behaviour on the premises
- Appendix 17** Licensing Officer comments on anti social behaviour from patrons leaving the premises
- Appendix 18** Licensing Officer comments on Noise while the premises is in use
- Appendix 19** Licensing Officer comments on Access and Egress problems
- Appendix 20** Licensing Officer comments on Noise leakage from the premises
- Appendix 21** Licensing Policy on hours of trading