

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub-Committee	29 October 2013	Unclassified	LSC 23/134	

Report of: David Tolley Head of Consumer and Business Regulations Service Originating Officer: Mohshin Ali Senior Licensing Officer	Title: Licensing Act 2003 Application for a Premises Licence for (Bethnal Green Working Men's Club), Ground Floor, First Floor and Second Floor, 42-46 Pollard Row, London E2 6NB Ward affected: Bethnal Green North
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1.0 Summary

Applicant: **Workingmans Club Ltd**

Name and Address of Premises: **Bethnal Green Working Men's Club**

Address of Premises: **Ground Floor
First Floor
Second Floor
42 - 46 Pollard Row
London
E2 6NB**

Licence sought: **Licensing Act 2003 – premises licence**

- **Sale by retail of alcohol**
- **The provision of regulated entertainment**
- **The provision of late night refreshment**

Representations: **Local Residents
London Fire and Emergency Planning Authority (L.F.E.P.A)**

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

Mohshin Ali
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3.0 Background

- 3.1 This is an application for a premises licence for Bethnal Green Working Men's Club, Ground Floor, First Floor and Second Floor, 42-46 Pollard Row, London E2 6NB.
- 3.2 Although this is a new application, the premises currently has a premises licence for the first floor which is attached as **Appendix 1**. The summary of the standard timings are as follows:

The sale by retail of alcohol (On and off sales). Late Night Refreshment. Regulated Entertainment consisting of Plays, Films, Live Music, Recorded Music, Performances of dance and Provision of facilities for making music and for dancing

- Sunday to Wednesday from 10:00 hours to midnight
- Thursday from 10:00 hours to 01:00 hours the following day
- Friday and Saturday from 10:00 hours to 02:30 hours the following day

Hours premises are open to the public:

- Sunday, Monday, Tuesday and Wednesday from 10:00 hours to 00:30 hours the following day
- Thursday, Friday and Saturday from 10:00 hours to 03:30 hours the following day

- 3.3 The premises also has a club premises certificate for the ground floor which is attached as **Appendix 2**. The summary of the standard timings are as follows:

The supply of alcohol by or on behalf of a club to, or to the order of a member of the club (On sales only).

- Weekdays 10 00 hrs 23 00 hrs
- Saturdays 10 00 hrs to 23 00 hrs
- Sunday 12 noon to 22 30 hrs

The opening hours of the club

- These are not restricted

- 3.4 A copy of the new premises licence application form is enclosed as **Appendix 3**. The agent acting on behalf of the licence holder has stated that the purpose of this application is to remove the Club Premises Certificate from the premises and additionally allow a restaurant to be installed and use the basement bar.

- 3.5 The timings that have been applied for the first floor and second floor, including the addition of the basement are as follows:

The sale by retail of alcohol (On and off sales). Regulated Entertainment - Indoors

Plays, Films, Live Music, Recorded Music, Performances of dance

- Sunday to Wednesday, from 10:00 hours to 00:30 hours
- Thursday, from 10:00 hours to 01:00 hours the following day
- Friday and Saturday from 10:00 hours to 02:30 hours the following day

Late Night Refreshment - Indoors

- Sunday to Wednesday, from 23:00 hours to 00:30 hours
- Thursday, from 23:00 hours to 01:00 hours the following day
- Friday and Saturday from 23:00 hours to 02:30 hours the following day

Hours premises are open to the public:

- Sunday to Wednesday, from 10:00 hours to 00:30 hours
- Thursday, from 10:00 hours to 03:30 hours the following day
- Friday and Saturday from 10:00 hours to 03:30 hours the following day

- 3.6 Following consultation with the Police, the applicant has offered the conditions in **Appendix 4**. The Police have not made a representation.

- 3.7 A map showing the relevant premises is included as **Appendix 5**.

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 2012.

- 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 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. Interested parties and their representatives 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 6**.
- 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 London Fire and Emergency Planning Authority and local residents.
- 5.9 Please see **Appendix 7** for the representation of the London Fire and Emergency Planning Authority.
- 5.10 Please see **Appendix 8** for the representation of S Ali, a local resident.
- 5.11 Please see **Appendix 9** for the representation of J Yearwood, a local resident.
- 5.12 All of the responsible authorities have been consulted about this application. They are as follows:
 - The Metropolitan Police
 - The LFEPA (the London Fire and Emergency Planning Authority).
 - Planning
 - Health and Safety
 - Noise
 - Trading Standards
 - Child Protection
 - Public Health

- 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 Essentially, the residents and the L.F.E.P.A oppose the application because in their opinion, the applicant has not explained how within the context of the application they will meet the prevention of public nuisance and the prevention of crime and disorder and public safety.
- 5.15 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.
- 5.16 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.

6.0 Licensing Officer Comments

- 6.1 The following 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 (See 6.2). 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 to licensing authorities in relation to the carrying out of their functions." It is a key mechanism for promoting best practice, ensuring consistent application and promoting fairness (1.7)
- ∇ Also "so long as licensing authorities have properly understood the Guidance, they may depart from it if they have reason to do so as long as 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 (10.6).
 - ∇ 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.10.25).
 - ∇ “The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities.” (10.20)
 - ∇ Mandatory conditions must be imposed (10.43) and censorship avoided (10.33).
 - ∇ 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. This may be unlawful under current law. However, it is important to note that the mandatory conditions made under sections 19A and 73B of the 2003 Act prohibit a number of types of drinks promotions where they give rise to a significant risk to any one of the four licensing objectives (10.39).
- 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 “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, club or premises management cannot be justified and will not serve the licensing objectives.” (2.39)
- 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 10 - 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 in the representations.

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 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.
- 7.3 Acts of religious worship, wherever performed are not licensable.
- 7.4 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.”
- 7.5 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.
- 7.6 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 licence for the 1st floor
- Appendix 2** A copy of the existing certificate for the Ground1st floor
- Appendix 3** A copy of the new premises licence application form
- Appendix 4** the applicant's offered the conditions
- Appendix 5** Maps of the area
- Appendix 6** Section 182 Guidance by the Home Office
- Appendix 7** Representation of L.F.E.P.A
- Appendix 8** Representation of S Ali a local resident
- Appendix 9** Representation of J Yearwood a local resident
- Appendix 10** Licensing Officer comments on noise while the premise is in use
- Appendix 11** Licensing Officer comments on access/egress problems
- Appendix 12** Licensing Officer comments on crime and disorder on the premises
- Appendix 13** Licensing Officer comments on crime and disorder from patrons leaving the premises
- Appendix 14** Public Safety
- Appendix 15** Planning
- Appendix 16** Licensing Policy relating to hours of trading