

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	6 November 2013	Unclassified	LSC 29/134	

Report of David Tolley Head of Consumer & Business Regulations Originating Officer: Mohshin Ali Senior Licensing Officer	Title Licensing Act 2003 Application to Vary the Premises Licence for Brick Lane Off Licence, 116 Brick Lane, London E1 5JJ Ward affected Spitalfields & Banglatown
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1.0 Summary

Applicant: **Shahinul Hussain Shah**
 Name and **Brick Lane off Licence**
 Address of Premises: **114 Brick Lane**
London E1 5JJ

Licence sought: **Licensing Act 2003 variation**
To seek remote sales
Extension for sale of alcohol

Objectors: **Metropolitan Police**
Local Resident 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

Mohshin Ali
020 7364 5498

3.0 **Background**

- 3.1 This is an application for a variation in a premises licence for Brick Lane Off Licence, 114 Brick Lane, London E1 5JJ.
- 3.2 A copy of the existing licence is enclosed as **Appendix 1**.
- 3.3 A copy of the variation application is enclosed as **Appendix 2**.
- 3.4 The variation seeks to have remote alcohol sales added to the licence and an extension for the sale of alcohol until 2am on New Years Eve.
- 3.5 These premises were identified by Licensing Officers as holding remote sales through enforcement visits of local restaurants who were under suspension of their licence. The restaurant businesses were calling on local off licences to bring in alcohol on behalf of their customers; the Licensing Authority felt that a variation applicaiton would be necessary so that appropriate conditions could be placed on the licence in order to meet the licensing objectives. See point 6.0 of this report.
- 3.6 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 June 2013.
- 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.

5.0 Representations

- 5.1 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following:
Metropolitan Police – See **Appendix 4**
Local Resident Group – See **Appendices 5 to 6**
Local Residents – See **Appendices 7 to 14**
- 5.2 The Licensing Authority has agreed conditions with the applicant.
Please see **Appendix 15**
- 5.3 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
- 5.4 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
- 5.5 The objections cover allegations of
- Anti-social behaviour from patrons leaving the premises
 - Underage drinking
 - Touting
- 5.6 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.
- 5.7 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 Guidance on remote sales

- 6.1 The place where the order for alcohol, or payment for it, takes place may not be the same as the place where the alcohol is appropriated to the contract (i.e. the place where it is identified and specifically set apart for delivery to the purchaser). This position can arise when sales are made online, by telephone, or mail order. Section 190 of the 2003 Act provides that the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract. It will be the premises at this location which need to be licensed; for example, a call centre receiving orders for alcohol would not need a licence but the warehouse where the alcohol is stored and specifically selected for, and despatched to, the purchaser would need to be licensed. These licensed premises will, as such, be subject to conditions including the times of day during which alcohol may be sold. The premises licence will also be subject to the mandatory licence conditions. (3.8)
- 6.2 Persons who run premises providing 'alcohol delivery services' should notify the relevant licensing authority that they are operating such a service in their operating schedule. This ensures that the licensing authority can properly consider what conditions are appropriate. Premises with an existing premises licence, which choose to operate such a service in addition to their existing licensable activities, should contact their licensing authority for its view on whether to make an application to vary their licence to add this activity to their existing licensable activities. (3.9)
- 6.3 Licence holders should consider carefully what steps they are required to take to comply with the age verification requirements under the 2003 Act in relation to sales of alcohol made remotely. These include sales made online, by telephone and mail order sales, and alcohol delivery services. Each of these sales must comply with the requirements of the 2003 Act. The mandatory condition requires that age verification takes place before a person is served alcohol. Where alcohol is sold remotely (for example, online) or through a telephone transaction, the sale is made at this point but the alcohol is not actually served until it is delivered to the customer. Age verification measures (for example, online age verification) should be used to ensure that alcohol is not sold to any person under the age of 18. However, licence holders should also consider carefully what steps are appropriate to ensure that age verification takes place before the alcohol is served (i.e. physically delivered) to the customer to be satisfied that the customer is aged 18 or over. It is, therefore, the responsibility of the person serving or delivering the alcohol to ensure that age verification has taken place and that photo ID has been checked if the person appears to be less than 18 years of age. (10.48)

7.0 Licensing Officer Comments

7.1 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.

7.2 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.
- 7.3 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.
- 7.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 7.5 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.
- 7.6 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)
- 7.7 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 7.8 In **Appendices 16-18** 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.
- 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 the existing licence.
- Appendix 2** A copy of the application for variation.
- Appendix 3** Maps of the area
- Appendix 4** Representation of Police
- Appendix 5** Representation of Spitalfields Society
- Appendix 6** Representation of Spitalfields Community Group
- Appendix 7** Representation of Cattni
- Appendix 8** Representation of Douglas
- Appendix 9** Representation of Frankcom
- Appendix 10** Representation of Mr & Mrs Fuest
- Appendix 11** Representation of Lancaster
- Appendix 12** Representation of Palmer
- Appendix 13** Representation of Piper
- Appendix 14** Representation of Shapiro
- Appendix 15** Agreed Conditions with Licensing Authority
- Appendix 16** Licensing Officer comments on Anti Social Behaviour
- Appendix 17** Licensing Officer comments on Underage Drinking
- Appendix 18** Licensing Officer comments on Touting