

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	26 November 2013	Unclassified	LSC 33/134	

Report of Dave Tolley Head of Consumer and Business Regulations Service Originating Officer: Damian Doherty Licensing Officer	Title Licensing Act 2003 Application for New Premises Licence for Nisa Local, 9 Burdett Road, Mile End, London E3 4TU Ward affected MILE END EAST
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Summary

1.0 Applicant: **Qaiser Mustafa Sandhu**

Name and Address of Premises: **Nisa Local
9 Burdett Road
Mile End
London
E3 4TU**

Licence sought: **Licensing Act 2003 New
The Sale of Alcohol**

Representations: **Local Residents/Business**

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

Damian Doherty
020 7364 3329

3.0 **Background**

This is an application for a new premises licence for Nisa Local, 9 Burdett Road, Mile End, London E3 4TU

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

3.2 The current application was received on 2nd September 2013 which satisfied the Responsible Authorities.

3.3 The applicant has described the nature of the new premises application as:

- The Sale of Alcohol

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

Sale of Alcohol (On and off sales):

§ Monday to Sunday from 08:30hrs to 23:00hrs

Hours premises are open to the public:

§ Monday to Sunday from 07:00hrs to 23:00hrs

3.5 A map showing the relevant premises is 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 1st November 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, 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 Residents

See Appendices 4 and 5

- **Appendix 4** is a representation from Didhar Hussain, 27 Burdett Road
 - **Appendix 5** is a representation from the Burdett Road Business association
 - A petition has also been received, but excluded from the final report, please see 6.13 for a further explanation.
- 5.9 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

5.10 The objections cover allegations of

- Anti social behaviour from patrons leaving the premises
- Underage drinking or harm to minors
- Access/Egress problems
- Drug taking
- Acting As A Magnet Attracting The Young Who Then Engage In Anti-Social Behaviour

5.11 No representations were received from the relevant authorities.

5.12 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.

5.13 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 “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 In **Appendices 6-10** 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.
- 6.9 The applicant, through their Agent has agreed to additional conditions with the Metropolitan Police, which should be taken into consideration by Members in relation to the Operating Schedule. **See Appendix 11.**
- 6.10 In May 2013, an application was received by the Tower Hamlets Licensing Authority for a new premises licence application for off sales of alcohol at 11 Burdett Road, London, E3 4TU. On 16th July 2013 the application was heard by the Licensing Sub Committee and was refused. Please see **Appendix 12** for a copy of the decision letter.
- 6.11 This current application for 9 Burdett Road was submitted on 2nd September 2013 by the same applicant but using a different agent. It was noted that the plans submitted had been the same for both the May and September applications, but for different addresses.
- 6.12 Photographs have been included in **Appendix 13** to show that 9 and 11 Burdett Road neighbour one another, but are two distinctly different addresses.
- 6.13 For the original May application for 11 Burdett Road, representations were received from local residents, and a business association. This included a petition led by Mr Didhar Hussain. Mr Hussain has made a new representation against the latest application and included the petition for the previous application for 9 Burdett Road. This petition is therefore rejected as it now relates to the incorrect address and is therefore omitted from this report. It should however be noted that Mr Hussain's new representation stands, without the petition.

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

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| 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 | Representations from local resident |
| Appendix 5 | Representations from local business association |
| Appendix 6 | LOC: Anti-Social Behaviour - Patrons Leaving The Premises |
| Appendix 7 | LOC: Underage drinking or other harm to minors |
| Appendix 8 | LOC: Access/Egress problems |
| Appendix 9 | LOC: Acting As A Magnet Attracting The Young Who Then Engage In Anti-Social Behaviour |
| Appendix 10 | LOC: Drug Taking |
| Appendix 11 | Email containing agreed Conditions with the Metropolitan Police |
| Appendix 12 | Copy of decision letter in regards to previous application at 11 Burdett Road |
| Appendix 13 | Photographs of 9 and 11 Burdett Road |