

Committee :	Date	Classification	Report No.	Agenda Item No.
<b>Licensing Sub Committee</b>	13 March 2014	<b>Unclassified</b>	LSC 67/134	

Report of: <b>David Tolley</b> <b>Head of Consumer and Business Regulations Service</b>  Originating Officer: <b>Mohshin Ali</b> <b>Senior Licensing Officer</b>	Title: <b>Licensing Act 2003</b> <b>Application for a variation of a Premises Licence for The Old George Public House, 379 Bethnal Green Road, London, London E2 0AN</b>  Ward affected: <b>Bethnal Green North</b>
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## 1.0 Summary

Applicant: **Pubola Ltd**  
 Name and Address of Premises: **The Old George Public House**  
**379 Bethnal Green Road**  
**London**  
**E2 0AN**

Licence sought: **Licensing Act 2003 - Variation**

- **Regularise hours and remove embedded restrictions prior to Licensing Act 2003**
- **To remove conditions on the licence which restrict hours of operation**
- **To remove other conditions on the licence**

Representation: **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 premises licence for The Old George Public House, 379 Bethnal Green Road, London, London E2 0AN.
- 3.2 A copy of the existing licence is enclosed as **Appendix 1**.

The current hours are as follows:

**The sale by retail of alcohol with Regulated Entertainment consisting of music and dancing (including entertainment of the like kind) and Restricted Film Exhibition:**

***See full licence for details . The timings were granted prior to the Licensing Act 2003 and in general are summarised follows:***

#### **Extended hours subject to conditions (refer to full licence)**

- Sunday to Thursday until midnight
- Friday and Saturday until 02:00 hours on the following day

#### **Regulated Entertainment consisting of music and dancing (including entertainment of the like kind) and Restricted Film Exhibition**

- Sunday to Thursday until midnight
- Friday and Saturday until 02:00 hours on the following day

#### **NOTE: the above timings are subject the conditions below:**

except that—

- the permitted hours shall end at **midnight** on any day on which music and dancing is not provided after **midnight**; and
- (b) on any day that music and dancing end between midnight and the permitted hours, the permitted hours shall end when the music and dancing end.

Except on Sundays immediately before bank holidays, the permitted hours on Sundays shall extend until midnight except that—

- the permitted hours shall end at midnight on any Sunday on which music and dancing is not provided after midnight;
- (b) where music and dancing end between midnight on any Sunday and thirty minutes past midnight, the permitted hours on that Sunday shall end when the music and dancing end.

#### **Provision of late night refreshment**

- Sunday to Thursday until 00:30 hours the following day
- Friday and Saturday until 02:30 hours on the following day

Note: However, New Years Eve is subject to the Regulatory Reform (Special Occasion Licensing) Order 2002. Which means that while that order is in effect the premises may remain open for the twelve hours between 11pm on New Years Eve and 11am on New Years Day.

### **The opening hours of the premises**

There are no restrictions on the hours during which this premises is open to the public

- 3.3 A copy of the variation application is enclosed as **Appendix 2**.
- 3.4 The applicant has described the nature of the variation as:
- a. *Submit revised plans to incorporate basement and first floor areas in to trading space (NOTE: No plans have been submitted with this application so Members do not have to consider this)*
  - b. *Regularise hours and remove embedded restrictions prior to Licensing Act 2003*
  - c. *Remove the following:*
    - *Christmas/New Year etc conditions: "Note: However, New Years Eve is subject to the Regulatory Reform (Special Occasion Licensing) Order 2002. Which means that while that order is in effect the premises may remain open for the twelve hours between 11pm on New Years Eve and 11am on New Years Day".*
    - *Children in Bars conditions (Pre Licensing Act 2003)*
    - *Remove capacity: "The maximum number of persons accommodated at any one time in the ground floor bar shall not exceed 100". and replace with risk assessed capacity dependent on use*
- 3.5 The applicant has also applied to remove the following:
- *The conditions relating to the times the license authorises the carrying out of licensable activities relating the sale by retail of alcohol.*
  - *The restrictions on the doors being open due to revised layout:  
"The outer lobby door between the bar area and Wear Place shall be kept locked back in the open position during the whole time that the premises are occupied".*
  - *The outer lobby door between the bar area and Bethnal Green Road shall be kept locked back in the open position during the whole time that the premises are occupied.*
  - *The restriction on the number of persons on the premises to be changed to risk assessed basis dependent on the activity taking place.*
  - *There will be no admission to the premises by the public after 11.30pm.*

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

**Sale of Alcohol – On and off sales**

- Sunday to Wednesday, from 10:00 hours to midnight
- Thursday to Saturday, from 10:00 hours to 02:00 hours the following day

**The Provision of late night refreshment – Indoors**

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

**Provision of regulated Entertainment – Indoors**

Live music, recorded music, performances of dance and Films

- Sunday to Thursday until midnight
- Friday and Saturday until 02:00 hours on the following day

**Hours premises are open to the public**

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

3.7 The applicant has agreed the following times and conditions with the Met Police:

**Sale of alcohol:**

Thursday reduced from 02:00 hours to midnight (As per existing licence)

“Conditions

1. Install and maintain CCTV system
  - a. The CCTV system shall incorporate a recording facility and any recordings shall be retained and stored in a suitable and secure manner for a minimum of 31 days.
  - b. A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained.
  - c. The system will comply with other essential legislation, and all signs as required will be clearly displayed.
  - d. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity.

- e. There must also be someone on the premises, who can download the images and present them on request by a police officer or other responsible authority
  - f. One camera to be placed outside the entrance and on entry
- 2. An Incident Book to be maintained, to include refusals . To be signed at the end of licensable hours by the manager / DPS
  - 3. Two SIA staff to be employed on a Friday and Saturday from 2100 until closing, if the premises remains open after midnight.
  - 4. Use of F696 for external promoters and DJs;
  - 5. No drinking vessels / bottles to be taken outside on the pavement.”

3.8 Members may wish to note that as the applicant has agreed conditions with the Met Police, the timings are now to remain the same as the current hours but with certain restrictions that were imposed prior to the Licensing Act 2003. For example:  
***“the permitted hours shall end at midnight on any day on which music and dancing is not provided after midnight”...*** Please refer to the full licence.

3.9 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 1<sup>st</sup> November 2013.

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, 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 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 4**.
- 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 local residents.
- 5.9 Please see **Appendix 5** for the applicant’s agreement with the Met Police.
- 5.10 Please see below the list of local residents:

<b>Name</b>	<b>Appendix</b>
Mr Sanabar Ali and Mrs Nazma Ali	<b>6</b>
Rofik Miah	<b>7</b>
Mrs Jean Bailey	<b>8</b>
Catherine O'Donnell	<b>9</b>
Kengo Oshima	<b>10</b>
Anthony Gourdin	<b>11</b>
Mrs V Jackson	<b>12</b>
R and P Carter	<b>13</b>
S Jackson	<b>14</b>
Muhammed Haque	<b>15</b>

- 5.11 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
  - Public Health
- 5.12 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
- 5.13 Essentially, the relevant parties 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.
- 5.14 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.
- 5.15 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.
- 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 - 19** 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 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 08:00hrs 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

<b>Appendix 1</b>	A copy the existing licence
<b>Appendix 2</b>	A copy of the application for variation
<b>Appendix 3</b>	Maps of the area
<b>Appendix 4</b>	Section 182 Advice by the Home Office - Relevant, vexatious and frivolous representations
<b>Appendix 5</b>	Conditions agreed with Met Police
<b>Appendices 6 -15</b>	Individual representations of the local residents
<b>Appendix 16</b>	Licensing Officer comments on Anti-Social Behaviour From Patrons Leaving The Premises
<b>Appendix 17</b>	Licensing Officer comments on Access and Egress problems
<b>Appendix 18</b>	Licensing Officer comments on Licensing Policy relating to hours of trading
<b>Appendix 19</b>	Licensing Officer comments on the Tower Hamlets Cumulative Impact Zone