

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	24 July 2014	Unclassified	LSC 07/145	

Report of: David Tolley Head of Consumer and Business Relations Originating Officer: Andrew Heron Licensing Officer	Title: Licensing Act 2003 Application for a premises licence variation for Boho Mexica – 151-153 Commercial Street, London, E1 6BJ Ward affected: Spitalfields and Banglatown
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1.0 Summary

Applicant: **Enrique Barrientos–Vivas (Director)**
 Name and Address of Premises: **Boho Mexica (Mexica Ventures Limited)**
151-153 Commercial Street
London
E1 6BJ

Licence sought: **Licensing Act 2003 variation**
Extending the hours for the sale of alcohol
Extending the hours for and adding regulated entertainment
Extending the hours for Late Night Refreshment

Objectors: **Local Residents**
Metropolitan Police

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

Andrew Heron
020 7364 2665

3.0 Background

3.1 This is an application for a variation in a premises licence for Boho Mexico – 151-153 Commercial Street, London, E1 6BJ.

3.2 A copy of the existing licence is enclosed as **Appendix 1**.

The current hours are as follows:

The sale of alcohol:

- Sunday to Thursday from 11:00hrs to 23:00hrs
- Friday and Saturday from 10:00hrs to 23:30hrs

Regulated entertainment consisting of Recorded music only:

- Sunday to Thursday from 11:00hrs to 23:30hrs
- Friday and Saturday from 10:00hrs to 00:00hrs (midnight)

Late Night refreshment:

- Thursday, from 23:00hrs to 23:30hrs
- Friday and Saturday, from 23:00hrs to 00:00hrs (midnight)

Hours premises are open to the public

- Sunday to Thursday from 11:00hrs to 23:30hrs
- Friday and Saturday from 10:00hrs to 00:00hrs (midnight)

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:

- Extending the hours for the sale of alcohol
- Extending regulated entertainment
- Extending late night refreshment

3.5 The applicant states the following:

- 1) *ON Monday evenings only we wish to display films via a projections screen during the hours of service. The films can be viewed from all areas inside the restaurant;*
- 2) *We wish to have tables and chairs outside of the restaurant for customer use. We will be serving food and beverages in this area and playing recorded music. This would take place from the front wall of the restaurant to approximately two meters onto the sidewalk. This is seven days a week;*
- 3) *On Friday and Saturday evenings we wish to extend the sale alcohol until 12:30am and then close the restaurant by 1:00am. Recorded music would be played until 01:00am.*

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

Sale of Alcohol (on sales only)

- Sunday to Thursday from 11:00hrs to 23:00hrs
- Friday and Saturday from 10:00hrs to 00:30hrs (the following day)

The Provision of Regulated Entertainment in the form of Films (indoors):

- Monday from 17:00hrs to 23:30hrs

The Provision of Regulated Entertainment in the form of Recorded Music:

- Sunday to Thursday from 11:00hrs to 23:30hrs
- Friday and Saturday from 10:00hrs to 01:00hrs (the following day)

The Provision of Late Night Refreshment:

- Thursday from 23:00hrs to 23:30hrs
- Friday and Saturday from 23:00hrs to 01:00hrs (the following day)

Hours premises is open to the public:

- Sunday to Thursday from 11:00hrs to 23:30hrs
- Friday and Saturday from 10:00hrs to 01:00hrs (the following day)

3.7 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 1st 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. 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 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 the following:
- Local Residentssee
Appendices 5-29
 - The Metropolitan Policesee
Appendix30
- 5.9 It should be noted that the application also received five invalid representations. The representations were deemed invalid as they were either incomplete with residential address details, or the objector failed to make relevant reference to one or more of the four licensing objectives. All objectors in this circumstance were written to and provided with an opportunity to validate their objections. Not all objectors in this circumstance responded.
- 5.10 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

- 5.11 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
- 5.12 The objections cover allegations of
- Anti-social behaviour from patrons leaving the premises
 - 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
 - Extensions on Hours of Trading
 - The Tower Hamlets Cumulative Impact Zone
- 5.13 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.
- 5.14 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
- v 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).
 - v 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 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 sell 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 31-36** 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

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| Appendix 1 | A copy the existing licence |
| Appendix 2 | A copy of the application for variation |
| Appendix 3 | Maps of the area |
| Appendix 4 | Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations |
| Appendix 5 | Representation of Local residentMs T Abineri |
| Appendix 6 | Representation of Local resident Dr K Aspinall |
| Appendix 7 | Representation of Local resident Ms H Bagshaw |
| Appendix 8 | Representation of Local resident Mr E Bagshaw |
| Appendix 9 | Representation of Local residentMs K Bradley |
| Appendix 10 | Representation of Local resident Me A Bridger |
| Appendix 11 | Representation of Local resident Ms F Buxton |
| Appendix 12 | Representation of Local residents Ms R Caddy and Mr M Carthy |
| Appendix 13 | Representation of Local resident Mr T S Couzens |
| Appendix 14 | Representation of Local residentMs J Dey |
| Appendix 15 | Representation of Local residentMr D Halstead |
| Appendix 16 | Representation of Local resident Ms N Heard |
| Appendix 17 | Representation of Local residentMr J Hurlin |
| Appendix 18 | Representation of Local resident C V Kappelhoff - Secretary of Newlon Housing Association's Residents' Association |
| Appendix 19 | Representation of Local residents Ms G Orbell, Ms V Kwai and Mr A Bridger |
| Appendix 20 | Representation of Local resident Mr Y Personne |

- Appendix 21** Representation of Local resident Ms L Richardson
- Appendix 22** Representation of Local resident Ms R Sheldon
- Appendix 23** Representation of Local resident Ms L J Skinner
- Appendix 24** Representation of Local resident Ms S Misfud –(on behalf of) Spitalfields Community Group
- Appendix 25** Representation of Local resident Mrs E Williamson
- Appendix 26** Representation of Local resident Shuk Yeung
- Appendix 27** Representation of Local resident Mr N Feinson
- Appendix 28** Representation of Local resident Mr J Last (in two parts, both email and letter)
- Appendix 29** Representation of Local resident Mr D Powrie
- Appendix 30** Representation of PC Alan Cruickshank – Metropolitan Police
- Appendix 31** Licensing Officer comments on Anti-Social Behaviour from Patrons Leaving the Premises
- Appendix 32** Licensing Officer comments on Noise while the Premise is in Use
- Appendix 33** Licensing Officer comments on Access and Egress Problems
- Appendix 34** Licensing Officer comments on Noise Leakage from the Premises
- Appendix 35** Licensing Officer comments on Licensing Policy Relating to Hours of Trading
- Appendix 36** Licensing Officer comments on The Tower Hamlets Cumulative Impact Zone