

Committee :	Date	Classification	Report No.	Agenda Item No.
<b>Licensing Sub-Committee</b>	16 September 2014	<b>Unclassified</b>	LSC 22/145	

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 to vary the Premises Licence for Ferry House, 26 Ferry Street, London E14 3DT</b>  Ward affected: <b>Blackwall and Cubit Town</b>
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## 1.0 Summary

Applicant:	<b>Ben Abdsamad Allali</b>
Name and	<b>Ferry House</b>
Address of Premises:	<b>26 Ferry Street London E14 3DT</b>
Licence sought:	<b>Licensing Act 2003 – Vary premises licence</b> <ul style="list-style-type: none"> <li>• <b>To add the sale of alcohol and recorded music on the first floor</b></li> </ul>
Representations:	<b>Local Residents / Other Persons Environmental Protection</b>

## 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 of the premises licence for Ferry House, 26 Ferry Street, London E14 3DT.

3.2 On the 23<sup>rd</sup> November 2011, Mr Ben Allali became the licence holder and also the Designated Premises Supervisor.

3.2.□.1. On the 29<sup>th</sup> January 2013, Mr Allali made a similar variation to include the first floor and to remove some conditions of the licence. This application received numerous representations and subsequently Mr Allali withdrew the application.

3.2.□.2. On the 10<sup>th</sup> June 2013, Mr Allali then made another new application for the first floor. This application also received representations from local residents, Environmental Protection and the Licensing Authority. The application was refused at the Licensing Sub-Committee hearing on the 20<sup>th</sup> August 2013.

3.3 A copy of the existing licence for the ground floor is enclosed in **Appendix 1**.

3.4 The timings of the existing licence are detailed below for information only:-

#### **Ground Floor**

#### **Alcohol (On and off sales)**

#### **The provision of Regulated Entertainment**

(Indoor Sporting Events, Live Music, Recorded Music, Performance of Dance, Provision of Facilities for Making Music, Provision of Facilities for Dancing)

- Monday to Saturday 11:00 hours to 00:00 hours
- Sunday 11:00 hours to 23:00 hours

#### Non-standard times

12 events per annum until 02:00 hours, inclusive of Bank Holidays, with seven clear days notice given to the Police and Environmental Health.

Note: The premises may remain open for the twelve hours between 11pm on New Years Eve and 11am on New Years Day.

#### **Hours premises are open to the public:**

- Monday to Saturday 11:00 hours to 00:20 hours
- Sunday 11:00 hours to 23:20 hours

Non-standard times

20 minutes after the cease of licensable activities

Note: the premises may remain open for the twelve hours between 11pm on New Years Eve and 11am on New Years Day.

- 3.5 A copy of the variation application is enclosed as **Appendix 2**.
- 3.6 The applicant has described the nature of the variation as follows:  
- To add the sale of alcohol and recorded music on the first floor
- 3.7 The applicant has applied to add the following to the existing licence:

**First Floor**

**Alcohol (On and off sales)**

**The provision of Regulated Entertainment – Indoors and outdoors**  
**(Recorded Music only)**

- Monday to Saturday 11:00 hours to 00:00 hours
- Sunday 11:00 hours to 23:00 hours

**Hours premises are open to the public:**

- Monday to Saturday 11:00 hours to 00:20 hours
- Sunday 11:00 hours to 23:20 hours

Non-standard times

- New Years Eve, from 23:00 hours to 11:00 on New Years Day.

- 3.8 Members may wish to note that the current licence does not authorise the provision of late night refreshment (provision of hot food and hot drinks between 23:00 hours to 05:00 hours). In the variation, the applicant has not applied to include the provision of late night refreshment. Members may wish to seek clarification from the licence holder in relation to this matter.
- 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 in 2011.
- 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 April 2012.

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 Interested party as defined in Section 13 (3) of the Licensing Act 2003 is limited to persons living in the vicinity of the premises, their representatives and local businesses in the vicinity of the premises and their representatives. Essentially, the interested party making the representation should show by what they say that they, or those they represent are sufficiently close to be personally affected by the application.

5.3 Only a responsible authority or an interested party can make a representation. Both of these terms are defined by statute, in Section 13 of the Licensing Act 2003.

5.4 There are two tests for an interested party and only one for a responsible authority. The two tests are contained in Section 18 of the Act.

5.5 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.

5.6 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.

5.7 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.

5.8 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 4**.

5.9 All the representations in this report have been considered by the relevant officer (Licensing Services Manager) and determined to have met the requirements of the Licensing Act 2003.

5.10 This hearing is required by the Licensing Act 2003, because relevant representations have been made by Local Residents / Other Persons and Environmental Protection.

5.11 Please **Appendix 5** for the representation of Environmental Protection.

5.12 Please below for a list of other persons making a representation

<b>Name</b>	<b>Interest</b>	<b>Appendix</b>
Laura Muir	Local resident	<b>6</b>
Poul Hansen	Local resident	<b>7</b>
Deni Butterfield	Local resident	<b>8</b>
Zolkiewicz Magda	Local resident	<b>9</b>
Ignacia Benitez	Local resident	<b>10</b>
Sande Carlo	Local resident	<b>11</b>
Zanda Mising	Local resident	<b>12</b>
Rory Wilkinson	Local resident	<b>13</b>
Mr J and Mrs K Cole	Local resident	<b>14</b>
PBC Solicitors	Freeholders	<b>15</b>
Khaled Ahmed-Ali	Local resident	<b>16</b>
Harry Yuen	Local resident	<b>17</b>
Conor Funston	Local resident	<b>18</b>

5.13 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

5.14 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

5.15 Essentially, the responsible authority and interested parties oppose the application because the applicant has not explained how within the context of the variation they will meet all of 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 19 - 26** 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 current premises licence

**Appendix 2** A copy of the application for variation

**Appendix 3** Maps of the area

**Appendix 4** Section 182 Guidance by the Home Office

**Appendix 5** Representation of representation of Environmental Protection

**Appendices 6 - 18** the actual representations of the residents

**Appendix 19** Licensing Officer comments on noise while the premise is in use

**Appendix 20** Licensing Officer comments on access/egress problems

**Appendix 21** Licensing Officer comments on crime and disorder on the premises

**Appendix 22** Licensing Officer comments on crime and disorder from patrons leaving the premises

**Appendix 23** Public safety

**Appendix 24** Protection of Children from harm

**Appendix 25** Planning

**Appendix 26** Licensing Policy relating to hours of trading