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| Committee : | Date | Classification | Report No. | Agenda Item No. |
| Licensing Sub Committee | 23 September 14 | Unrestricted | LSC 29/145 | |

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| Report of David Tolley Head of Consumer and Business Regulation Services Originating Officer: Alexander Lisowski Licensing Officer | Title Licensing Act 2003 Application for a New Premises Licence for Mercado, Retail Unit D, City Scape, Wentworth Street, London, E1. Ward affected Spitalfields and Banglatown |
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1.0 Summary

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| Applicant: | Donostia Limited |
| Name and | Mercado |
| Address of Premises: | Retail Unit D City Scape Wentworth Street London E1 |
| Licence sought: | Licensing Act 2003 Application for a new premises licence: <ul style="list-style-type: none"> • Late Night Refreshment • On and Off Sale of Alcohol |
| Objectors: | The 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

Alexander Lisowski
020 7364 7446

3.0 **Background**

- 3.1 This is an application for a new premises licence for the on and off sale of alcohol and the provision of late night refreshment at a restaurant: Mercado, Retail Unit D, City Scape, Wentworth Street, London, E1. variation of a premises licence to allow the provision of late night refreshment at Preem FC, 108 Brick Lane, London, E1 6RL.

The venue is within the area covered by the Brick Lane Cumulative Impact Zone.

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

The hours applied for are:

The Provision of Late Night Refreshment

- Monday to Thursday, 23.00pm to 23.30pm
- Friday and Saturday, 23.00pm to midnight
- From the end of permitted hours on New Year's Eve to 05.00am on New Year's Day.

The On and Off Sale of Alcohol

- Monday to Thursday, 09.00am to 23.00pm
- Friday and Saturday, 09.00am to 23.30pm
- Sunday, 09.00am to 22.00pm
- From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

Opening Hours of the Premises

- Monday to Thursday, 06.00am to 23.30pm
- Friday and Saturday, 06.00am to midnight
- Sunday, 06.00am to 22.30pm
- From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

- 3.3 Maps showing the relevant premises are included as **Appendix 2**.

4.0 **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, 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 2014.
- 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 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 5.5 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 3**.
- 5.6 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.

- 5.7 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following:
- Metropolitan Police

See Appendix 4

- 5.8 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

- 5.9 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

- Crime and public disorder
- Public nuisance

- 5.11 There are strict time limits to any representations. The time limits contained in The Licensing Act, 2003 (Premises licences and club premises certificates) Regulations 2005.

6.0 Licensing Officer Comments

- 7.0 The venue is within the area of the Brick Lane Cumulative Impact Zone. See **Appendix 5**.

- 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 “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.

8.0 Exemptions

- 8.1 There are a number of statutory exemptions from the operation of the Licensing Act 2003, and Members need to bear these in mind.
- 8.2 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.
- 8.3 Acts of religious worship, wherever performed are not licensable.
- 8.4 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.”
- 8.5 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.

8.6 Section 177 can be disapplied on a licence review if it is proportionate to do so.

9.0 Legal Comments

9.1 The Council's legal officer will give advice at the hearing.

10.0 Finance Comments

10.1 There are no financial implications in this report.

10.0 Appendices

Appendix 1 A copy of the application for a new premises licence.

Appendix 2 Maps of the surrounding area of the premises.

Appendix 3 Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations.

Appendix 4 Representations of the Metropolitan Police.

Appendix 5 Brick Lane Cumulative Impact Zone.

Appendix 6 Licensing officer comments on anti-social behaviour on the premises.

Appendix 7 Licensing officer comments on anti-social behaviour patrons leaving the premises.

Appendix 8 Access and egress problems.

Appendix 9 Planning.

Appendix 10 Licensing Policy relating to hours of trading.