

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	30 September 14	Unclassified	LSC 35/145	

Report of: David Tolley Head of Consumer and Business Relations Originating Officer: Andrew Heron Licensing Officer	Title: Licensing Act 2003 Application for variation of a premises licence for Ottolenghi, 11 Artillery Passage, London, E1 7LJ Ward affected: Spitalfields and Banglatown
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1.0 Summary

Applicant: **Ottolenghi Limited**
 Name and Address of Premises: **Ottolenghi**
11 Artillery Passage
London
E1 7LJ

Licence sought: **Licensing Act 2003 variation**
Extending the hours for the sale of alcohol
The removal of a condition

Objectors: **Local Residents**
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

Andrew Heron
020 7364 2665

3.0 **Background**

3.1 This is an application for a variation in a premises licence for Ottolenghi, 11 Artillery Passage, London, E1 7LJ.

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

- Monday to Saturday from 11:00hrs to 00:00hrs (midnight)
- Sunday from 12:00hrs (midday) to 23:30hrs
- Christmas Day from 12:00hrs (midday) to 23:30 hrs
- New Year's Eve, except on a Sunday, 11:00hrs to 00:00hrs (midnight)
- On New Year's Eve on a Sunday, 12:00hrs (midday) to 23:30hrs

The provision of late night refreshment

- Monday to Saturday from 23:00hrs to 00:00hrs (midnight)
- Sunday from 23:00hrs to 23:30hrs
- Christmas Day from 23:00hrs to 23:30hrs
- New Year's Eve, except on a Sunday, 23:00hrs to 00:00hrs (midnight)
- On New Year's Eve on a Sunday, 23:00hrs to 23:30hrs

The provision of regulated entertainment in the form of Live Music, Recorded Music and Dancing

- Monday to Friday 23:00hrs to 01:00hrs (the following day)
- Saturday, from 11:00hrs to 23:00hrs
- Sunday, from 11:00hrs to 22:30hrs

Non-Standard Timings

- On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).

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:

- Extending the hours for the sale of alcohol, including off sales
- Removal of a condition

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

Sale of Alcohol (on and off sales)

- Monday to Saturday from 08:00hrs to 00:00hrs (midnight)
- Sunday from 08:00hrs to 23:30hrs

- The Hours for the provision of regulated entertainment and late night refreshment are to remain unchanged.
- The opening hours are to remain unchanged
- The non-standard hours are to remain unchanged.

3.6 A map showing the relevant premises is included as **Appendix 3**.

3.7 The application has been amended upon agreement between the applicant's agent and the Metropolitan Police. Please see **Appendix 4** for a copy of the email. The conditions are as follows:

To amend the condition in Annex 1 (of the application) – Mandatory Conditions:

Suitable beverages other than intoxicating liquor (including drinking water) shall be equally available with or otherwise as an ancillary to meals served in the licensed premises in all parts of the premises where intoxicating liquor is sold or supplied. The licence is granted for premises structurally adapted and bona fide used, or intended to be used for the purpose of habitually providing the customary main meal at midday or in the evening, or both, for the accommodation of persons frequenting the premises, and the licence is subject to the condition that in the area hatched green on the deposited plan intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such a person as an ancillary to his meal.

To add the following two conditions

1. In the retail area outlined green on the deposited plan, alcohol shall only be sold as an off sale in sealed containers for consumption off the premises between the hours of 0900 – 2300.
2. CCTV -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. A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained. The system will comply with other essential legislation, and all signs as required will be clearly displayed. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity. 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.

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 5**.
- 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
- The Metropolitan Police

See Appendices 6, 7 and 9

5.9 The representation from Mr and Mrs Richards (Appendix 7) came with addition signatures. These signatures may not necessarily be accepted by Members as a petition. In **Appendix 8** please find a copy of a letter to Mr and Mrs Richards in relation to the quality of the petition. Members may wish to consider the validity of the additional signatories.

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
- Disturbance from patrons leaving the premises by car
- Close proximity to residential properties
- The LBTH 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

- ❖ 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 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 10-14** 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

- Appendix 1** A copy the existing licence
- Appendix 2** A copy of the application for variation
- Appendix 3** Copy of email dated 28/08/2014 in relation to additional conditions agreed with the Met Police
- Appendix 4** Maps of the area
- Appendix 5** Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
- Appendix 6** Representations of Robin Moore of Finlagen Property Company Ltd. – the freeholder of surrounding premises and follow up email dated 19/08/2014
- Appendix 7** Representations of Local residents Mr and Mrs Richards – including a petition
- Appendix 8** Copy of letter to Mr and Mrs Richards in relation to issues with the presentation of the petition
- Appendix 9** Representations of the Metropolitan Police – PC Alan Cruickshank
- Appendix 10** Licensing Officer comments on: Anti-Social Behaviour from Patrons Leaving the Premises
- Appendix 11** Licensing Officer comments on: Noise while the Premise is in Use
- Appendix 12** Licensing Officer comments on: Access and Egress Problems
- Appendix 13** Licensing Officer comments on: Licensing Policy Relating to Hours of Trading
- Appendix 14** Licensing Officer comments on: the LBTH Cumulative Impact Zone