

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	16 December 2014	Unclassified	LSC 55/145	

Report of : David Tolley Head of Consumer and Business Relations Originating Officer: Alexander Lisowski Licensing Officer	Title: Licensing Act 2003 Application for a New Premises Licence for The Loove, 82A Commercial Street, London, E1 6LY. Ward affected: Spitalfields & Banglatown
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1.0 Summary

Applicant: **Mr Joseph Debono**

Name and Address of Premises: **The Loove
82A Commercial Street
London, E1 6LY**

Licence sought: **Licensing Act 2003 New Premises Licence
For the On and Off-Sale of Alcohol**

Objectors: **Metropolitan Police
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

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, at The Looove, 82A Commercial Street, London, E1 6LY.

The venue is within the Brick Lane Cumulative Impact Zone.

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

The hours applied for are:

The On and Off Sale of Alcohol

Monday to Sunday, 11.00am to 23.00pm.

Hours Premises are Open to the Public

Monday to Sunday, 08.00am to 23.30pm

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

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 October 2014.

- 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 3**.
- 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
Local Businesses
See Appendices 4-29

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

The Police and local residents on the grounds of
Crime and Disorder
The Prevention of Public Nuisance

- 5.10 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.
- 5.11 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 The venue is within the Brick Lane Cumulative Impact Zone. **See Appendix 30.**

6.9 In **Appendices 30-34** 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 of the application for a new premises licence.
- Appendix 2** Maps of the area around the venue.
- Appendix 3** Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations.
- Appendix 4** Representations of PC Cruickshank, Metropolitan Police.
- Appendix 5** Petition from local residents.
- Appendix 6** Representations of Dr. Kate Aspinall.
- Appendix 7** Representations of AleksBojovic and Aleksandra Stipanovich.
- Appendix 8** Representations of Rene'eCleovoulou.
- Appendix 9** Representations of John and Sandy Critchley.
- Appendix 10** Representations of Tracey Emin CBE, RA.
- Appendix 11** Representations of Joyce Fenton Douglas.
- Appendix 12** Representations of Carolyn Fuest.
- Appendix 13** Representations of David Gadd and Frank Picard.
- Appendix 14** Representations of Charles Gledhill and Marianna Kennedy.
- Appendix 15** Representations of Margaret Gordon, Chairman, St Georges Residents' Association, Spitalfields.
- Appendix 16** Representations of Nora Heard.
- Appendix 17** Representations of Glenn Leeder.
- Appendix 18** Representations of Dr Maria Lenn.
- Appendix 19** Representations of Barra Little.
- Appendix 20** Representations of Conor McLernon.
- Appendix 21** Representations of Glen Mifsud.

- Appendix 22** Representations of Selina Mifsud, Spitalfields Community Group.
- Appendix 23** Representations of Michael Myers.
- Appendix 24** Representations of Matt Piper.
- Appendix 25** Representations of Andy Rider, Rector and PCC of Christ Church, Spitalfields.
- Appendix 26** Representations of Karen Seward.
- Appendix 27** Representations of Jon Shapiro.
- Appendix 28** Representations of Paul Shearer.
- Appendix 29** Representations of Nick Shiren.
- Appendix 30** Information on the Brick Lane Cumulative Impact Zone.
- Appendix 31** Licensing officer comments on anti-social behaviour on the premises.
- Appendix 32** Licensing officer comments on anti-social behaviour by patrons leaving the premises.
- Appendix 33** Access and egress problems.
- Appendix 34** Planning.
- Appendix 35** Licensing Policy relating to hours of trading.