

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	16 December 2014	Unclassified	LSC 57/145	

Report of : David Tolley Head of Consumer and Business Relations Originating Officer: Andrew Heron Licensing Officer	Title: Licensing Act 2003 Application for a new Premises Licence for Khushbu – 74 Whitechapel High Street, London, E1 7QX Ward affected: Spitalfields and Banglatown
---	---

1.0 Summary

Applicant: **Aventio Ltd**
 Name and Address of Premises: **Khushbu**
74 Whitechapel High Street
London
E1 7QX

Licence sought: **Licensing Act 2003**
The Provision of Late Night Refreshment (the supply of hot food and hot drink)

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		Andrew Heron 020 7364 2665

3.0 **Background**

- 3.1 This is an application for a premises licence for Khushbu – 74 Whitechapel High Street, London, E1 7QX.
- 3.2 A copy of the application is enclosed as **Appendix 1**. The applicant has described the nature of the application as follows:
- The provision of late night refreshment (the supply of hot food and hot drink)
- 3.3 The hours that have been applied for are as follows:-

The Provision of Late Night Refreshment:

- Sunday to Thursday from 23:00hrs to 00:00hrs (midnight)
- Friday to Saturday from 23:00hrs to 04:00hrs (the following day)
- Members will note that the applicant has incorrectly completed the application form by only completing the section relevant to opening hours. It has been confirmed that the applicant wishes to apply for late night refreshment only, up to the hours listed on the application form.
- Members will also note from the application that the applicant has written 11:00hrs therefore as the commencement of late night refreshment; however, this does not become a licensable activity under the Licensing Act 2003 until 23:00hrs each night.

Hours premises is open to the public:

- Sunday to Thursday from 23:00hrs to 00:00hrs (midnight)
- Friday to Saturday from 23:00hrs to 04:00hrs (the following day)

- 3.4 A map showing the relevant premises is 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 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 Office has issued Guidance under Section 182 of the Licensing Act 2003. This is available on the Government's website, www.homeoffice.gov.uk. It will also be available at the hearing. 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 **Objections**

- 5.1 This hearing is required by the Licensing Act 2003, because relevant representations have been made by:
- The Metropolitan Police, see **Appendix 3**
- 5.2 Members should note that the application has since been amended upon consultation with the Metropolitan Police. The applicant has agreed to adopt a CCTV condition. The applicant and the Police remain unable to agree on hours of the provision of late night refreshment. A copy of the email in which the applicant agrees to the amendment is exhibited as **Appendix 4**.
- 5.3 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
- 5.4 Essentially, the regulatory Authority opposes the application because the applicant has not explained how within the context of longer hours they will meet the licensing objectives, particularly:
- the prevention of crime and disorder
 - the prevention of public nuisance
- 5.5 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.
- 5.6 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 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.

- 6.3 The Licensing Act 2003 permits children of any age to be on the premises 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 Members will find advice on the issues relating to conduct on the premises and egress as follows the comments of the Association of Chief Police Officers on non-standard times is also included:

Appendix 5 Licensing Officer comments on Crime and Disorder on the Premises

Appendix 6 Licensing Officer comments on Crime and Disorder from Patrons Leaving the Premises

Appendix 7 Licensing Officer comments on Egress Problems

Appendix 8 Licensing Policy relating to Hours of Trading

Appendix 9 LBTH Cumulative Impact Policy

7.0 Legal Comments

- 7.1 The Council’s legal officer will give advice at the hearing.

8.0 Finance Comments

- 8.1 There are no financial implications in this report.

9.0 Appendices

- Appendix 1** A copy of the application
- Appendix 2** Maps of the area
- Appendix 3** Representations of the Metropolitan Police
- Appendix 4** Email amending the application in regards to agreeing to the addition of a CCTV condition
- Appendix 5** Licensing Officer comments on Crime and Disorder on the Premises
- Appendix 6** Licensing Officer comments on Crime and Disorder from Patrons Leaving the Premises
- Appendix 7** Licensing Officer comments on Egress Problems
- Appendix 8** Licensing Policy relating to Hours of Trading
- Appendix 9** LBTH Cumulative Impact Policy