

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	16 June 2015	Unclassified	LSC 81/145	

Report of : David Tolley Head of Consumer and Business Relations Originating Officer: Andrew Heron Licensing Officer	Title: Licensing Act 2003 Application for a Premises Licence for Towpath Bars Limited – Easting: 537232 / Northing: 184404 Ward affected: Bow East
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1.0 Summary

Applicant: **Towpath Bars Limited**
 Name and **Towpath Bar**
 Address of Premises: **Easting: 537232 / Northing: 184404**
Hackney Wick

Licence sought: **Licensing Act 2003**
The Sale of Alcohol
Provide Late Night Refreshment
Provide regulated entertainment

Objectors: **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

Andrew Heron
020 7364 2665

3.0 **Background**

3.1 This is an application for a premises licence for Towpath Bars Limited – Easting: 537232 / Northing: 184404.

3.2 A copy of the application and the plans are available in **Appendix 1**.

3.3 The applicant has described the nature of the application as:

- The sale of alcohol
- Providing late night refreshment
- Providing regulated entertainment

3.4 The hours that are stated in the application are as follows:-

Sale of Alcohol (on sales only)

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

The Provision of Late Night Refreshment (indoors):

- Friday from 23:00hrs to 00:00hrs (midnight)
- Saturday from 23:00hrs to 01:00hrs (the following day)

The Provision of Regulated Entertainment in the form of Recorded Music outdoors):

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

Hours premises is open to the public:

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

There are further non-standard times:

- Sundays before Bank Holidays 11:00hrs to 01:00hrs
- New Year's Eve 11:00hrs to 09:00hrs (the following day)
- Morning British Standard Time commences to allow clock going back on hour

3.5 The application has been amended upon consultation with the Responsible Authorities.

3.6 The application has been amended via the Metropolitan Police to include the following additional conditions to the Operating Schedule:

1. *A CCTV camera system covering both internal and external to the premise is to be installed. The CCTV recordings are to be maintained for 31 days and to be provided upon request to either a Police Officer or an officer of any other Responsible Authority. A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity. At all times the premises is open, a person who can operate the CCTV system must be present on the premises. who can download the images and present them immediately on request by a police officer or other responsible authority;*
2. *That an incident report book be kept and record all incidents of crime and disorder associated with the premises.*
3. *Signs be prominently displayed both inside and in the outside asking customers to respect local residents and to be quiet when leaving the premises*
4. *A Challenge 25 Policy to be in place.*

An email showing the agreement to this between the Applicant and the Police is available in **Appendix 2**.

- 3.7 The application has been amended via the Tower Hamlets Environmental Health Team to include the following conditions on the Operating Schedule:

5. *Regulated entertainment shall not be audible at the façade or within any affected business or residential property (as relevant) so as to cause a nuisance;*
6. *The outside area is only used until 20:00hrs.*

The applicant has also agreed the following amendments to the following hours:

The Provision of Late Night Refreshment (indoors):

- Friday and Saturday from 23:00hrs to 00:00hrs (midnight)

Hours premises is open to the public:

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

An email showing the agreement to this between the Applicant and Environmental Health is available in **Appendix 3**. Members may wish to ascertain from the Applicant the new times of all licensable activities in line with the replacement opening times.

3.8 Maps showing the relevant premises are included as **Appendix 4**.

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 March 2015.

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.
- Kevin Blake
 - Max Christmas
 - Paul Denton
 - Anthony Gelatka
 - Piers Gibbon
 - Louisa Gummer
 - Ewa Kim
 - Hsinyi Liu
 - Caroline Luino
 - Carla Octigan
 - Shushanik Sargsyan
 - Christopher Symeon
 - Rebecca Wright

See **Appendices 6-18**

- 5.9 Members may wish to note that some representations were received by the Licensing Authority that were deemed invalid. The objectors were written to and given an opportunity to validate their representation. The majority did successfully respond and are presented above, however, two objectors failed to do so.
- 5.10 In addition, Members may wish to acknowledge that one local resident objector within Omega Works withdrew their representation once they were provided with the list of amendments as agreed between the Applicant, the Metropolitan Police and Environmental Health.
- 5.11 All of the responsible authorities have been consulted about this application. They are as follows:
- The Licensing Authority
 - The Metropolitan Police
 - The LFEP (the London Fire and Emergency Planning Authority).
 - Planning
 - Health and Safety
 - Noise (Environmental Health)
 - Trading Standards
 - Child Protection
 - Primary Care Trust
- 5.12 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

5.13 The objections cover allegations of

- Potential noise issued emanating from the premises whilst in use
- Potential anti-social behaviour on the premises
- Potential anti-social behaviour from patrons leaving the premises
- Disturbance from patrons leaving the premises on foot
- Close proximity to residential properties
- The opening hours
- One objector made a complaint in relation to the positioning of the blue notice used to advertise the application. The Licensing Authority was satisfied that the notice complied with the necessary Regulations, and in addition, representations were received from objectors whom had responded to the consultation as a direct result of seeing the notice.

5.14 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.

5.15 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 to licensing authorities in relation to the carrying out of their functions under the 2003 Act." It is a key medium for promoting best practice, ensuring consistent application and promoting fairness equal treatment and proportionality (1.7).
- ❖ Also "as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do

so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.” Therefore 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)
- ❖ Also, “The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.” Therefore, conditions may not be imposed for the purpose other than promoting the licensing objectives and in some cases no additional conditions will be appropriate. (10.8)
- ❖ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.4).
- ❖ The Guidance states: “Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.” (10.14)
- ❖ Mandatory conditions must be imposed (10.27) and censorship avoided (10.17).
- ❖ The Guidance states: “It is still permitted to sell alcohol using promotions (as long as they are compatible with any other licensing condition that may be in force), and the relevant person should ensure that the price of the alcohol is not less than the permitted price. Detailed guidance on the use of promotions is given in the guidance document available on the Gov.uk website.” (10.60)
Also, “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.” (10.21)

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 19-22** 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
Appendix 2	Maps of the area
Appendix 3	Email trail between the Applicant's legal representative and the Metropolitan Police agreeing conditions.
Appendix 4	Email trail between the Applicant's legal representative and LBTH Environmental Health agreeing conditions and amendments to hours.
Appendix 5	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 6	Representations of local resident Kevin Blake
Appendix 7	Representations of local resident Max Christmas
Appendix 8	Representations of local resident Paul Denton
Appendix 9	Representations of local resident Anthony Gelatka
Appendix 10	Representations of local resident Piers Gibbon
Appendix 11	Representations of local resident Louisa Gummer
Appendix 12	Representations of local resident Ewa Kim
Appendix 13	Representations of local resident Hsinyi Liu
Appendix 14	Representations of local resident Caroline Luino
Appendix 15	Representations of local resident Carla Octigan

Appendix 16	Representations of local resident Shushanik Sargsyan
Appendix 17	Representations of local resident Christopher Symeon
Appendix 18	Representations of local resident Rebecca Wright
Appendix 19	Licensing Officer comments on Anti-Social Behaviour on the Premises
Appendix 20	Licensing Officer comments on Anti-Social Behaviour from Patrons Leaving the Premises
Appendix 21	Licensing Officer comments on Access and Egress Problems
Appendix 22	Licensing Officer comments on Licensing Policy Relating to Hours of Trading

