

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	18 August 2015	Unclassified	LSC 05/156	

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 Preem Restaurant – 118-122 Brick Lane, London, E1 6RL Ward affected: Spitalfields and Banglatown
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1.0 Summary

Applicant: **Azmal Hussain**
 Name and Address of Premises: **Preem Restaurant**
118-122 Brick Lane
London
E1 6RL

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

Objectors: **Local Residents**
Metropolitan Police
Environmental Health
Licensing Authority

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 of the premises licence for Preem Restaurant – 118-122 Brick Lane, London, E1 6RL.

3.2 A copy of the existing licence is enclosed as **Appendix 1**.

3.3 This is the third application received from the Applicants legal representative in relation to this variation. Firstly an application was received in the name of Azmal Hossain, but was rejected by the Authority as only the current licence holder can apply for variations. Mr Azmal Hussain has been known to use this name in the past. The Applicant's legal representative initially advised that Mr Hussain wished to apply for the variation in this name, as his alias. A second application was made, still in the name of Azmal Hossain. Further advice was given and a third application was forthcoming; being the application presented to Members in this report, in the name of Azmal Hussain.

3.4 A copy of the variation application is enclosed as **Appendix 2**.

3.5 The applicant has described the nature of the variation as extending the supply of late night refreshment, alcohol and regulated entertainment until from 23:00hrs 03:00hrs (the following day).

3.6 The hours that have been applied for on the application are as follows:-

Sale of Alcohol (on and off sales)

- Monday to Sunday from 23:00hrs to 02:30hrs (the following day)

The Provision of Late Night Refreshment (indoors):

- Monday to Sunday from 23:00hrs to 02:30hrs (the following day)

The Provision of Regulated Entertainment in the form of recorded music (indoors):

- Monday to Sunday from 23:00hrs to 03:00hrs

Hours premises is open to the public:

- Monday to Sunday from 12:00hrs to 03:00hrs

3.7 Member may wish to note that the current granted hours for licensable activities are as follows:

Sale of Alcohol

- Monday to Saturday from 12:00 hours to 23:00 hours
- Sunday from 12:00 hours to 22:30 hours

The Provision of Regulated Entertainment (Recorded music only)

- Monday to Saturday from 12:00 hours to 23:00 hours
- Sunday from 12:00 hours to 22:30 hours

The Applicant has potentially made an error on the application form; as this would effectivity only commence licensable activities from 23:00hrs. It is likely the intention of the Applicant that they wished to extend the hours from the existing 23:00hrs. However, the application goes on to express the opening hours as you would have been expected, i.e. from 12:00hrs to 03:00hrs. Members may therefore wish to clarify the Applicant's intended hours of operation.

3.8 Maps showing the relevant premises are included as **Appendix 3**.

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 4**.
- 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 responsible authorities:
 - The Metropolitan Police
 - Tower Hamlet Environmental Health
 - Tower Hamlets Licensing Authority

See **Appendices 5-7**

Members may wish to note that part of the representation supplied by Environmental Health also contains an agreed amendment to the application to withdraw the provision of regulated entertainment from the application (please see the full historical content of the email from Nicola Cadzow in **Appendix 6**).

- 5.9 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following local residents
 - Professor Karim Brohi
 - John and Sandy Critchley
 - David Cunningham
 - Jane Curtis
 - Donna DeWick (on behalf of the Siptalfields Society)
 - Olwen Evans
 - Jeremy Freedman
 - Margaret Gordon (on behalf of the St Georges Resident's Association)
 - Giampaolo Guglielmi
 - Mark and Suzanne Lancaster
 - Glenn Leeder
 - Conor McLernon
 - Selina Misfud (on behalf of the Spitalfields Community Group)
 - Clive Murphy
 - Michael and Delores Nanson

- Sian Philips
- John Shapiro (on behalf of SPIRE)
- Alex Gordon Shute
- James Warwick
- Lyn Williams

See **Appendices 8-27**

- 5.10 Members may wish to note that the application also received other representations from local residents that were rejected by the Authority as being invalid with because the content was not relevant or the objector failed to provide their residential address. Any invalid representations were responded to in ordered to provide the Objector with an opportunity to validate their representation, however, some failed to do so within the consultation period.
- 5.11 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
- 5.12 In addition the application was required to be advertised in a local newspaper and by a blue poster. The application was originally advertised in the *Jono Jibon*, a weekly Bengali newspaper. Advice was given that this was not an appropriate publication; therefore the application was re-advertised in East End Life with an amended end consultation date.
- 5.13 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
- 5.14 The objections cover allegations of
- Anti-social behaviour on the premises
 - Anti-social behaviour from patrons leaving the premises
 - Drinking beyond the permitted hours
 - Disturbance from patrons leaving the premises on foot
 - Close proximity to residential properties

- Unusual Drinking Hours (i.e. extensions of hours for unspecified days)
- The LBTH Cumulative Impact Zone

5.15 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.

5.16 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 28-34** 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 the existing licence
Appendix 2	A copy of the application for variation
Appendix 3	Maps of the area
Appendix 4	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 5	Representations of Metropolitan Police
Appendix 6	Representations of Tower Hamlets Environmental Health
Appendix 7	Representations of Tower Hamlets Licensing Authority
Appendix 8	Representations of local resident Professor Karim Brohi
Appendix 9	Representations of local residents John and Sandy Critchley
Appendix 10	Representations of local resident David Cunningham
Appendix 11	Representations of local resident Jane Curtis
Appendix 12	Representations of local resident Donna DeWick (on behalf of the Siptalfields Society)
Appendix 13	Representations of local resident Olwen Evans
Appendix 14	Representations of local resident Jeremy Freedman
Appendix 15	Representations of local resident Margaret Gordon (on behalf of the St Georges Resident's Association)
Appendix 16	Representations of local resident Giampaolo Guglielmi
Appendix 17	Representations of local residents Mark and Suzanne Lancaster
Appendix 18	Representations of local resident Glenn Leeder
Appendix 19	Representations of local resident Conor McLernon
Appendix 20	Representations of local resident Selina Misfud (on behalf of the Spitalfields Community Group)
Appendix 21	Representations of local resident Clive Murphy

Appendix 22	Representations of local residents Michael and Delores Nanson
Appendix 23	Representations of local resident Sian Philips
Appendix 24	Representations of local resident John Shapiro (on behalf of SPIRE)
Appendix 25	Representations of local resident Alex Gordon Shute
Appendix 26	Representations of local resident James Warwick
Appendix 27	Representations of local resident Lyn Williams
Appendix 28	Licensing Officer comments on Anti-social behaviour on the premises
Appendix 29	Licensing Officer comments on Anti-social behaviour from patrons leaving the premises
Appendix 30	Licensing Officer comments on Access and Egress Problems
Appendix 31	Licensing Officer comments on Drinking beyond the permitted hours
Appendix 32	Licensing Officer comments on Unusual Drinking Hours
Appendix 33	Licensing Officer comments on Licensing Policy Relating to Hours of Trading
Appendix 34	Licensing Officer comments on The LBTH Cumulative Impact Zone