

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub-Committee	13 October 2015	Unclassified	LSC 12/156	

Report of: David Tolley Head of Consumer and Business Regulations Service Originating Officer: Mohshin Ali Senior Licensing Officer	Title: Licensing Act 2003 Application for a variation of a Premises Licence for KFC, 84 Whitechapel High Street, London E1 7QX Ward affected: Spitalfields and Banglatown
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1.0 Summary

Applicant: **Mohammed Tahir**

Name and **KFC**

Address of Premises: **84 Whitechapel High Street
London
E1 7QX**

Licence sought: **Licensing Act 2003 – premises licence**

- **Extending the hours for the provision of late night refreshment**

Representations: **Met Police
Licensing Authority
Local Business
Local Resident**

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

Mohshin Ali
020 7364 5498

3.0 **Background**

3.1 This is an application for a variation of the premises licence for KFC, 84 Whitechapel High Street, London E1 7QX.

3.2 A similar variation application was made by the licence holder on the 1st May 2015 and further information on this is contained in the Licensing Officer's representation.

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

3.4 The timings of the existing licence are detailed below for information only:-

Late Night Refreshment

- Friday and Saturday 23:00 hours to midnight

The opening hours of the premises

- Sunday to Thursday 10:00 hours to 23:00 hours
- Friday and Saturday 10:00 hours to midnight

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

3.6 The applicant has now applied for the following timings:

Provision of late night refreshment

- Sunday to Thursday, 23:00 hours to 00:00 hours
- Friday and Saturday, 23:00 hours to 03:00 hours the following day

Note: the applicant may wish to clarify why late night refreshment has been ticked to take place outdoors and not indoors.

Hours premises are open to the public:

- Monday to Thursday, 10:00 hours to 00:00 hours
- Friday and Saturday, 10:00 hours to 03:00 hours the following day
- Sunday, from 10:00 hours to 23:00 hours

3.7 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.

3.8 A map showing the relevant premises is 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 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 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. Interested parties and their representatives 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 Met Police, Licensing Authority, Local Business and Local Residents/Residents association.
- 5.9 Please see below the list of parties making representation.

Representation by	Appendix
Met Police	5
Licensing Authority	6
Whitechapel Gallery (L. Andrews)	7
Sergej Tiurin (Resident)	8

- 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
 - Trading Standards
 - Child Protection
 - Public Health
- 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 Essentially, the relevant parties oppose the application because the applicant has not explained how within the context of the application they will meet the licensing objectives, particularly the prevention of crime and disorder and the prevention of public nuisance.
- 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.

6.0 Licensing Officer Comments

- 6.1 The following is intended simply to advise Members of the relevant aspects of the Boroughs Licensing Policy, guidance from the Secretary of State, legislation and good practice (See 6.2). 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.” It is a key mechanism for promoting best practice, ensuring consistent application and promoting fairness (1.7)
- ❖ Also “so long as licensing authorities have properly understood the Guidance, they may depart from it if they have reason to do so as long as 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 (10.6).
- ❖ 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.
- ❖ “The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities.” (10.11)
- ❖ Mandatory conditions must be imposed (10.38) and censorship avoided (10.17).
- ❖ 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. This may be unlawful under current law. However, it is important to note that the mandatory conditions made under sections 19A and 73B of the 2003 Act prohibit a number of types of drinks promotions

where they give rise to a significant risk to any one of the four licensing objectives (10.26).

- 6.3 The Licensing Act 2003 permits children of any age to be on the premises which primarily sells 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 “Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.” (2.20)
- 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 9 - 15** Members are given general advice, and also have explanations of the Council’s Licensing Policy, Government advice and other legislation relating to the matters in the representations.

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 00 hrs 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 existing licence
Appendix 2	A copy of the variation application
Appendix 3	Maps of the area
Appendix 4	Section 182 Guidance by the Home Office
Appendices 5 -8	The representations
Appendix 9	Licensing Officer comments on noise while the premise is in use
Appendix 10	Licensing Officer comments on access/egress problems
Appendix 11	Licensing Officer comments on crime and disorder on the premises
Appendix 12	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 13	Planning
Appendix 14	Licensing Policy relating to hours of trading
Appendix 15	Licensing Officer comments on the Tower Hamlets Cumulative Impact Zone