

Committee :	Date	Classification
<b>Licensing Sub Committee</b>	<b>14<sup>th</sup> February 2017</b>	<b>Unrestricted</b>

Report of : <b>David Tolley</b> <b>Head of Environmental Health &amp; Trading Standards</b>	Title: <b>Licensing Act 2003 Application for New Premises Licence for Sakana Sushi, Unit E, 43a Commercial Street, London, E1 6BD</b>
Originating Officer: <b>Andrew Heron</b> <b>Licensing Officer</b>	Ward affected: <b>Spitalfields and Banglatown</b>

## 1.0 Summary

Applicant: **Japanese Cuisine Limited.**  
Name and **Sakana Sushi**  
Address of Premises: **Unit E, 43A Commercial Street**  
**London**  
**E1 6BD**

Licence sought: **Licensing Act 2003**  
**The provision of late night refreshment**

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 new premises licence for Sakana Sushi – Unit E, 43a Commercial Street, London, E1 6BD.
- 3.2 The premises did previously have a late night refreshment licence in place. A copy of that licence is enclosed as **Appendix 1** for Members' information only. Sakana Sushi Limited, the previous premises licence holder, dissolved on 23<sup>rd</sup> February 2016, thus voiding the licence.
- 3.3 A copy of the variation application is enclosed as **Appendix 2**. It is noted that there appears to be a number of mistakes in the application which Members should seek clarity on. The Applicant has indicated in Section (B) that the Supply of Alcohol has been applied for. However, the Applicant has completed Section (I) of the application specifying the Provision of Late Night Refreshment.
- 3.4 The applicant has described the nature of the application as either:
- The sale of alcohol and/or
  - Providing late night refreshment
- 3.5 The hours that have been applied for are as follows:-

#### **The Provision of Late Night Refreshment (indoors nor outdoors defined in application):**

- Monday to Thursday from 23:00hrs to 01:30hrs (the following day)
- Friday and Saturday from 23:00hrs to 02:00hrs (the following day)
- Sunday from 23:00hrs to 00:00hrs (midnight)

Members will note that the application states the start times for licensable activities as being 11:00hrs. Therefore it should be confirmed exactly what the applicant is applying for. It is noted that the Applicant goes on to provide the name and personal licence details for a proposed designated premises supervisor.

#### **Hours premises is open to the public:**

- Monday to Thursday from 11:00hrs to 01:30hrs (the following day)
- Friday and Saturday from 11:00hrs to 02:00hrs (the following day)
- Sunday from 11:00hrs to 00:00hrs (midnight)

- 3.6 In an email exchange between the Metropolitan Police and the Applicant, it is noted that the Applicant has now agreed to the following quoted hours:

*Sun -Thu 11.30 - 23.00 : closing 23.30*  
*Fri - Sat 11.30 - 23.30 :*  
*Closing Midnight*

The Police in their original representation (since withdrawn) took the application to include both alcohol *and* late night refreshment. The

representation was subsequently withdrawn once the Applicant agreed to the above. However, it remains very unclear what has been agreed with the Responsible Authorities. Please see **Appendix 3** which exhibits an email exchange between the Police and the Applicant; and **Appendix 4** which exhibits an email exchange between Environmental Health (Noise) and the Applicant.

The Applicant does appear to have agreed additional conditions and the following hours:

The Supply of Alcohol (on sales only)

- Monday to Thursday from 11:30hrs to 23:00hrs
- Friday to Saturday from 11:30hrs to 23:30hrs

Late Night Refreshment

- Friday to Saturday from 23:00hrs to 23:30hrs

Opening Hours

- Monday to Thursday from 11:30hrs to 23:30hrs
- Friday and Saturday from 11:30hrs to 00:00hrs (midnight)

Members should note that alcohol sales and opening hours have not been addressed for Sundays and will therefore have to make a formal decision on any hours if it is seen fit to grant.

#### 4.0 **Location and Nature of the premises**

- 4.1 Photographs of the venue and immediate vicinity will be provided at the hearing.
- 4.2 The site plan of the venue is included as **Appendix 5**.
- 4.3 Maps showing the vicinity are included as **Appendix 6**.
- 4.4 Details of other licensed venues in the immediate vicinity are included as **Appendix 7**.

#### 5.0 **Licensing Policy and Government Advice**

- 5.1 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 1<sup>st</sup> November 2013.
- 5.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.

- 5.3 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](http://www.homeoffice.gov.uk). It was last revised in March 2015.
- 5.4 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.

## 6.0 Representations

- 6.1 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
- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 6.6 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 8**.
- 6.7 All the representations in this report have been considered by the relevant officer (Team Leader Licensing & Safety) and determined to have met the requirements of the Licensing Act 2003.
- 6.8 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following local residents.
- **Appendix 9** Anthony do Jasay
  - **Appendix 10** Pat Jones
  - **Appendix 11** Glenn Leeder
  - **Appendix 12** Selina Misfud on behalf of the Spitalfields Community Group
  - **Appendix 13** Alan Williams

- 6.9 It should be noted that the application also received an invalid representation. The author was written to in order to be provided with the opportunity to make a valid representation within the consultation period. No response was received.
- 6.10 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 (Environmental Health)
  - Trading Standards
  - Child Protection
  - Primary Care Trust (Public Health England)
- 6.11 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
- 6.12 The objections cover allegations of
- Potential anti-social behaviour on the premises
  - Potential anti-social behaviour from patrons leaving the premises
  - Close proximity to residential properties
  - Hours of trade
  - The LBTH Cumulative Impact Zone
- 6.13 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.
- 6.14 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.

## **7.0 Conditions consistent with Operating Schedule**

7.1 Members will note from the application for that the following points are offered in the Operating Schedule. Members will note that they may require significant amendments to make them enforceable:

7.2

- 1) Strong Management controls and effective training of all staff so that they are aware of the premises licence and the requirement to meet the four licensing objectives with particular attention to:
  - a) No selling of alcohol to underage people;
  - b) No drunk and disorderly behaviour on the premises area;
  - c) Vigilance in preventing the use and sale of illegal drugs at the retail area
  - d) No violent and anti-social behaviour
  - e) No harm to children
- 2) CCTV system installed to monitor entrances, exits and other parts of the premises in order to address the prevention of crime objective;
- 3) A clear and legible notice outside the premise indicating the normal hours under the terms of the premises licence during which licensable activities are permitted;
- 4) Clear and conspicuous notices warning of potential criminal activity, such as theft that may target customers will be displayed;
- 5) Not selling of alcohol to drunk or intoxicated customers;
- 6) All staff will be trained;
- 7) Custom will not be sought by means of a personal solicitation outside or in the vicinity of the premises;
- 8) Internal and external lighting to promote the public safety;
- 9) There will be training and implementation of underage ID check;
- 10) Will keep book or recording system for inspections;
- 11) There will be prominent and clear and legible notices displayed at the exit requesting customers to respect residents and leave the premises and area quietly;
- 12) Customers will not be allowed to stand outside the premises;
- 13) Customers will not be admitted to premises above opening hours;
- 14) Adequate waste receptacles for use by customers will be provided in the local vicinity;

- 15) Will display Challenge 25 sign;
- 16) Will check and accept only photo ID;
- 17) Will keep log book at all times;
- 18) Training provided to all staff.

## **8.0 Conditions Agreed/Requested by Responsible Authority (please see Annexes 3 and 4)**

### **8.1**

- 1) CCTV. The CCTV system shall incorporate a recording facility and any recordings shall be retained and stored in a suitable and secure manner for a minimum of 31 days. A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained. The system will comply with other essential legislation, and all signs as required will be clearly displayed. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity. There must also be someone on the premises, who can download the images and present them on request by a police officer or other responsible authority. One camera be placed outside the entrance and on entry;
- 2) Use of incident /refusal book;
- 3) No drinks to be consumed outside the premises;
- 4) No more than 4 smokers to be outside at one time.

## **9.0 Licensing Officer Comments**

9.1 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.

### **9.2 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)

9.3 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.

- 9.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 9.5 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.
- 9.6 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)
- 9.7 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 9.8 In **Appendices 14-18** 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.

#### 10.0 **Legal Comments**

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

#### 11.0 **Finance Comments**

- 11.1 There are no financial implications in this report.

## 12.0 Appendices

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| <b>Appendix 1</b>  | A copy the void licence  |
| <b>Appendix 2</b>  | A copy of the application  |
| <b>Appendix 3</b>  | Email between Applicant and Police discussing hours and potential conditions                       |
| <b>Appendix 4</b>  | Email between Applicant and Environmental Health (Noise) discussing hours and potential conditions |
| <b>Appendix 5</b>  | Site Plan  |
| <b>Appendix 6</b>  | Maps of the surrounding area   |
| <b>Appendix 7</b>  | Surrounding Premises Licence details   |
| <b>Appendix 8</b>  | Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations                  |
| <b>Appendix 9</b>  | Representation of local resident Anthony do Jasay  |
| <b>Appendix 10</b> | Representation of local resident Pat Jones   |
| <b>Appendix 11</b> | Representation of local resident Glenn Leeder  |
| <b>Appendix 12</b> | Representation of local resident Selina Misfud on behalf of the Spitalfields Community Group       |
| <b>Appendix 13</b> | Representation of local resident Alan Williams   |
| <b>Appendix 14</b> | Licensing Officer comments on anti-social behaviour on the premises                                |
| <b>Appendix 15</b> | Licensing officer comments on anti-social behaviour patrons leaving the premises                   |
| <b>Appendix 16</b> | Licensing officer comments on access and egress problems   |
| <b>Appendix 17</b> | Licensing officer comments on hours of trading   |
| <b>Appendix 18</b> | Licensing officer comments on the LBTH Cumulative Impact Zone                                      |

