

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	14 July 2020	Unclassified		

Report of : David Tolley Head of Environmental Health & Trading Standards Originating Officer: Lavine Miller-Johnson Licensing Officer	Title: Licensing Act 2003 Application for variation of a Premises Licence for Coupette 423 Bethnal Green Road London E3 0AN Ward affected: St Peters
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1.0 **Summary**

Applicant: **Coupette Bethnal Green Limited**
 Name and Address of Premises: **Coupette**
423 Bethnal Green Road
London
E2 0AN

Licence sought: **Licensing Act 2003**

Objectors: **Licensing Authority**
Environmental Protection

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 Section 182 Guidance LBTH Licensing Policy		Lavine Miller-Johnson 020 7364 2665

3.0 **Background**

- 3.1 This is an application for a variation of the premises licence for Coupette 423 Bethnal Green Road, London, London E2 0AN. The premise falls with Bethnal Green Cumulative Impact Zone.
- 3.2 A copy of the existing licence is enclosed as **Appendix 1**.
- 3.3 A copy of the variation application is enclosed as **Appendix 2**.
- 3.4 The applicant has described the nature of the variation as:
 - 1. To extend the sale by retail of alcohol Monday to Saturday from 11:00 hours- 02:00 hours the following day (on and off sales)
 - 2. To amend the opening hours of the premises Monday- Saturday From 10:00 hours- 02:00 hours and Sunday from 10:00 hours to 23:00 hours

4.0 **Location and Nature of the premises**

- 4.1 Maps showing the vicinity are included as **Appendix 3**.
- 4.2 Other licensed premises within the vicinity **Appendix 4**.

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 1st November 2018.
- 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. It was last revised in April 2018.
- 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 5**.
- 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:

Licensing Authority
Environmental Protection

Appendix 6
Appendix 7

- 6.9 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)
 - Home office Immigration Enforcement
- 6.10 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

6.11 The objections cover allegations of

- Noise while the premise is in use
- Close proximity to residential properties
- Noxious smells or light pollution
- Noise leakage from the premises

6.12 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.

6.13 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 Applicants response to representations received. **Appendix 8**

7.1 Conditions consistent with Operating Schedule

1. Staff training will be given in responsible sales of alcohol and Health & Safety legislation.
2. Sales of alcohol will only be made when a personal licence holder is present at the premises.
3. An operational CCTV System shall be maintained covering the entrance and licensed areas premises.
4. Recordings from the CCTV System shall be retained for a minimum of 31 days and shall be made available to an authorised officer of the Licensing Authority, a Police Officer or Police Licensing Officer together with facilities for viewing.
5. Cameras shall encompass all ingress and egress outside the premise, fire exits and all areas where the sale and supply of alcohol occurs.
6. The Premises Licence Holder must ensure at all times a DPS or appointed member of staff is capable and competent at downloading CCTV footage.
7. Incidence record book to be kept and updated.
8. The Premises Licence Holder shall ensure that no customers will take glasses or open bottles of alcoholic drinks from the premises.
9. All doors and windows of the premises shall be kept closed and shut at all times there is any music, live or recorded other than for entry or egress of customers.
- 10 Notices shall be placed at each exit requesting customers to respect the neighbours and leave quietly.
- 11 The licence holder shall ensure that a 'Challenge 25' Policy is operated at the premises with appropriate signage displayed inside the venue.

- 12 No person under the age of 18 years shall be permitted into the premises without being under the supervision of an appropriate adult.
- 13 There shall be no unaccompanied children on the premises between 19:00 hours and opening the next morning.

Licensing Officer Comments

8.1 The Live Music Act removed licensing requirements for the following:

- amplified live music and recorded music between 8am and 11pm before audiences of no more than 500 people on premises authorised to sell alcohol for consumption on the premises;
- unamplified live music between 8am and 11pm in all venues.

Further exemptions apply see Section 16.5-16.6 of Section 182 Guidance.

8.2 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.

8.3 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 (10.25) 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.” (10.58)
- ❖ 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)

8.4 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.

8.5 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”

8.6 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.

8.7 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)

8.8 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible

authorities.

8.9 In **Appendices 9-** 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.

9 Legal Comments

9.3 The Council's legal officer will give advice at the hearing.

10 Finance Comments

10.1 There are no financial implications in this report.

11 Appendices

Appendix 1	A copy the existing licence
Appendix 2	A copy of the application for variation
Appendix 3	Maps of the surrounding area
Appendix 4	Other licensed premises in the vicinity
Appendix 5	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 6	Representations of Licensing Authority
Appendix 7	Representations of Environmental Protection
Appendix 8	Applicants response to representations received
Appendix 9	Licensing officer comments on Noise when the premises is in use
Appendix 10	Licensing officer comments on access/egress problems
Appendix 11	Licensing policy advice on public nuisance
Appendix 12	Section 182 guidance public nuisance
Appendix 13	Licensing Policy advice on crime & disorder
Appendix 14	Section 182 guidance on crime & disorder
Appendix 15	Cumulative Impact Policy for Bethnal Green Area
Appendix 16	Licensing Policy relating to hours of trading