

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub-Committee	24 November 2020	Unclassified		

Report of: David Tolley Head of Environmental Health & Trading Standards Originating Officer: Mohshin Ali Senior Licensing Officer	Title: Licensing Act 2003 Application for a variation of a Premises Licence for (previously known as Virginia Off Licence & Supermarket) 59 Virginia Road, London, London E2 7NF Ward affected: Weavers
--	---

1.0 Summary

- Applicant/PLH: **Charlie Borrow**
- Name and **(Previously known as Virginia Off Licence & Supermarket)**
- Address of Premises: **59 Virginia Road
London
E2 7NF**
- Licence sought: **Licensing Act 2003 – variation of a premises licence**
- **To add “on” sale of alcohol to existing licence**
 - **To extend the licensable times**
- Representation(s): **Other persons (residents)**

2.0 Recommendations

- 2.1 That the Licensing Committee considers the application and representations 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
<ul style="list-style-type: none"> • Guidance Issued under Section 182 of the Licensing Act 2003 • Tower Hamlets Licensing Policy • File 		Mohshin Ali 020 7364 5498

3.0 **Background**

- 3.1 This is an application for a variation of a premises licence for (previously known as Virginia Off Licence & Supermarket) 59 Virginia Road, London, London E2 7NF.
- 3.2 A copy of the existing premises licence is enclosed as **Appendix 1** for information only.
- 3.3 On the 4th August 2020, the licence was transferred to Charlie Borrow but it should be noted that the Designated Premises Supervisor (Habib Altun) has not yet been transferred.
- 3.4 The licensable activities and timings of the existing licence are detailed below for information:

The sale by retail of alcohol (off sales only)

- *Monday to Saturday, 08:00 hours to 23.00 hours*
- *Sunday, 10:00 hours to 22.30 hours*

The opening hours of the premises (including recorded music)

- *There are no restrictions on the hours during which this premises is open to the public*

- 3.5 The applicant has described the nature of the proposed variation as follows:
“The variation looking to be made is to allow on sales of alcohol, to be sold and consumed on the premises as well as maintaining the existing off sales license”
- 3.6 A copy of the premises licence application form is enclosed as **Appendix 2**.
- 3.7 The applicant has applied for the following extension of licensable activities and timings:-

The sale by retail of alcohol (on and off sales)

- *Monday to Sunday, from 09:00 hours to 24.00 hours (midnight)*

The provision of regulated entertainment - Indoors
(recorded music)

- *Monday to Sunday, from 08:00 hours to 24.00 hours (midnight)*

The opening hours of the premises

- *Monday to Sunday, from 10:00 hours to 24.00 hours (midnight)*

4.0 **Location and Nature of the premises**

4.1 Maps and photographs showing the vicinity are included as **Appendix 3**.

4.2 Details of the nearest licensed venues are included as **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 the 1st 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. 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:

Other persons	Appendix
Alberto Torres Hernandez	6
Barbara Ungaro	7
Helen Callander	8
Jonathan Moberly	9
Maxine Aston	10
Stan Everett	11
Susanna Kow	12
Tonje Pettersen	13
Yaojen Chuang	14

6.9 The applicant has submitted additional documents in support of the application and these are attached in **Appendix 15**.

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
- Environmental Health Noise Team
- Trading Standards
- Child Protection
- Public Health
- Home Secretary (Home Office Immigration Enforcement)

6.11 In addition the application was required to be advertised in a local newspaper and by a blue poster. Only representations 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 Essentially, the relevant parties oppose the application because in their opinion, the applicant has not explained how within the context of the application they will meet the licensing objectives of crime and disorder and the prevention of public nuisance.
- 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 *No guest to be outside the premises after 21:00 hrs unless leaving the premises.*
- 7.2 *Music to be kept to a reasonable level to avoid disturbing neighbours*
- 7.3 *Children not allowed on the premises after 19:00 hrs*

8.0 Conditions in consultation with the Responsible Authorities

None

9.0 Licensing Officer Comments

- 9.1 The Business & Planning Act 2020 came into force on Wednesday 22nd July 2020 and provides a temporary permission for businesses that have a premises licence that permits them to sell alcohol in regards to the ability to sell alcohol as an off sale, i.e. for consumption off the premises. The permission will end on 30th September 2021 unless the legislation is changed by the Secretary of State.

It will only apply to businesses that hold a Premises Licence up to 22nd July 2020 and that in the last 3 years preceding 22 July 2020 those licences have NOT:

- had a premises licence application where permission for off sales was refused;
- had a variation of a premises licence seeking permission for off sales refused
- had a variation seeking to exclude off sales permission granted
- had a premises licence varied or modified by a review hearing to exclude off sales.

The new off-sales permission will permit off-sales to be made at a time when the licensed premises are open for the purposes of selling alcohol for consumption on the premises, subject to a cut off time of 11pm or the cut off time of the current licensed hours stated on the licence, whichever is earlier. Measures also temporarily suspend existing licence conditions in so far as they are inconsistent with the new off-sales permission. Further Guidance on this can be found at <https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill>

9.2 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.

9.3 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. 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.

9.4 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)
- 9.5 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.
- 9.6 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 9.7 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.
- 9.8 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)

9.9 The Council's Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

9.10 In **Appendices 16 - 21** 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

Appendix 1 A copy of the existing premises licence

Appendix 2 A copy of the current application

Appendix 3 Maps and photographs of the surrounding area

Appendix 4 Other licensed venues in the area

Appendix 5 Section 182 Guidance by the Home Office

Appendices 6-14 Representations of responsible authorities/residents

Appendix 15 Applicant's supporting documents

Appendix 16 Licensing Officer comments on noise while the premise is in use

Appendix 17 Licensing Officer comments on access/egress Problems

Appendix 18 Licensing Officer comments on crime and disorder on the premises

Appendix 19 Licensing Officer comments on crime and disorder from patrons leaving the premises

Appendix 20 Planning

Appendix 21 Licensing Policy relating to hours of trading