

Committee: Licensing Sub-Committee	Date 24 November 2020	Classification Unclassified	Report No.	Agenda Item No.
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Report of: David Tolley Head of Environmental Health & Trading Standards	Title: Licensing Act 2003 Application for a Premises Licence for (Marco Food Centre) 38 - 40 Commercial Road, London E1 1LN
Originating Officer: Mohshin Ali Senior Licensing Officer	Ward affected: Whitechapel

1.0 Summary

Applicant: **Daas Trading London Limited**

Name and Address of Premises: **Marco Food Centre**
12b Commercial Road
London
N18 1TP

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

- **The sale by retail of alcohol (off sales only)**

Representations: **Residents**
Businesses

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 premises licence for (Marco Food Centre) 38 - 40 Commercial Road, London E1 1LN.

3.2 The applicant has described the premises as follows:
“Convenience Store”

3.3 A copy of the premises licence application form is enclosed as **Appendix 1**.

3.4 The applicant has reduced the times of licensable activities in consultation with the Police and Licensing Authority (RA) as follows:-

The sale by retail of alcohol - Off sales only

- Monday to Sunday, from 06:00 hrs to 00:00 hrs (midnight)

The opening hours of the premises

- Monday to Sunday, from 06:00 hrs to 00:00 hrs (midnight)

4.0 **Location and Nature of the premises**

4.1 The site plan of the venue is included as **Appendix 2**.

4.2 Maps and photos showing the vicinity are included as **Appendix 3**.

4.3 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 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 a relevant representation against the premises have been made by the following:

Name	Appendix
Mrs Fozia	6
Nazzim Ahmed	7
Shummey Miah	8
Simone Gaillard	9
Erol Aslan (petition)	10
Hamaon Rashid (petition)	11
K C. (petition)	12

- 6.9 It should be noted that some of the petition pages submitted by Erol Aslan are also repeated in the petition pages submitted by the other petitioners.
- 6.10 All of the responsible authorities have been consulted about this application. They are as follows:
- The Licensing Authority
 - The Metropolitan Police
 - London Fire Brigade
 - 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 objective of the prevention of public nuisance and the prevention of crime and disorder.

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 (as offered)**

7.1 *Staff training shall be recorded and updated every 6 months training shall cover the requirements for id as part of age verification, fines and punishments and other matters relevant regarding the licensing act 2003 to staff members role in the premises.*

7.2 *There shall be a suitable colour digital CCTV recording system installed at the premises the system must be capable of providing 28 days recording. the images recorded are to be retained for 28 days and made available to the police or other enforcement agencies upon reasonable request (within 48hours)in line with data protection legislation. dvd/usb copies of relevant footage to be provided to the police or other enforcement agencies at no cost.*

Licensing Officer recommends the following standard wording:

The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Tower Hamlets Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV

system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.

- 7.3 *Signage shall be displayed in a prominent position on the premises requesting that customers leave quietly*
- 7.4 *The premises licence holder shall ensure that a 'challenge 25' policy is adopted on the premises.*
- 7.5 *Signage of the 'challenge 25' policy shall be prominently displayed on the premises.*
- 7.6 *Acceptable identification accepted by the premises licence holder, dps, or other staff members shall be a passport, photo driving licence or pass accredited identity card staff training in i.d procedure will be carried out on a regular basis.*

Licensing Officer recommends the following standard wording:

A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.

- 7.7 *The licence holder shall ensure that a refusals register is kept on the premises and that this shall be immediately available upon request of an authorised officer. The register shall record any refused sale of alcohol.*
- 7.8 *The refusal register shall be inspected on a regular basis by the Designated Premises Supervisor (DPS) or nominated person/s and signed by the DPS or nominated person/s that they have checked the register at least 12 months of refusal register details shall be retained and made available upon request by an authorised officer.*
- 7.9 *Signage shall be prominently displayed warning customers of the legal penalties for purchasing alcohol for any person under the age of 18 years*

8.0 Conditions in consultation with the Responsible Authorities

- 8.1 Conditions agreed with the Licensing Authority (acting as a responsible authority) and Met Polce Licensing. Please see **Appendix 13:**

“opening hours have now reduced, and are now Monday – Sunday 06:00 – 00:00 hours (midnight), which are the same hours for the sale of alcohol”

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.
- 9.2 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>
- 9.3 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.
- 9.4 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.

9.5 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)

- 9.6 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.
- 9.7 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 9.8 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.
- 9.9 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)
- 9.10 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 9.11 In **Appendices 14 - 19** 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 current application
- Appendix 2** Site Plan
- Appendix 3** Maps and photos of the surrounding area
- Appendix 4** Other licensed venues in the area
- Appendix 5** Section 182 Guidance by the Home Office
- Appendices 6-12** Representations of against the premises
- Appendix 13** Conditions agreed with Police and Licensing Authority
- Appendix 14** Licensing Officer comments on noise while the premise is in use
- Appendix 15** Licensing Officer comments on access/egress Problems
- Appendix 16** Licensing Officer comments on crime and disorder on the premises
- Appendix 17** Licensing Officer comments on crime and disorder from patrons leaving the premises
- Appendix 18** Public safety
- Appendix 19** Planning
- Appendix 20** Licensing Policy relating to hours of trading