

Committee : Licensing Sub-Committee	Date 2 nd March 2021	Classification Unclassified	Report No.	Agenda Item No.
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Report of: David Tolley Head of Environmental Health & Trading Standards Originating Officer: Mohshin Ali Senior Licensing Officer	Title: Licensing Act 2003 Application for a Premises Licence for (Jack the Chipper) 74 Whitechapel High Street, London E1 7QX Ward affected: Spitalfields and Banglatown
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1.0 Summary

Applicant:	Kin Catering Limited
Name and	Jack the Chipper
Address of Premises:	74 Whitechapel High Street London E1 7QX
Licence sought:	Licensing Act 2003 – premises licence <ul style="list-style-type: none"> • The sale by retail of alcohol (on sales only) • The provision of late night refreshment
Representations:	Licensing Authority (RA) Environmental Health Noise Team

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 (Jack the Chipper) 74 Whitechapel High Street, London E1 7QX.

3.2 The applicant has described the premises as:
“Restaurant and premises trading as Jack the Chipper”.

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

3.4 The licensable activities and timings that have been applied for are as follows:

The sale by retail of alcohol – (on sales only)

- Monday to Wednesday, from 10:00 hrs to 23:30 hrs
- Thursday to Saturday, from 10:00 hrs to 00:30 hrs the following day
- Sunday, from 10:00 hrs to 23:30 hrs

Non-standard timings

- Christmas Eve and New Years’ Eve, until 00:30 hrs the following day

The provision of late night refreshment - (Indoors)

- Monday to Wednesday, from 23:00 hrs to 24:00 hrs (midnight)
- Thursday to Saturday, from 23:00 hrs to 01:00 hrs the following day
- Sunday, from 23:00 hrs to 24:00 hrs (midnight)

Non-standard timings

- Christmas Eve and New Years’ Eve, until 01:00 hours the following day

The opening hours of the premises

- Monday to Wednesday, from 10:00 hrs to 24:00 hrs (midnight)
- Thursday to Saturday, from 10:00 hrs to 01:00 hrs the following day
- Sunday, from 10:00 hrs to 24:00 hrs (midnight)

Non-standard timings

- Christmas Eve and New Years’ Eve, until 01:00 hrs the following day

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 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following:
 - Licensing Authority acting as a Responsible Authority (See **Appendix 5**).
 - Environmental Health Noise Team (See **Appendix 6**).
- 6.2 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
 - Public Health
 - Home Secretary (Home Office Immigration Enforcement)
- 6.3 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

- 6.4 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 crime and disorder and the prevention of public nuisance.
- 6.5 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.
- 6.6 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 *The Designated Premises Supervisor shall ensure that all existing staff, new staff, supervisors, and managers receive an induction in the legality and procedure of alcohol sales, prior to undertaking the sale of alcohol. This training shall include the contents of the premises licence, times of the operation, licensable activities, and all conditions. Training documents shall be signed and dated, and training records shall be made available to Police or authorised council officers on request. The records shall be retained for at least 18 months.*
- 7.2 *Alcohol shall only be served on the premises ancillary to a substantive table meal.*
- 7.3 *CCTV shall be installed and maintained in a good working condition and cover the entrance of the premises and all external areas.*
- 7.4 *CCTV covering areas inside and outside of the premises shall be installed and maintained to police recommendations with properly log arrangements. All images shall be stored for a minimum of 31 days and all recordings shall show the correct date and time*
- 7.5 *A staff member from the premises that is conversant with the operation of the CCTV system shall be on the premises at all times the premises is open to the public. This staff member shall be able to show Police recent date footage with the minimum of delay when requested. This date or footage reproduction shall be almost instantaneous.*
- 7.6 *Appropriate signage shall be in a prominent position, informing customers they are being recorded on CCTV.*
- 7.7 *A refusals book shall be kept at the premises to record details of all refusals to sell alcohol. This book shall contain the date and time of the*

incident, a description of the customers, the name of the staff who refused the sale and the reason the sale was refused. The book shall be made available to Police or authorised council officers on request.

- 7.8 *An incident log shall be kept at the premises, and be available on request by an authorised officer or to Police which will include the following:*
- a. all crimes and incidents of disorder reported to the venue;*
 - b. all ejections of patrons;*
 - c. any complaints received concerning crime and disorder*
 - d. seizure of drugs and offensive weapons*
 - e. any faults in the CCTV system, searching equipment or scanning equipment;*
 - f. any refusal of the sale of alcohol;*
- 7.9 *Signs shall be placed in a prominent place at all exit points of the premises requesting patrons to respect the neighbours and leave quietly.*
- 7.10 *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.*

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.

- 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 7 - 13** 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 application
Appendix 2	Site Plan
Appendix 3	Maps of the surrounding area
Appendix 4	Other licensed venues in the area
Appendix 5	Representation of Licensing Authority (RA)
Appendix 6	Representation of EH Noise Team
Appendix 7	Licensing Officer comments on noise while the premise is in use
Appendix 8	Licensing Officer comments on access/egress Problems
Appendix 9	Licensing Officer comments on crime and disorder on the premises
Appendix 10	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 11	Planning
Appendix 12	Licensing Policy relating to hours of trading
Appendix 13	Tower Hamlets Cumulative Impact Zone