

Committee: Licensing Sub-Committee	Date	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 Provisional Statement for (Boxpark Shoreditch, Unit 37- 41, 2 – 10 Bethnal Green Road, London E1 6GY Ward affected: Weavers
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1.0 Summary

Applicant: **Boxpark Limited**

Name and Address of Premises: **Boxpark Shoreditch**
Unit 37 - 41
2 - 10 Bethnal Green Road
London
E1 6GY

Licence sought: **Licensing Act 2003 - provisional statement**

- **The sale by retail of alcohol**
- **The provision of late night refreshment**

Representations: **Environmental Protection**
Licensing Authority
Community Safety

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 provisional statement for (Boxpark Shoreditch, Unit 37- 41, 2 – 10 Bethnal Green Road, London E1 6GY.

3.2 The applicant has described the schedule of works as follows:

“Plans of the proposed units that are the subject of the application premises are submitted with the application.

These comprise 5 container units at the well establish Boxpark premises (which already hold a number of premises licences issued by the London Borough of Hackney).

The units were previously used for retail purposes and the intention is that, subject to the grant of the licence, they will be converted in to one single leisure unit operating as a licensed bar and restaurant

This is in line with the planning permission issued by Tower Hamlets Council dated 13 November 2020 number PA/20/01491.

The work will include an internal fit out to include installation of kitchen, customer area and lavatories, to enable premises to trade as a bar/restaurant with facilities for takeaway and home delivery service with outside area (subject to the conditions submitted with this application)”

3.3 The applicant has described the premises as follows:

“The units were previously used for retail purposes and the intention is that, subject to the grant of the licence, they will be converted in to one single leisure unit operating as a licensed bar and restaurant”

3.4 A copy of the provisional statement application is enclosed as **Appendix 1**.

3.5 The applicant has applied for the following the licensable activities and times:-

The sale by retail of alcohol - On and off sales

- Monday to Saturday, from 08:00 hrs to 23:30 hrs
- Sunday, from 08:00 hrs to 22:30 hrs

The provision of late night refreshment

- Monday to Saturday, from 23:00 hrs to 00:00 hours (midnight)

The opening hours of the premises

- Monday to Saturday, from 08:00 hrs to 00:00 hrs (midnight)
- Sunday, from 08:00 hrs to 23:00 hrs

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

Responsible authority/other persons	Appendix
Environmental Protection - Nicola Cadzow	5
Licensing Authority - Kathy Driver	6
Community Safety - John Fortune	7

6.2 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)

- 6.3 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 public nuisance and the prevention of crime and disorder.
- 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.
- 6.7 The applicant has responded to the representation of the Licensing Authority and the correspondence is included in **Appendix 8**.
- 7.0 **Conditions consistent with Operating Schedule (as offered)**
- 7.1 *See updated conditions agreed with Police below.*
- 8.0 **Conditions in consultation with the Responsible Authorities**
- Conditions agreed with Police Licensing (See Appendix 9)
- 8.1 *There shall be no vertical drinking at the premises*
- 8.2 *The premises shall operate primarily as a restaurant*
- 8.3 *The premises shall have a queue management system for people waiting to enter the premises.*
- 8.4 *The premises shall have a security plan agreed by Central East Police Licensing.*
- 8.5 *The security plan will include but is not limited to the provision of SIA security staff, search policy and ejection procedures. This plan will be reviewed annually or after a serious incident.*

8.6 *In circumstances where door security are employed at the premises the following conditions shall*

8.7 *On occasions when door security are provided at the premises the following conditions shall apply:*

(a) The licensed door supervisors shall be employed solely for vetting, regulating, controlling and supervising patrons whilst entering and whilst on the premises and to ensure the maintenance of good order, public safety and internal security.

LICENSING OFFICER COMMENTS: "Cardiff City Council" should be changed to "London Borough of Tower Hamlets".

(b) A register shall be kept at the premises to record the details of the door supervisors, the number of persons on the premises and any incidents. The register shall be produced to authorised officers of Cardiff City Council and the Police upon request.

(c) The register shall contain the following details:

(1) Full SIA registration number.

(2) Date and time that the Door Supervisor commenced duty, countersigned by the Designated Premises Supervisor or Duty Manager.

(3) Date and time that the Door Supervisor finished work, countersigned by the Designated Premises Supervisor or Duty Manager.

(4) Any occurrence or incident of interest involving crime and disorder or public safety must be recorded giving names of the Door Supervisor involved.

(5) Training records

(6) ID Photo and scan of SIA badge

(7) A record will be kept on site of all SIA checks, on the validity of all door staff licences.

(8) The name, home address and registration number of all door supervisors working at the premises. The door supervisor register must be kept at the premises and be available for inspection by the Police or an authorised officer from the Council and shall be retained for a period of 1 Year.

8.8 *The premises licence holder will install a CCTV system as follows:*

(a) Recordings shall be kept for a minimum of 31 days with time and date stamping.

(b) The entire licensable area shall be covered by the CCTV. There shall be at least one camera positioned at each entry and exit point to monitor any external areas to the premises. This includes any areas designated for tables and chairs and/or a designated smoking area.

(c) Data recordings shall be made immediately available to an authorised officer of the Police and/or Licensing Authority together with facilities for viewing upon request.

(d) Recorded images shall be of such quality as to be able to identify the recorded person in any light.

(e) At least one member of staff on the premises at any time during operating hours shall be trained to access and download material from the CCTV system.

8.9 Signs shall be placed in prominent positions on the premises notifying customers that CCTV is in operation

8.10 Signs will be prominently displayed at all exit points reminding customers to leave quietly and respect local residents.

8.11 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 driving licence or passport.

8.12 An incident log shall be kept at the premises, and made available on request to an authorised officer of the council or the police, which will record the following

(a) All crimes reported:

(b) All ejections of patrons

(c) Any complaints received.

(d) Any incidents of disorder.

(e) Seizure of drugs or offensive weapons.

(f) Any faults in the CCTV system

(g) Any refusal of the sale of alcohol.

(h) Any visit by a relevant authority or emergency service.

8.13 In the event that a serious assault is committed on the premises (or appears to have been committed) the management will immediately ensure that:

(a) the police (and, where appropriate, the London Ambulance Service) are called without delay;

(b) all measures that are reasonably practicable are taken to apprehend any suspects pending the arrival of the police;

(c) the crime scene is preserved so as to enable a full forensic investigation to be carried out by the police; and

(d) such other measures are taken (as appropriate) to fully protect the safety of all persons present on the premises.

- 8.14 *Premises to operate zero tolerance policy to drugs and notices to this effect shall be displayed at the entrance to the premises.*
- 8.15 *The premises will operate a drugs policy agreed by Central East Police Licensing. This Policy will be reviewed annually or after a serious incident.*
- 8.16 *An adequate and appropriate supply of first aid equipment and materials shall be available on the premises*
- 8.17 *All staff will be given refresher training every twelve months on the legislation relating to the sales of alcohol to underage persons and drunken persons.*
- 8.18 *Any music to be played on the premises shall be limited to background music*
- 8.19 *Any sales of alcohol by way of off sales will be by way of home delivery only and must accompany an order for substantial refreshment*
- 8.20 *The use of the outside area shall be limited to customers seated at tables, and any drinks for consumption in the outside seating area shall be in shatterproof vessels/poly carbs or such other form as may be agreed with the police in writing.*
- 8.21 *A written dispersal policy agreed by Central East Police Licensing shall be in place and implemented at the premises to move customers from the premises and the immediate vicinity in an orderly fashion.*

9.0 Licensing Officer Comments

9.1 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.

9.2 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.

9.3 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)
- ❖ When a person applies for a premises licence in respect of premises (or part of the premises or premises which are substantially the same) for which a provisional statement has been made, representations by responsible authorities and other persons will be excluded in certain circumstances. These are where:
 - the application for a licence is in the same form as the licence described in the provisional statement;
 - the work in the schedule of works has been satisfactorily completed;
 - given the information provided in the application for a provisional statement, the responsible authority or other person could have made the same, or substantially the same, representations about the application then but failed to do so without reasonable excuse; and
 - there has been no material change in the circumstances relating either to the premises or to the area in the proximity of those premises since the provisional statement was made (8.96).

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

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

9.9 In **Appendices 10 - 16** 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
- Appendices 5 - 7** Representations of against the premises
- Appendix 8** Applicant's response to Licenisng
- Appendix 9** Applicant's response to Licenisng
- Appendix 10** Licensing Officer comments on noise while the premise is in use
- Appendix 11** Licensing Officer comments on access/egress Problems
- Appendix 12** Licensing Officer comments on crime and disorder on the premises
- Appendix 13** Licensing Officer comments on crime and disorder from patrons leaving the premises
- Appendix 14** Planning
- Appendix 15** Licensing Policy relating to hours of trading
- Appendix 16** Tower Hamlets Cumulative Impact Zone