

Committee: Licensing Sub-Committee	Date: 15 June 2021	Classification: UNRESTRICTED	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 to Review the Premises Licence for 76 Brick Lane, London E1 6RL Ward affected: Spitalfields and Banglatown
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1.0 Summary

Name and Address of premises:	Beefy and Birds, also known as Kyices Kitchen 76 Brick Lane London E1 6RL
Licence under review:	Licensing Act 2003 <ul style="list-style-type: none"> ▪ Sale by retail of alcohol ▪ Provision of late night refreshment
Representations:	Metropolitan Police <ul style="list-style-type: none"> - Licensing Authority - Health & Safety - Environmental Protection

2.0 Recommendations

- 2.1 That the Licensing Committee considers the application for review and then adjudicates 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 **Review Application**

- 3.1 This is an application for a review of the premises licence for Beefy and Birds, 76 Brick Lane London E1 6RL. The review was triggered by Metropolitan Police.
- 3.2 A copy of the review application is attached in **Appendix 1**.
- 3.3 Evidence supporting review is attached in **Appendix 2**.

4.0 **The Premises**

- 4.1 The premises licence was issued on 29th November 2017. The licensee is Blue Tiger Limited, company no.10600462. The company director is recorded as Sultan Miah. The record on companies house shows a compulsory strike off has been suspended due to an objection.

The licence remains active until such time the company has been struck off the register.

It should also be noted at the time of writing this report, annual fees are unpaid for years 2018 and 2019. A fee was paid for 2020 linked to an email address associated with Kyices Kitchen. The licence remains suspended due to unpaid fees.

A copy of the premises licence is contained in **Appendix 3**.

- 4.2 Maps showing the premises, surrounding area and vicinity of local residents are included in **Appendix 4**.

5.0 **Representations**

- 5.1 This hearing is required by the Licensing Act 2003, because a review has been triggered by the Metropolitan Police.
- 5.2 The review is supported by Licensing Authority, see **Appendix 5**.
- 5.3 The review is also supported by Health and Safety, see **Appendix 6**.
- 5.4 The review is further supported by Environmental Protection, see **Appendix 7**.
- 5.5 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

5.6 In the view of the interested party and the responsible authorities it is necessary to achieve the licensing objectives of the prevention of public nuisance and prevention of crime & disorder and the prevention of public safety.

6.0 Review Explained

6.1 The Licensing Act 2003 was described by the Government at the time as “light touch” but as Baroness Blackstone stated in the Lords at the time of the second reading (26 Nov 2002) “Local residents and businesses as well as expert bodies, will have the power to request that the licensing authority review existing licences where problems arise. Such a review could result in the modification of the licence, its suspension, or ultimately, revocation.”

6.2 The Home Office has issued guidance under Section 182 of the Licensing Act 2003 in relation to reviews and that is contained in **Appendix 8**. It is available on the Government’s website, www.homeoffice.gov.uk. It was last revised in April 2018.

6.3 Members are particularly asked to note the comments in relation Crime and Disorder. In particular the home office advice is that “The role of the licensing authority when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure that the crime prevention objective is promoted.”

6.4 In relation to its advice on representations the home office has also advised that “there is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations.” It has also issued revised guidance about Crime and Disorder. **See Appendix 9**.

6.5 Members should also note the Council’s Licensing Policy in relation to Crime and Disorder, the relevant parts of which are contained in **Appendix 10**.

- 6.6 In most premises existing legislation will provide adequately for the safety of the public or club members and guests. However, where this is not the case, consideration might be given to the conditions as set out in home office guidance. This is detailed in **Appendix 11**.
- 6.7 In relation to the prevention of Public Safety the Home Office advises Licensing Authorities under article 43 of the Regulatory Reform (Fire Safety) Order 2005 any conditions imposed by the licensing authority that relate to any requirements or prohibitions that are or could be imposed by the Order have no effect and should therefore not seek to impose fire safety conditions where the Order applies.
- 6.8 The Home Office has advised that in relation to reviews “ Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation. ”
- 6.9 An interested party or a responsible authority can trigger a review at any time, but the grounds must be relevant to the licensing objectives. The form of the application, and the advertisement of the review are the subject of regulations (The Licensing Act 2003 (Premises Licences and Club Premises Certificate) Regulations 2005). In addition, the licensing authority has to satisfy itself of certain matters in relation to the Licensing Act 2003. The Licensing & Safety Team Leader is the delegated officer who deals with this on behalf of the Licensing Authority. All the matters stated in 5.0 were considered before any representations were accepted for inclusion in this report.
- 6.10 The Licensing Act 2003 requires that the Licensing Authority satisfies itself that it should reject the grounds for a review because:
- The ground is not relevant to one or more of the licensing objectives
 - In the case of an application by a local resident that the application is frivolous, vexatious or repetitious.

7.0 **Review Advertisement**

- 7.1 The review was advertised by a blue poster, next to the premises, by the Licensing Section. This was periodically monitored by the Section to ensure it was on continuous display, and replaced as necessary. It was also advertised at Mulberry Place, 5 Clove Crescent, London E14 2BG.

7.2 The party that triggers the review must notify the licence holder and responsible authorities. The review documents were sent to the licence holders.

7.3 The procedure for a review can be summarised as follows:

- A review is triggered by a responsible authority or interested party
- Consultation is conducted for 28 full days
- Other responsible authorities or interested parties may join in the review
- Members conduct a hearing
- Members make a determination
- All the parties to the review have the right of appeal to the magistrates court (i.e. the licence holder, the person who triggered the review and those who have made a representation).

8.0 Licensing Officer Comments

- 8.1 When licence holders or designated premises supervisors move, leave a premises or dispose of their premises they remain responsible in law until they have informed the licensing authority and surrendered the licence or arranged a transfer, which may involve notification to the Police as well. Any licensees or designated premises supervisors who are not sure what to do should contact the licensing authority. Please note that should the DPS cease to work/be employed by the premises the Licensing Authority will consider that there is no DPS for those premises. This consideration shall apply regardless of whether that person is still named on the Premises Licence, or whether they have asked for their name to be removed from it. This consideration shall apply until such time that an application is received to nominate a new premises supervisor. In such cases, the Licensing Authority shall expect no sales of alcohol to take place until an application to vary the DPS has been submitted to the Licensing Authority. (27.1 Licensing Policy)
- 8.2 The Governments advice in relation to reviews is contained in **Appendix 8**. Members must consider all the evidence and then decide from the following alternatives:
- Take no further action as they do not consider it proportionate to do so
 - Impose conditions (including altering existing permissions) that relate to problems which they consider have been identified and which are necessary and proportionate to ensure that the licensing objectives are met
 - Suspend the licence for a period
 - Revoke the licence completely
- 8.3 The licence should only be suspended or revoked if Members believe that alterations to the existing licence, including imposing new conditions does not have a reasonable prospect of ensuring that the licensing objectives are met.
- 8.4 Members should bear in mind that conditions may not be imposed for any purpose other than to meet the licensing objectives.
- 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.

9.0 Legal Comments

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

10.0 Finance Comments

10.1 There are no financial implications in this report.

11.0 Appendices

Appendix 1	Copy of the review application
Appendix 2	Police review evidence
Appendix 3	Premises Licence
Appendix 4	Maps of the premises and surrounding area
Appendix 5	Representations from Licensing Authority
Appendix 6	Representations from Health & Safety
Appendix 7	Representations from Environmental Protection
Appendix 8	Guidance issued under Section 182 by the Home Office for reviews
Appendix 9	Guidance Issued by the Home Office under Section 182 of the Licensing Act 2003 concerning Crime and Disorder
Appendix 10	London Borough of Tower Hamlets Licensing Policy in relation to the prevention of Crime and Disorder
Appendix 11	Guidance Issued by the Home Office under Section 182 of the Licensing Act 2003 concerning Public Safety