

Committee : Licensing Sub-Committee	Date 29 June 2021	Classification Unclassified	Report No.	Agenda Item No.
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Report of: David Tolley Head of Environmental Health & Trading Standards Originating Officer: Lavine Miller-Johnson Licensing Officer	Title: Licensing Act 2003 Application for a Premises Licence for Trade 47 Commercial Street, London E1 6BD Ward affected: Spitalfields and Banglatown
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1.0 Summary

Applicant: **Commercial street Limited**

Name and Trade

Address of Premises: **47 Commercial Street**
London
E1 6BD

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

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

Representations: **Licensing Authority (RA)**

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

- Guidance Issued under Section 182 of the Licensing Act 2003
- Tower Hamlets Licensing Policy
- File

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3.0 **Background**

3.1 This is an application for a premises licence for (Trade) 47 Commercial Street, London E1 6BD.

3.2 The applicant has described the premises as *Cafe business selling wines, beers and cocktails*

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 – (Onsales only)

- *Monday to Saturday, from 09:00 hrs to 23:30 hrs*
- *Sundays from 09:00 to 21:00 hours*

The opening hours of the premises

- *Monday to Saturday, from 07:00 hrs to 23:30 hrs*
- *Sunday, from 09:00 hrs to 21:00 hrs*

4.0 **Location and Nature of the premises**

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

4.2 Map showing the vicinity and Brick Lane CIZ area 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 relevant representations have been made by the following:
- Licensing Authority acting as a Responsible Authority (See **Appendix 5**).
- 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
 - Environmental Protection (Noise)
 - 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.
- 6.7 The applicant has responded to the representations made by the responsible authorities and the responses is included in **Appendix 6**.

- 7.0 Conditions consistent with Operating Schedule (offered by the applicant)**
- 7.1 All staff shall be suitably trained for their job function for the premises. The training shall be written into a programme ongoing and under constant review and shall be made available to a relevant responsible authority when called upon.
- 7.2 A properly specified and fully operational CCTV system shall be installed, operated and maintained. The system shall incorporate a camera covering each of the entrance doors and be capable of providing an image which is regarded as 'identification standard' of all persons entering and/or leaving the premises. The CCTV system shall be in operation at the premises at all times when the premises are used for the provision of licensable activity
- 7.3 The CCTV system shall incorporate a recording facility and all recordings shall be securely stored for a minimum of 31 days. The CCTV system shall be maintained and fully operational throughout the hours that the premises is open for any licensable activity
- 7.4 Signage indicating that a CCTV recording system is in operation shall be displayed prominently in the premises.
- 7.5 A premises daily register shall be kept at the premises. This register shall be maintained and kept for a rolling period of 12 months. The register shall record the name of the person responsible for the premises on each given day. The register shall record all incidents which may have occurred which are relevant to the supply of alcohol and the promotion of the licensing objectives. Such incidents shall include complaints made to the premises alleging nuisance or anti-social behaviour by persons attending or leaving the premises. The register shall also record all refusals to sell alcohol. The register shall be readily available for inspection by an authorised person upon reasonable request.
- 7.6 The premises licence holder shall join any Pubwatch or similar organisation where active.
- 7.7 No person shall be allowed to leave the premises whilst in the possession of any glass drinking vessel or open glass bottle, whether empty or containing any beverage.
- 7.8 The premises licence holder shall ensure that a suitable fire risk assessment and emergency plan is in place at all times.
- 7.9 An adequate and appropriate supply of first aid equipment and materials shall be available on the premises.

- 7.10 No accumulation of combustible rubbish, dirt, surplus material or stored goods shall be permitted to remain in any part of the premises except in an appropriate place and of such quantities so as not to cause a nuisance, obstruction or other safety hazard.
- 7.11 Signage requesting customers to be respectful of others when entering or leaving the premises shall be installed in a prominent position by the premises' exit.
- 7.12 Patrons smoking outside the premises shall be monitored regularly.
- 7.13 The premises' frontage shall be regularly monitored to keep it clean and clear of litter.
- 7.14 Arrangements shall be put in place to ensure that waste collection contractors do not collect refuse between 19:00 and 07:00.
- 7.15 Signage requesting customers to be respectful of others when entering or leaving the premises shall be installed in a prominent position by the premises' exit.
- 7.16 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 a Proof of Age card carrying a 'PASS' logo.
- 7.17 All occasions when persons have been refused service shall be recorded in the premises daily register.
- 7.18 There shall be no children unaccompanied by a responsible adult on the premises after 21:00.
- 7.19 All children under the age of 12 years shall be accompanied by an adult whilst on the premises

8.0 Conditions agreed with the Responsible Authorities

- 8.1 Loudspeakers shall not be located in the entrance lobby or outside the premise building.
- 8.2 Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
- 8.3 No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a public nuisance.

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 - 15** 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 and Brick Lane CIZ
Appendix 4	Other licensed venues in the area
Appendix 5	Representation of Licensing Authority (RA)
Appendix 6	Applicant’s response

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 public nuisance
Appendix 10	Section 182 guidance on public nuisance
Appendix 11	Licensing Officer comments on crime and disorder
Appendix 12	Section 182 guidance on crime and disorder
Appendix 13	Planning
Appendix 14	Licensing Policy relating to hours of trading
Appendix 15	Tower Hamlets Cumulative Impact Zone