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| Committee : Licensing Sub-Committee | Date 15 July 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 (Italian Graffiti Food Centre) 124 – 126 Brick Lane, London E1 6RU Ward affected: Spitalfields and Banglatown |
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1.0 Summary

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| Applicant: | Mr Azmal Mert Hussain |
| Name and | Italian Graffiti |
| Address of Premises: | 124 – 126 Brick Lane London E1 6RU |
| Licence sought: | Licensing Act 2003 – premises licence <ul style="list-style-type: none"> • The sale by retail of alcohol (on sales) • The provision of late night refreshment |
| Representations: | Licensing Authority (RA) Environmental Protection Team Police Licensing |

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 (Italian Graffiti Food Centre) 124 – 126 Brick Lane, London E1 6RU.

3.2 The applicant has described the premises as:

“The premises is situated in a shopping parade with residential flats above the premises. The premises was licensed to sell alcohol and late night refreshment. The previous occupier was the applicant’s tenant and the premises licence was under the tenant’s company name. The company has lapsed as a result of that premises licence has cancelled”.

3.3 Members may wish to note that the previous licence holder “DS Cocoa House Ltd” (The Director being Fatou Mendy) dissolved on 15 November 2019 and therefore the licence effectively lapsed at that time. Section 50 of the Licensing Act 2003 makes provision to reinstate the licence within 28 day period, however this time period has also lapsed.

3.4 For members’ information only, the licensable activities and times of the lapsed licence which was for the ground floor only were:

The sale by retail of alcohol (on sales)

- *Monday to Sunday, 11:30 hrs to 01:30 hrs the following day*

The provision of late night refreshment

- *Monday to Sunday, from 23:00 hrs to 02:00 hrs the following day*

The provision of regulated entertainment (Recorded Music only)

- *Monday to Sunday, 11:30 hrs to 02:00 hrs the following day*

The opening hours of the premises

- *Monday to Sunday, 10:00 hrs to 02:00 hrs the following day*

3.5 A copy of the new premises licence application form is enclosed as **Appendix 1**. The licensable activities and timings that have been applied for the ground floor (including rear external area) and the basement floor are as follows:

The sale of by retail of alcohol (on sales)

- *Monday to Sunday, 11:30 hrs to 02:30 hrs the following day*

The provision of late night refreshment - Indoors

- *Monday to Sunday, from 23:00 hrs to 03:00 hrs the following day*

The opening hours of the premises

- *Monday to Sunday, 11:00 hrs to 03:30 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 Protection Team
(See **Appendix 6**).
- Police Licensing Team
(See **Appendix 7**).

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.

7.0 Conditions consistent with Operating Schedule (offered by the applicant)

7.1 *Training shall be provided to all to ensure a good knowledge and awareness of the prevention of crime and disorder.*

7.2 *All staff shall have sufficient knowledge on who is allowed and who is not by law to purchase alcoholic drinks.*

7.3 *CCTV Shall be installed and the recorded materials shall be retained and stored in a suitable and secure manner for a minimum of 31 days. A system shall be in place to maintain the quality of the recorded image and a complete audit trail. The system shall comply with the relevant legislation. CCTV shall be operational during the opening hours. Recordings and images shall be available on request for the Police and other responsible authorities.*

7.4 *The outside of the premises shall be kept tidy, any spillages shall be cleaned.*

- 7.5 *No drinks, bottled drinks or food shall be allowed to be consumed in front of the premises.*
- 7.6 *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 *Signage shall be displayed at prominent locations in the premises highlighting the sales of alcohol will not be made to persons under the age of 18 or persons purchasing on behalf of persons under 18 years of age.*
- 7.8 *The Designated Premises Supervisor (DPS) and Premises Licence Holder shall instigate ongoing training for all staff in relation to the legislation governing underage sales, proxy purchasing and the "Challenge 25" and ID policy"*
- 7.9 *The DPS and PLH shall ensure that a Refusals Book is maintained and kept at the premises at all times.*
- 7.10 *There shall be a member of staff available at all times to monitor the alcohol sales area to prevent underage alcohol sales.*

Members may wish to note that in addition to the CCTV condition, the following conditions were also attached to the previous lapsed licence:

- 7.11 *The premises will not knowingly allow any person, by payment or otherwise, to solicit custom for that premises by offering inducements or other concessions*
- 7.12 *No persons under the age of 18 will be allowed on the premises after 23:00 hrs*
- 7.13 *No music or amplified sound shall be generated on the premises to give rise to a nuisance to neighbouring residents (recorded music has not been applied for with this application).*
- 7.14 *No external areas to be used for the consumption of either food or alcohol.*
- 7.15 *No person shall be employed to solicit for custom or be permitted to solicit for custom for business for the premises in any public place within a 500 metres radius of the premises.*

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 8 - 14** 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

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| 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 EP Noise Team |
| Appendix 7 | Representation of Police Licensing |
| Appendix 8 | Licensing Officer comments on noise while the premise is in use |
| Appendix 9 | Licensing Officer comments on access/egress Problems |
| Appendix 10 | Licensing Officer comments on crime and disorder on the premises |
| Appendix 11 | Licensing Officer comments on crime and disorder from patrons leaving the premises |
| Appendix 12 | Planning |
| Appendix 13 | Licensing Policy relating to hours of trading |
| Appendix 14 | Tower Hamlets Cumulative Impact Zone |