

Committee: Licensing Sub-Committee	Date 14 September 2021	Classification Unclassified	Report No.	Agenda Item No.
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Report of: David Tolley Head of Environmental Health and Trading Standards Originating Officer: Mohshin Ali Senior Licensing Officer	Title: Licensing Act 2003 Application for a variation of a premises licence for (La Luna Italian Pizza & Deli) Unit E, 43a Commercial Street, London E1 6BD Ward affected: Spitalfields and Banglatown
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1.0 Summary

Applicant:	J Cuisine Limited
Name and Address of Premises:	La Luna Italian Pizza & Deli Unit E 43a Commercial Street London E1 6BD
Licence sought:	Licensing Act 2003 - variation <ul style="list-style-type: none"> To add and extend the times for the provision of late night refreshment
Representations:	Licensing Authority (Responsible Authority) Environmental Health Noise Team Other persons (residents)

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 variation of a variation of a premises licence for La Luna Italian Pizza & Deli which was previously known as Sakana Sushi at Unit E, 43a Commercial Street, London E1 6BD.

3.2 A copy of the existing licence is enclosed as **Appendix 1**. The timings are as follows:

The sale by retail of alcohol (on sales only)

- *Sunday to Thursday from 11:30 hours to 22:30 hours*
- *Friday and Saturday from 11:30 hours to 23:00 hours*

The opening hours of the premises

- *Sunday to Thursday from 11:30 hours to 23:00 hours*
- *Friday and Saturday 11:30 hours to 23:30 hours*

3.3 A copy of the variation application is enclosed as **Appendix 2**. The applicant has described the variation as follows:

“We have added our take away service in our business. Therefore, we want to extend our late night refreshment hours to 02:00 hrs. Our delivery personnel, will collect the hot food for delivery only. No eating/dining, or public collection will be allowed. ”

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

The sale by retail of alcohol (On sales only)

- *Sunday to Thursday from 11:30 hours to 22:30 hours (No change)*
- *Friday and Saturday from 11:30 hours to 23:00 hours (No change)*

The provision of late night refreshment (Outdoors)

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

The opening hours of the premises

- *Sunday to Thursday, from 07:00 hrs to 23:00 hrs*
- *Friday and Saturday, from 07:00 hrs to 23:30 hrs*

4.0 **Location and Nature of the premises**

4.1 Maps of the venue are included as **Appendix 3**.

4.2 Photographs showing the vicinity are included as **Appendix 4**.

4.3 Details of the nearest licensed venues are included as **Appendix 5**.

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 (RA) - **(Appendix 6)**
 - Environmental Health Noise Team - **(Appendix 7)**
 - Alex Gordon Shute (resident) - **(Appendix 8)**
 - John and Sandy Critchley (residents) - **(Appendix 9)**
- 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 Department
 - 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 objections 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 the applicant has not explained how within the context of the application they will meet the licensing objective(s), particularly 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.

7.0 Conditions consistent with Operating Schedule

- 7.1 The following are conditions are contained within the existing premises licence:

Annex 3 - Conditions attached after a hearing by the licensing authority

1. *The supply of alcohol at the premises shall only be to a person seated taking a meal there and for consumption by such a person as ancillary to their meal*
2. *CCTV – The CCTV system shall incorporate a recording facility and any recording 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 maintained. The system will comply with other essential legislation and all signs as required will be clearly displayed. The system will be maintained and fully operational throughout the hours that the premises is open for any licensable activity. There must be someone on the premises who can download the images and present them on request by Police Officer or other Responsible Authority. Cameras will be appropriately sited throughout and at the entrance to the premises.*
3. *An incident book shall be kept at the premises, and made available to the Police or authorised Council Officers which will record:*
 - a. crimes reported,*
 - b. lost property,*
 - c. all ejections of customers,*
 - d. any complaints received,*
 - e. any incidents of disorder,*
 - f. any seizure of drugs or offensive weapons,*
 - g. any faults in the CCTV,*
 - h. any refusal in the sale of alcohol,*

- i. any visit by a Responsible Authority or Emergency Service,*
4. *Notices will be prominently displayed at entry and exit doors and point of sales advising customers:*
- a. to respect the needs of local residents and leave the area quietly*
 - b. to respect the needs of local residents when smoking outside and use the area quietly*
5. *A Challenge 25 Scheme shall operate to ensure that any person attempting to purchase alcohol who appears to be under the age of 21 shall provide documented proof that he/she is over 21 years of age. Proof of age shall only comprise a passport, a photo card driving licence, an EU/EEA national ID card or similar document, or an industry approved proof of age photo identity card with an official hologram.*
6. *All staff will be trained on induction and be given refresher training to appropriately undertake the sale of alcohol and their role in the operation of Challenge 25 Scheme. Training will include identifying persons under 25 making a challenge, acceptable proof of age and checking it, making and documenting refusals, avoiding conflict and responsible alcohol retailing;*
7. *Records of staff training are to be kept and provided to the Police or Responsible Authorities upon request.*
- 8.0 Conditions in consultation with the responsible authorities/other person**
- 8.1 No additional conditions
- 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.

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>

- 9.2 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.
- 9.3 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 (See 6.2). 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.
- 9.4 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)
- 9.5 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.
- 9.6 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 9.7 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.
- 9.8 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)

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

9.10 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 existing licence
Appendix 2	A copy of the variation application
Appendix 3	Maps of the venue
Appendix 4	Photographs showing vicinity of the venue
Appendix 5	Details of nearest licensed venues
Appendix 6	Representation of Licensing Authority (RA)
Appendix 7	Representation of Environmental Health Noise Team
Appendix 8	Representation of Alex Gordon Shute
Appendix 9	Representation of John and Sandy Critchley
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