

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub-committee	28 September 2021	Unclassified		

Report of: David Tolley Head of Environmental Health and Trading Standards Originating Officer: Lavine Miller-Johnson Licensing Officer	Title: Licensing Act 2003 Application for a premises licence variation for Pure La Cucina 96 Brick Lane E1 6RL Ward affected: Spitalfields and Banglatown
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1.0 Summary

Applicant: **Mr Salah Uddin Kader Rubel**

Name and **Pure La Cucina**

Address of Premises: **96 Brick Lane**
London
E1 6RL

Licence sought: **Licensing Act 2003 – To Extend Late Night Refreshment Hours**

Representations: **Residents**
Environmental Health

2.0 Recommendations

2.1 That the Licensing Committee considers the application and objections 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

File Only

Lavine Miller-Johnson
02073642665

3.0 **Background**

- 3.1 This is an application for a premises licence within the Brick Lane CIZ area for **Pure La Cucina 96 Brick Lane E1 6RL**
- 3.2 A copy of the premises licence application is enclosed as **Appendix 1**.
- 3.3 A copy of the existing premises licence is enclosed as **Appendix 2**
- 3.4 The hours applied for the premises are as follows:

Late Night Refreshment

Monday – Sunday from 23:30 hours to 03:00 hours (the following day)

Supply of Alcohol

No change to the current hours on the premises licence

Hours Open to the Public

Monday – Sunday from 12:00 hours to 03:00 hours

- 3.5 The applicant has described the nature of the variation as: To extend the late-night refreshment on Monday to Sunday, until 03:00 hours the following day. Additional hours are for food only (not alcohol) No customers will be allowed into the premises, just delivery drivers.
- 3.6 They also seek to amend condition 3 of annex 2 from *There shall be no collection or deliveries between 23:00 and 07:00*, to read *There shall be no collection or deliveries between 03:00 hours and 07:00 hours*.

4.0 **Location and Nature of the premises**

- 4.1 Photographs of the venue and immediate vicinity are included as **Appendix 3**
- 4.2 Maps showing the vicinity and CIZ map 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 2013.
- 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 All representations have to meet basic legal and administrative requirements. If they fail to do so they cannot be accepted. When rejected the person sending in the representation must be written to, and an explanation for rejection given in writing
- 6.2 A responsible authority or other person can make a representation. There are two tests for other persons and only one for a responsible authority. The two tests are contained in Section 18 of the Act.
- 6.3 All representations must be "about the likely effect of the grant of the premises licence on the promotion of the licensing objectives." Likely means something that will probably happen, i.e. on balance more likely than not.
- 6.4 Representations by responsible authorities do not have to meet the second test of not being vexatious and frivolous. Other persons have to meet this test.
- 6.5 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 6.6 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 6**.
- 6.7 All the representations in this report have been considered by the relevant officer (Team Leader Licensing & Safety) and determined to have met the requirements of the Licensing Act 2003.
- 6.8 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following responsible authorities and local residents:
- **Environmental Health Appendix 7**
 - **John & Sandy Critchley Appendix 8**
 - **SPIRE Residents Association Appendix 9**

- 6.9 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
 - Noise
 - Trading Standards
 - Child Protection
 - Public Health
- 6.10 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
- 6.11 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 objectives, particularly the prevention of public nuisance.
- 6.12 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.
- 6.13 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

1. The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of the Tower Hamlets Police Licensing Team. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Viewing of recordings shall be made available immediately upon the request of Police or authorised officer throughout the entire 31 day period.

2. There shall be signs displayed in the customer area to advise that CCTV is in operation,
3. An incident log shall be kept at the premises, and be available on request to the Police or an authorised officer. It must be completed within 24 hours of any incident and will record the following:
 - a) all crimes reported to the venue;
 - b) all ejections of patrons;
 - c) any complaints received concerning crime and disorder
 - d) any incidents of disorder;
 - e) all seizures of drugs or offensive weapons;
 - f) any faults in the CCTV system, searching equipment or scanning equipment;
 - g) any visit by a relevant authority or emergency service.
4. There must also be someone on the premises who can download the images and present them immediately on request by a police or other regulatory authority.
5. The premises licence holder or the DPS or any person who controls the premises or any persons concerned in the management of the premises shall not cause or permit a person to solicit for custom for the premises in any street or public place.
6. Clear signage to be placed in the restaurant windows stating that the premises support the Council's No Touting Policy.
7. Alcohol sold on the premises in open containers shall only be consumed on the premises
8. In the event that a serious assault is committed on the premises (or appears to have been committed) the management will immediately ensure that:
 9. the police (and, where appropriate, the London Ambulance Service) are called without delay
10. The premises licence holder shall provide training for all staff to ensure that they are familiar with all means of ingress and egress and the appropriate procedures in case of any emergencies that require an immediate evacuation of the premises. A record of training shall be maintained and shall be available upon request an authorised officer of the Licensing Authority or the Police.
11. Waste materials shall not be placed in the external bins between 23:00 hours and 07:00 hours the following day.
12. There shall be no collection or deliveries between 03:00 hours and 07:00 hours

13. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and business and leave the area quietly.
14. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly.
15. Noise from plant and equipment noise from ventilation, refrigeration or air conditioning plant or equipment shall not cause nuisance to the occupants of any properties in the vicinity.
16. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.
17. A direct telephone number for the manager at the premises shall be publicly available at all times the premises is open. This telephone number is to be made available to residents and businesses in the vicinity.
18. After 23:00 hours children under the age of 12 will be required to be accompanied by an adult.

8.0 Conditions agreed in consultation with responsible authorities:

None

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 (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.

9.3 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.” It is a key mechanism 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.” (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)
- ❖ It is not acceptable for licensing authorities to simply replicate the wording from an applicant’s operating schedule. A condition should be interpreted in accordance with the applicant’s intention (10.5)

- ❖ The Licensing Authority may only impose such conditions as are necessary for meeting the licensing objectives.
 - ❖ It is Government policy that facilities for people and performers with disabilities should be provided at places of entertainment.
 - ❖ “The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities.” (10.11)
 - ❖ 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)
 - ❖ 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. This may be unlawful under current law. However, it is important to note that the mandatory conditions made under sections 19A and 73B of the 2003 Act prohibit a number of types of drinks promotions where they give rise to a significant risk to any one of the four licensing objectives (10.21).
 - ❖ 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)
- 9.4 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 “Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.” (2.21)
- 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- 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 in the representations.

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.

Appendices

Appendix 1	A copy of the premises licence application
Appendix 2	A copy of the existing premises licence
Appendix 3	Photographs of the venue and immediate vicinity
Appendix 4	Maps showing vicinity of venue & Brick Lane CIZ
Appendix 5	Details of nearest licensed venues
Appendix 6	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 7	Representation from Environmental Health
Appendix 8	Representation from resident
Appendix 9	Representation from Resident Association
Appendix 10	Licensing Officer comments on Public Nuisance
Appendix 11	S182 advice on Public Nuisance
Appendix 12	Licensing Policy relating to hours of trading
Appendix 13	Licensing Policy on the CIZ
Appendix 14	Planning