

Committee : Licensing Sub-Committee	Date 22 February 2022	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 (Oval Cafe) 11-12 The Oval, London E2 9DU Ward affected: Bethnal Green West
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1.0 Summary

Applicant:	Illumination Venues Limited
Name and	Oval Cafe
Address of Premises:	11- 12 The Oval London E2 9DU
Licence sought:	Licensing Act 2003 – premises licence <ul style="list-style-type: none"> • The sale by retail of alcohol (on sales only) • The provision of regulated entertainment • The provision of late night refreshment
Representations:	Met Police

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 (Oval Cafe) 11-12 The Oval, London E2 9DU.

3.2 The applicant has described the premises as follows:
“Events Space and Cafe”. The applicant has also stated: *The previous Premises Licence in respect of these premises (26838) lapsed and therefore this application mirrors the previous Premises Licence.*

3.3 The previous licence has been included for members information only (Please see **Appendix 1**).

3.4 A copy of the premises licence application form is enclosed as **Appendix 2**.

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

The sale by retail of alcohol – (on sales only)

- *Monday to Wednesday, from 12:00 hrs to 00:00 hrs (midnight)*
- *Thursday to Saturday, from 12:00 hrs to 04:00 hrs the following day*
- *Sunday, from 12:00 hrs to 02:00 hrs the following day*

The provision of late night refreshment - Indoors

- *Monday to Wednesday, from 23:00 hrs to 00:00 hrs (midnight)*
- *Thursday to Saturday, from 23:00 hrs to 05:00 hrs the following day*
- *Sunday, from 23:00 hrs to 02:00 hrs the following day*

The provision of regulated entertainment – Indoors

(Recorded music)

- *Thursday, from 23:00 hrs to 04:00 hrs the following day*
- *Friday and Saturday, from 23:00 hrs to 06:00 hrs the following day*
- *Sunday, from 23:00 hrs to 02:00 hrs the following day*

Non-standard timings

- *New Year’s Eve, above licensable activities from 08:00 hrs to 03:00 hrs on New Year’s Day.*

The opening hours of the premises

- *Monday to Wednesday, from 08:00 hrs to 00:30 hrs the following day*
- *Thursday, from 08:00 hrs to 04:00 hrs the following day*
- *Friday and Saturday, from 08:00 hrs to 06:00 hrs the following day*
- *Sunday, from 08:00 hrs to 02:00 hrs the following day*

4.0 Location and Nature of the premises

4.1 The site plan of the venue is included as **Appendix 3**.

- 4.2 Maps and photos 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. It was last revised in November 2021.
- 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:
- Met Police Licensing
(See **Appendix 6**).
- 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 party 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 and public safety.

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 premises will be seated only and supervised by a floor manager at all times and with a S.I.A supervisor after 21:00 until close.*

7.2 *A CCTV camera system covering both internal and external to the premise is to be installed.*

a. The CCTV recordings are to be maintained for 31 days and to be provided upon request to either a Police Officer or an officer of any other Responsible Authority.

b. A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained.

c. The system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity.

d. At all times the premises is open, a person who can operate the CCTV system must be present on the premises who can download the images and present them immediately on request by a police officer or other responsible authority.

7.3 *That an incident report book be kept and record all incidents of crime and disorder associated with the premises.*

7.4 *At times when this premises operates with the (Pickle Factory), 14 The Oval, London E2 9DT then following Pickle Factory Conditions shall apply.*

- a. Any private hire shall be internally risk assessed in advance.
- b. Cab service shall be offered to all guests leaving the building.
- c. Deliveries shall take place Monday to Saturday, from 08:00 hours to 19:00 hours and Sundays, from 09:00 hours to 12:00 hours.
- d. SIA staff shall be deployed in a pattern and numbers agreed by the DPS and the Police.
- e. Toilets shall be checked at least every 30 minutes at peak times to detect and discourage drug use during events. Records of these checks shall be kept.
- f. A barricade is to be used outside the entrance to the venue when events are on to facilitate the effective queuing of people wishing to gain entry.
- g. All members of Management and Staff shall be briefed in 'Challenge 25' and 'Don't Do Drunk' Policies with the related paperwork acknowledged and signed. This also applies to all new starters and trial shift applicants.
- h. An incident book shall be kept and maintained every day the premises is open.
 - i). The book shall contain the names and SIA numbers of security staff, their time on duty and time off duty.
 - ii). The book shall also record any refusals of entry, refusals of sale of alcohol and any incidents of disorder, incidents of crime or other incidents of note.
 - iii). The book shall be signed off by the duty manager at the end of each day.
- i. To be a member of the local "pub watch" and to send representatives to all meetings.
- j. All flat surfaces in the toilet areas shall be removed or covered over to prevent and deter drug use. Toilet seat covers shall be removed from all toilets.
- k. All security shall wear their identification badges and high visibility tabards clearly marked "Security".
- l. A joint strategy between the Oval and the Pickle Factory for managing customers arriving and leaving their respective venues shall be completed and agreed by Police.

m. Prominent notices will be placed throughout the venue asking customers to mind their property and report any suspicious incidents.

n. Safety checks will be carried out monthly prior to opening and all incidents will be recorded in a log book which will be available for inspection by authorised officers.

o. Floor staff will be allocated tasks around the venue to be completed every 15 minutes to ensure no trip hazards are present.

p. All sweeps of the venue will be recorded in a nightly log.

q. Prominent signs will be displayed to ensure guests are quiet leaving the venue.

r. Front of house staff will monitor guests entering or leaving the venue to ensure moderate behaviour.

s. Bottling out from premises will be forbidden between the hours of 22:00:09:00

t. A challenge 25 policy shall be in operation. A log shall be kept of all challenges made by staff.

7.5 Deliveries shall be only from 08:00hrs to 19:00hrs Monday to Saturday.

7.6 No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance

7.7 A Noise Limiter must be fitted to the musical amplification system set at a level determined by and to the satisfaction of an acoustic consultant who is a member of the Institute of Acoustics so as to ensure that no noise nuisance is caused to local residents or businesses.

a. The operation panel of the noise limiter shall then be secured by a key or password to the satisfaction of the acoustic consultant and access shall only be by persons authorised by the Premises Licence Holder.

b. No alteration or modification to any existing sound system(s) should be effected without prior agreement with an acoustic consultant.

c. No additional sound generating equipment shall be used on the premise without being routed through the sound limiter device.

7.8 A 'Challenge 25' policy will be operated at the premises.

7.9 The café shall be strictly adults only after 18:00hrs..

8.0 Conditions in consultation with the Responsible Authorities

- 8.1 A Challenge 25 Policy has been agreed with Trading Standards (See **Appendix 7**)

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 2022 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

Appendix 1	A copy of the previous lapsed licence
Appendix 2	A copy of the application
Appendix 3	Site Plan
Appendix 4	Maps of the surrounding area
Appendix 5	Other licensed venues in the area
Appendix 6	Representation of Police Licensing
Appendix 7	Condition agreed with Trading Standards
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	Licensing Officer comments on public safety
Appendix 13	Planning
Appendix 14	Licensing Policy relating to hours of trading