

Committee: Licensing Sub-Committee	Date 7 th June 2022	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 (Rapha Racing Cycle Club, Cafe & Store), Spitalfields Market, 61-63 Brushfield Street, London E1 6AA Ward affected: Spitalfields and Banglatown
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1.0 Summary

Licence holder:	OSM Ltd
Name and Address of Premises:	(Rapha Racing Cycle Club) Spitalfields Market 61-63 Brushfield Street London E1 6AA
Licence sought:	Licensing Act 2003 - variation <ul style="list-style-type: none"> • To update the plan of the premises and • extend the times for the sale of alcohol
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

- 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 (Rapha Racing Cycle Club, Cafe & Store), Spitalfields Market, 61-63 Brushfield Street, London E1 6AA.

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

Sale by retail of alcohol - On sales only

- *Monday to Sunday, from 11:00 hours to 21:00 hours*

***The provision of regulated entertainment – Indoors
(Films only)***

- *Monday to Sunday, from 08:00 hours to 21:00 hours*

The opening hours of the premises

- *Monday to Sunday, from 08:00 hours to 21:30 hours*

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

“To update the plan and to extend on sales Monday to Sunday until 23:00.”

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

Sale by retail of alcohol - On sales only

- *Monday to Sunday, from 11:00 hours to 23:00 hours*

The opening hours of the premises

- *Monday to Sunday, from 08:00 hours to 23:30 hours*

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 1st November 2018 with an update on the CIZ policy 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:

- Licensing Authority (RA) - **(Appendix 6)**
- Environmental Health Noise Team - **(Appendix 7)**
- Anthony de Jasay - **(Appendix 8)**
- Andrew Wheeler - **(Appendix 9)**
- Alan Williams - **(Appendix 10)**
- Barra Little - **(Appendix 11)**
- Joel & Julia Chan - **(Appendix 12)**
- John and Sandy Critchley - **(Appendix 13)**
- Lucinda de Jasay- **(Appendix 14)**
- Rose Sheldon (SMRA) - **(Appendix 15)**
- Randall Thiel (SPIRE) - **(Appendix 16)**

- 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 2 - Conditions consistent with the operating Schedule

1. *A full CCTV system shall be maintained and operated at the premises with cameras positioned both internally and externally.*
2. *Recorded CCTV images will be maintained and stored for a period of twenty-eight days and shall be produced to the Police or Licensing Authority upon request.*
3. *CCTV will be in operation at any time a person is in the premises. Where CCTV is recorded onto a hard drive system, any DVDs subsequently produced will be in a format so it can be played back on a standard PC or DVD player.*
4. *Any person left in charge of the premises must be trained in the use of any such CCTV equipment, and be able to produce CCTV images to an officer from a responsible authority upon request.*
5. *Alcohol shall not be removed from the premises, save for consumption in any delineated external area as shown on the plan attached to the licence.*
6. *Staff will be trained in the laws relating to under age sales, and that training shall be documented and repeated at 6 monthly intervals.*
7. *A refusals book will be maintained at the premises, and made available to an officer of a responsible authority upon request.*

8. *A first aid box will be available at the premises at all times.*
9. *The premises shall maintain an Incident Log and public liability insurance.*
10. *The exterior of the building shall be cleared of litter at regular intervals.*
11. *Notices will be positioned at the exits to the premises requesting customers to leave in a quiet manner.*
12. *A "Challenge 21 Policy shall be implemented in full and appropriate identification sought from any person who appears to be under the age of 21. The only acceptable forms of ID are photographic driving licences, passports, HM forces warrant cards, EU/EEA national ID card or similar document or a form of identification with the "PASS" hologram.*
13. *Any outside area used by customers wishing to dine, drink or smoke shall be clearly delineated and covered by the CCTV system which will be installed at the premises.*
14. *The outside area shall be monitored by staff when it is in use. The area will be cleaned regularly.*
15. *Suitable receptacles shall be provided for smokers to dispose of cigarette butts.*
16. *Signs will be displayed in the area requesting customers keep noise to a minimum.*
17. *Customers shall not be permitted to take alcohol beyond the boundary of the outside area.*
18. *The supply of alcohol at the premises shall only be to a person seated taking a table meal there and for consumption by such a person as ancillary to their meal.*
19. *There shall be no vertical drinking at the premises.*
20. *No noise generated on the premises shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.*
21. *A direct telephone number for the premises shall be available at all times and shall be made available to residents in the vicinity.*

8.0 Conditions in consultation with the responsible authorities/other person

- 8.1 There is correspondence between the applicant and the Licensing Authority (RA) where additional conditions were offered. At the time of writing this report it was not clear if the Licensing Authority had agreed to the conditions (See **Appendix 17**).

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.

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 18 - 24** 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
Appendices 8-16	Representation of residents
Appendix 17	Additional conditions
Appendix 18	Licensing Officer comments on noise while the premise is in use
Appendix 19	Licensing Officer comments on access/egress problems
Appendix 20	Licensing Officer comments on crime and disorder on the premises
Appendix 21	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 22	Planning
Appendix 23	Licensing Policy relating to hours of trading
Appendix 24	Tower Hamlets Cumulative Impact Zone