

Committee :	Date	Classification	Report No.	Agenda Item No.
<b>Licensing Sub Committee</b>	22 September 2022	<b>Unclassified</b>		

Report of : <b>David Tolley</b> <b>Head of Environmental Health &amp; Trading Standards</b>  Originating Officer: <b>Lavine Miller-Johnson</b> <b>Licensing Officer</b>	Title: <b>Licensing Act 2003 Application for variation of a Premises Licence for The Breakhouse Café Unit 17 Bloc River Bank 455 Wick Lane London E3 2TB</b>  Ward affected: <b>Bow West</b>
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## 1.0 Summary

Applicant: **The Breakhouse Ltd**

Name and Address of Premises: **The Breakhouse Café Unit 17 Bloc River Bank 455 Wick Lane London E3 2TB**

Licence sought: **Licensing Act 2003 - Variation to Premise Licence**

Objectors: **Residents, Ward Councillor**

## 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

Section 182 guidance  
Licensing Policy  
File

Lavine Miller-Johnson  
020 7364 2665

### 3.0 **Background**

3.1 This is an application for a variation of the premises licence for 'The Breakhouse Café Unit 17 Bloc River Bank 455 Wick Lane London E3 2TB

3.2 The existing Premise Licence was issued on 13<sup>th</sup> April 2021 following a licensing subcommittee and a copy is enclosed as **Appendix 1**.

3.3 The timings of the existing licence are detailed below for information purposes only:-

*The sale by retail of alcohol*

- Monday to Sunday from 12:00 hours to 23:00 hours

*Opening hours*

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

3.4 The applicant has described the nature of the variation as follows:

1. To permit off sales for delivery or off-site catering
2. Amend condition 8 in Annex 3 to permit the external area to be used until 23:00 hours
3. To replace condition 3 in Annex 3 with the following condition "Substantial food shall be available throughout the premises at all times."
4. To permit supply of alcohol on the premises from 09:00 hours subject to the following condition "The supply of alcohol between 09:00 hours and midday shall only be ancillary to a meal.
5. " To add films as a licensable activity between 12:00 hours and 23:00 hours everyday.

3.5 A copy of the variation application is enclosed as **Appendix 2**.

### 4.0 **Location and Nature of the premises**

4.1 Photographs of the venue and immediate vicinity are enclosed in **Appendix 3**.

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

4.3 Nearby Licensed Premises are shown in **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 1<sup>st</sup> 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](http://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 received. The application has also received supporting representations

<b>Representation</b>	<b>Appendix</b>
Michael Dover	7
David Griffiths	8
Cllr Rachel Blake	9
<b>Supporting Representation</b>	
Felix Borrelli	10
Louis Mustill	11
Liam Phillips	12
Nicole Warmerdam	13
Robert Woods	14
Annelise Sealy	15
Natalie & Adam Tinley	16
Amy Smith	17
Julian Gascoigne	18

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 (Environmental Health)
- Trading Standards
- Child Protection
- Public Health
- Immigration

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 The objections cover allegations of

- Public nuisance
- Anti - social behaviour
- Protection of children from harm

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 on existing Premises Licence: Annex 3 – Added following a licensing subcommittee on 13<sup>th</sup> April 2021**

1. There shall be no off sales of alcohol.
2. The premises shall ensure that customers do not take or consume open containers of alcohol off the premises.
3. 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.
4. Loudspeakers shall not be located in the entrance lobby or outside the premise building.
5. All windows and external doors shall be kept closed after 21:00 hours, or at any time when regulated entertainment takes place, except for the immediate access & egress of persons.
6. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
7. No idling of vehicles, being either patron or delivery vehicles outside the premise whilst premise is in operation.
8. The external area shall not be used after 21:00 hours, except for patrons permitted to temporarily leave and then re-enter the premises, e.g. to smoke, and shall be limited to 10 persons at any one time. Any person temporarily leaving the premises shall not be permitted to take drinks outside.
9. No noise generated on the premises, or by its associated plant or equipment, shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.

10. 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.
11. A staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open. This staff member must be able to provide a Police or authorised council officer copies of recent CCTV images or data with the absolute minimum of delay when requested.
12. There shall be a personal licence holder on duty on the premises at all times when the premises are authorised to sell alcohol.
13. When the designated premise supervisor is not on the premises any or all persons authorised to sell alcohol will be authorised by the designated premises supervisor in writing. This shall be available on request by the Police or any authorised officer.
14. 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) any faults in the CCTV system, searching equipment or scanning equipment;
  - f) any refusal of the sale of alcohol;
  - g) any visit by a relevant authority or emergency service.
15. In the event that a serious assault is committed on the premises (or appears to have been committed) the management will immediately ensure that:
  - a) the police (and, where appropriate, the London Ambulance Service) are called without delay;
  - b) all measures that are reasonably practicable are taken to apprehend any suspects pending the arrival of the police;
  - c) the crime scene is preserved so as to enable a full forensic investigation to be carried out by the police; and
  - d) such other measures are taken (as appropriate) to fully protect the safety of all persons present on the premises.

16. The licence holder shall enter into an agreement with a hackney carriage and/or private carriage firm to provide transport for customers, with contact numbers made readily available to customers who will be encouraged to use such services.
17. Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.
18. A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of the refused sale and the name of the member of staff who refused the sale. The record shall be available for inspection at the premises by the police or an authorised officer at all times whilst the premises is open.

### **Conditions consistent with Operating Schedule**

1. Amend condition 8 in Annex 3 to permit the external area to be used until 23:00 hours
2. The supply of alcohol between 09:00 hours and midday shall only be ancillary to a meal.
3. Substantial food shall be available throughout the premises at all times

### **8.0 Conditions agreed in consultation with the responsible authorities**

#### **Conditions agreed Environmental Protection – Appendix 21**

- Agreed to reduce the external area hours from 23:00 hour to 22:00 hours

### **9.0 Licensing Officer Comments**

9.1 The following is intended 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.

### **9.2 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)
- ❖ 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.
- ❖ 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)
- 9.3 The Licensing Act 2003 permits children of any age to be on the premises which primarily sell alcohol providing they are accompanied by an adult. It is not necessary to make this a condition.
- 9.4 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 9.5 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.
- 9.6 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)

- 9.7 The Council's Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 9.8 In **Appendices 22 - 28** 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

<b>Appendix 1</b>	A copy the existing licence
<b>Appendix 2</b>	A copy of the application for variation
<b>Appendix 3</b>	Photographs
<b>Appendix 4</b>	Maps of the surrounding area
<b>Appendix 5</b>	Nearby licensed premises
<b>Appendix 6</b>	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
<b>Appendix 7-18</b>	Resident representation and support
<b>Appendix 19</b>	Objector and solicitor mediation
<b>Appendix 20</b>	Councillor Blake and applicant mediation
<b>Appendix 21</b>	Agreement with Environmental Protection
<b>Appendix 22</b>	S182 advice re public nuisance
<b>Appendix 23</b>	Licensing Policy advice on public nuisance
<b>Appendix 24</b>	Anti-social behaviour when leaving premises
<b>Appendix 25</b>	Section 182 Protection of Children from Harm
<b>Appendix 26</b>	Licensing Policy advice on Protection of Children from Harm
<b>Appendix 27</b>	Framework hours
<b>Appendix 28</b>	Planning