

Committee: Licensing Sub-Committee	Date 27 October 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 (Vout-O-Reenees), the Crypt of 30 Prescott Street London E1 8BB Ward affected: Whitechapel
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1.0 Summary

Licence holder:	Sophie Parkin
Name and Address of Premises:	(Vout-O-Reenees), the Crypt of 30 Prescott Street London E1 8BB
Licence sought:	Licensing Act 2003 - variation • Extend the times for the sale of alcohol
Representations:	Other persons

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 (Vout-O-Reenees), the Crypt of 30 Prescott Street London E1 8BB.
- 3.2 A copy of the existing licence is enclosed as **Appendix 1**. The licensable activities and timings are as follows:

The sale by retail of alcohol (on sales only)

- Monday to Thursday 14:00hrs to 00:00hrs (midnight)
- Friday and Saturday 14:00hrs to 01:00hrs (the following day)

Late Night Refreshment

- Monday to Thursday 23:00hrs to 00:30hrs hrs the following day
- Friday and Saturday 23:00hrs to 01:30hrs (the following day)

Regulated Entertainment in the form of Films (indoors)

- Monday to Saturday 12:00hrs (midday) to 23:00hrs
- Sunday 14:00hrs to 21:00hrs

Regulated Entertainment in the form of Live Music (indoors)

- Monday to Saturday 12:00hrs (midday) to 23:00hrs
- Sunday 13:00hrs to 21:30hrs

The opening hours of the premises

There are no restrictions on the hours during which this premises is open to the public

- 3.3 A copy of the variation application is enclosed as **Appendix 2**. The applicant has described the variation as to extend until 2am on Friday and Saturday.
- 3.4 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 14:00hrs to 00:00hrs (midnight)
- Thursday, from 14:00hrs to 01:00hrs (the following day)
- Friday, 14:00hrs to 02:00hrs (the following day)
- Saturday 13:00hrs to 02:00hrs (the following day)

The provision of Late Night Refreshment - Indoors

- Monday to Thursday 23:00hrs to 00:30hrs hrs the following day (No change)
- Friday and Saturday 23:00hrs to 01:30hrs (the following day) (No change)

Regulated Entertainment in the form of Films (indoors)

- Monday to Saturday 12:00hrs (midday) to 23:00hrs (No change)
- Sunday 14:00hrs to 21:00hrs (No change)

Regulated Entertainment in the form of Live Music (indoors)

- *Monday to Saturday 12:00hrs (midday) to 23:00hrs (No change)*
- *Sunday 13:00hrs to 21:30hrs (No change)*

Regulated Entertainment in the form of Recorded Music (indoors)

- *Tuesday and Wednesday, from 17:00 hrs to 00:00hrs (midnight)*
- *Thursday, from 17:00 hrs to 01:00hrs (the following day)*
- *Friday and Saturday 17:00hrs to 02:00hrs (the following day)*

The opening hours of the premises

- *Monday to Wednesday from 14:00hrs to 00:00hrs (midnight)*
- *Thursday, from 14:00hrs to 01:00hrs (the following day)*
- *Friday, 14:00hrs to 02:00hrs (the following day)*
- *Saturday 13:00hrs to 02:00hrs (the following day)*

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 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:
 - The Flame of Love Praying Group London - **(Appendix 7)**
 - David Cleghorn - **(Appendix 8)**
- 6.9 The Licensing Authority has considered the advice and redacted the representations accordingly.
- 6.10 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)

- 6.11 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
- 6.12 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.
- 6.13 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.
- 6.14 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. *Applicants must have their name and address prominently displayed on the premises in a part frequented by members for at least 48 hours*
2. *The premises will have a committed anti-drug attitude. Anyone found to be taking drugs will face immediate expulsion;*
3. *The premises will provide taxis for customers upon request;*
4. *Notices to be displayed telling customers leaving to be quiet and considerate;*
5. *A CCTV camera system will be operational both inside and out; (See updated condition below)*
6. *A doorman will be employed during any parties;*
7. *No children are permitted during licensed hours.*

Additional condition offered by the licence holder:

8. *No members of the general public can gain entry to the premises. Invited guests only and all must sign a register on entry.*

8.0 Conditions in consultation with the responsible authorities/other person

- 8.1 The following conditions have been agreed with the Licensing Authority (RA) - (See **Appendix 9**).

1. *When the designated premise supervisor or a personal licence holder is not on the premises, any or all persons authorised to sell alcohol will be fully trained on the sales of alcohol and authorised by the designated premises supervisor in writing. This shall be available on request by the Police or any authorised officer.*
2. *In reference to the training mentioned in condition 1 above, all staff whose responsibilities include the retail sale of alcohol shall receive training about the prevention of underage sales on induction and then a refresher training session every 3 months thereafter every 6 months. This training shall be recorded and the records to be available on request to the Police or any authorised officer. The training to include:*
 - a. *the operation of the challenge 25 scheme;*
 - b. *types of acceptable ID;*
 - c. *the method of recording challenges;*
 - d. *the likely consequences of making an underage sale;*
 - e. *Reasons for refusal and updating the refusals log;*
 - f. *proxy sales.*
3. *Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.*

- 8.2 The following conditions have been agreed with the Police - (See **Appendix 10**).

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. 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.

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, any refusal of the sale of alcohol;
- g) any visit by a relevant authority or emergency service.

4. A Challenge 25 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.

5. 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 must show the outcome of the person who was intoxicated. 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.

6. The premises shall have a written dispersal policy which details how the premises will disperse their customers so as not to cause noise nuisance to local residents. This policy is to be made available to Police or any relevant authority upon request.

7. The premises shall have no promoted electronic dance music events.

8.3 The following conditions have been agreed with the Environmental Protection - (See **Appendix 11**).

1. All windows and external doors shall be kept closed after 22:00 hours, or at any time when regulated entertainment takes place, except for the immediate access and egress of persons.

2. Loudspeakers shall not be located in the entrance lobby or outside the premises building.

3. The premises license holder shall ensure that music and/or patrons sound is not audible at the nearest noise sensitive premises.

4. There shall be no more than seven smokers to be allowed to smoke outside the premise at any one time. No more than two guests at any one time will be allowed to smoke outside after 22:00 hours.

5. No alcohol shall be allowed to be consumed in the outdoor area.

6. No collections of waste or recycling materials (including bottles) from the premises shall take place between 22:00 hours and 08:00 hours on the following day.

7. No deliveries to the premises shall take place between 22:00 hours and 08:00 hours the following day.

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 2023 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.
- 10.0 In **Appendices 12 - 17** 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.

11.0 **Legal Comments**

- 11.1 The Council’s legal officer will give advice at the hearing.

12.0 **Finance Comments**

- 12.1 There are no financial implications in this report.

13.0 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	Home Office concerning relevant, vexatious and frivolous representations
Appendix 7	Representation of The Flame of Love Praying Group London
Appendix 8	Representation of David Cleghorn
Appendix 9	Agreed conditions with Licensing Authority (RA)
Appendix 10	Agreed conditions with Police
Appendix 11	Agreed conditions with Environmental Protection
Appendix 12	Licensing Officer comments on noise while the premise is in use
Appendix 13	Licensing Officer comments on access/egress problems
Appendix 14	Licensing Officer comments on crime and disorder on the premises
Appendix 15	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 16	Planning
Appendix 17	Licensing Policy relating to hours of trading