

Committee: Licensing Sub Committee	Date 22 November 2022	Classification Unrestricted	Report No.	Agenda Item No.
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Report of: David Tolley Head of Environmental Health & Trading Standards	Title: Licensing Act 2003 Application for a new Premise Licence for Havens Yard Ltd Arch 410 Haven Mews St Pauls Way, London E3 4AG
Originating Officer: Lavine Miller-Johnson Licensing Officer	Ward affected: Mile End

1.0 **Summary**

Applicant: **Havens Yard Ltd**

Name and Address of Premises: **Havens Yard Ltd
Arch 410 Haven Mews St Pauls Way
London
E3 4AG**

Licence sought: **Licensing Act 2003
Supply of Alcohol**

Objectors: **Licensing Authority
Metropolitan Police**

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
Section 182 Guidance
LBTH Licensing Policy

Lavine Miller-Johnson
020 7364 2665

3.0 **Background**

- 3.1 This is an application for a new Premise Licence for Havens Yard Ltd at Arch 410 Haven Mews St Paul's Way London E3 4AG
- 3.2 The applicant has described the premises as: restaurant/bar selling gourmet burgers, high quality cocktails and craft beers.
- 3.3 A copy of the application is shown in **Appendix 1**.
- 3.4 The hours applied for are as follows:

Supply of Alcohol (on and off sales)

Monday to Thursday from 11:00 hours 23:30 hours
Friday to Saturday from 11:00 hours to 00:00 (midnight)
Sunday from 11:00 hours to 22:30

Opening times

Monday to Thursday from 11:00 hours to 00:00 hours (Midnight)
Friday to Saturday from 11:00 hours to 00:30 hours
Sunday from 11:00 hours to 23:00 hours

4.0 **Location and Nature of the premises**

- 4.1 The site plan of the venue is included as **Appendix 2**.
- 4.2 Maps showing the vicinity are included as **Appendix 3**.
- 4.3 Photographs of the premises are included in **Appendix 4**.
- 4.4 Details of other licensed venues in the immediate vicinity 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.
- 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.
- **Licensing Authority – Appendix 7**
 - **Metropolitan Police – Appendix 8**
- 6.9 Correspondence from applicant to the Licensing Authority - **Appendix 9**
- 6.10 Correspondence from applicant to the Metropolitan Police - **Appendix 10**
- 6.11 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
 - Home office (Immigration Enforcement)
- 6.12 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
- 6.13 The objections relate to:
- Public nuisance
 - Crime and disorder
- 6.14 Essentially, the relevant parties oppose the application because the applicant has not explained how within the context of the application they will meet licensing objective of the prevention of public nuisance and the prevention of crime and disorder.
- 6.15 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.
- 6.16 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. Signs will be displayed stating that the premises supports the Councils 'No touting' policy and advising customers that touting is unlawful and dangerous.
2. CCTV will be installed and maintained at the premises. It shall be retained for a minimum of 31 days and will be provided to the police or other responsible authorities upon request.
3. An incident log shall be kept at the premises, which logs all crimes reported to the venue, all ejections of customers, any incidents of crime or disorder and any refusal or sales of alcohol. It shall be provided to the police or other responsible authorities upon request.

4. All sale of alcohol for consumption off the premises (save for those for consumption in the outside area) shall be in sealed containers only and shall not be consumed on the premises.
5. A challenge 25 policy will be in operation at the premises.
6. A zero tolerance to drug policy will be operated at the premises.
7. All staff will be trained in the challenge 25 and drugs policy.
8. At all times the premises is operating, there will be a member of staff who is trained in first aid.
9. All staff will be trained in spotting signs of harassment and when/how to intervene.
10. Windows and doors shall be kept closed at any time when amplified live or recorded music is played, except for the immediate access and egress of persons.
11. A noise limiter must be fitted to the amplification system and will be set at a level agreed with an authorised environmental health officer.
12. Loudspeakers shall not be located in the entrance/exit of the premises or outside the building.
13. The outside area shall be closed at 22:00 hours.
14. Notices shall be prominently displayed at the exit and the outside area requesting patrons to respect the needs of local residents and use/leave the area quietly.
15. Children under the age of 18 years shall not be allowed onto the premises after 22:00 hours.
16. A challenge 25 policy will be operated at the premises.

8.0 Conditions Agreed/Requested by Responsible Authority

Conditions agreed with the Environmental Health Team – Appendix 11

1. All external doors and/or windows 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 after 22:00 hours.

4. No more than five guests at any one time shall be allowed to smoke outside after 22:00 hours.
5. No alcohol can be consumed in the outdoor area after 22:00 hours.
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 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)
- ❖ 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)

- 9.3 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 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)
- 9.7 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 12 - 18** 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 application
Appendix 2	Site Plan
Appendix 3	Maps of the surrounding area
Appendix 4	Photographs of the premises
Appendix 5	Other licensed venues in the area
Appendix 6	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendix 7	Representation from LA
Appendix 8	Representation from Police
Appendix 9	Correspondence from applicant to LA
Appendix 10	Correspondence from applicant to Police
Appendix 11	Conditions agreed with EP
Appendix 12	Licensing Officer comments on public nuisance
Appendix 13	S182 advice on public nuisance
Appendix 14	Licensing Officer comments on crime and disorder
Appendix 15	S182 advice on crime and disorder
Appendix 16	ASB – Access/Egress
Appendix 17	Licensing Policy relating to hours of trading
Appendix 18	Planning