

Committee: <b>Licensing Sub-Committee</b>	Date	Classification <b>Unclassified</b>	Report No.	Agenda Item No.
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Report of: <b>David Tolley</b> <b>Head of Environmental Health and Trading Standards</b>  Originating Officer: <b>Lavine Miller-Johnson</b> <b>Licensing Officer</b>	Title: <b>Licensing Act 2003</b> <b>Application for a variation of a premises licence for Wicked Fish Queens Yard White Post Lane London E9 5EN</b>  Ward affected: <b>Bow East</b>
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## 1.0 Summary

Licence holder:	<b>Wicked Fish LTD</b>
Name and Address of Premises:	<b>Wicked Fish Queens Yard White Post Lane London E9 5EN</b>
Licence sought:	<b>Licensing Act 2003 - Variation</b> <ul style="list-style-type: none"> <li>• <b>Amend hours to Late Night Refreshment</b></li> </ul>
Representations:	<b>Police &amp; Licensing Authority</b>

## 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"> <li>• Guidance Issued under Section 182 of the Licensing Act 2003</li> <li>• Tower Hamlets Licensing Policy</li> <li>• File</li> </ul>		<b>Lavine Miller-Johnson</b> <b>020 7364 2665</b>

### 3.0 **Background**

- 3.1 This is an application for a variation of a premises licence for, Wicked Fish, Queens Yard White Post Lane, London E9 5EN
- 3.2 A copy of the existing licence is enclosed as **Appendix 1**. The licensable activities and timings are as follows:

#### **Late Night Refreshment**

Sunday to Thursday from 23:00 -01:00 HRS

Friday to Saturday from 23:00 - 04:00 HRS

#### **Non-standard timing**

Christmas Eve and New Year's Eve

Christmas Eve and Christmas Day 23:00 hours to 05:00 hours

New Years Eve 23:00 hours to 05:00 hours (the day following), New

Year's Day 23:00 hours to 05:00 hours

#### **The sale of alcohol (on sales only)**

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

#### **The opening hours of the premises**

Sunday – Thursday from 06:00 hours to 01:30 hours

Friday -Saturday from 06:00 hours to 04:30 hours

#### **Non-standard timing**

Christmas Eve and Christmas Day 23:00 hours to 05:00 hours

New Years Eve 23:00 hours to 05:00 hours (the day following), New Year's

Day 23:00 hours to 05:00 hours

- 3.3 A copy of the variation application is enclosed as **Appendix 2**. The applicant has described the variation as, to add the supply of alcohol for consumption on and off the premises. They also apply for the removal and amendment of conditions.
- 3.4 The licensable activities, timings, and condition to be amended have been applied for are as follows:

#### **Late Night Refreshment (indoors and outdoors)**

- Sunday to Thursday from 23:00 hours to 01:00 hours
- Friday to Saturday from 23:00 hours to 05:00 hours

#### **Hours open to the public**

Sunday to Thursday from 05:00 hours to 01:30 hours

Friday to Saturday from 05:00 hours to 05:00 hours (24hrs)

## **Amend the following conditions Annex 2:**

- **Condition 3** - All outside tables and chairs shall be rendered unusable by (00:00) Sunday to Thursday and (03:30) Friday to Saturday.
- Condition 7 - One (1) SIA door supervisor shall be employed on the premises Fridays and Saturdays.

## **Amend the above conditions as follows:**

- **Condition 3** - All outside tables and chairs shall be rendered unusable by (00:00) Sunday to Thursday and 04:30 hours Friday to Saturday.
- Condition 7 - One (1) SIA door supervisor shall be employed on the premises Fridays and Saturdays until 30 minutes after the cessation of licensable activities.

### **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 1<sup>st</sup> 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](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 made by the following:
  - Metropolitan Police (Licensing) - **(Appendix 7)**
  - Licensing Authority – **(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 conditions are contained within the existing premises licence:

### **Annex 2 - Conditions consistent with the current premises licence**

1. 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, searching equipment or scanning equipment;
  - g) any visit by a relevant authority or emergency service.
  
2. In the event that a serious assault is committed on the premises (or appears to have been committed) the management if safe to do so, 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.
3. All outside tables and chairs shall be rendered unusable by (00:00) Sunday to Thursday and (03:30) Friday to Saturday.
  4. Notices shall be prominently displayed at any area used for smoking requesting patrons to respect the needs of local residents and use the area quietly
  5. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.
  6. Three (3) people working at all times at the venue.
  7. One (1) SIA door supervisor shall be employed on the premises Fridays and Saturdays.
  8. Intoxicating liquor shall not be supplied on the premises other than to persons taking table meals there and for consumption by such a person as an ancillary to their meal.
  9. Suitable beverages other than intoxicating liquor (including drinking water) shall be equally available for consumption with or otherwise as an ancillary to meals served on the premises.
  10. No vertical drinking on the premises.
  11. Sales of alcohol will only be made when a personal licence holder is present at the premises.
  12. All Staff members engage, or to be engaged in selling alcohol on the premises shall receive full training pertinent to the Licensing Act, specifically in regard to Age Restricted Sales, and the refusal of sales to persons believed to be under the influence of alcohol or drugs.
  13. All such training is to be fully documented and signed by not only the employee but the person delivering the training. Training records shall be kept at the premises and made available upon request to either the Police Officers or an authorised officer of Tower Hamlets Council.

14. 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 of Tower Hamlets Council at all times whilst the premises is open.
15. 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 driving licence, passport or proof of age card with PASS Hologram.
16. Signage advertising the aforementioned proof of age scheme shall be prominently displayed throughout the premises with a particular emphasis on the alcohol display and the service areas.
17. Spirits will not be sold. It is to be noted that the type of alcohol to be supplied on the premises include; light beer, sparkling and house wines, and prosecco. Spirits will not be sold.

## **8.0 Conditions in consultation with the responsible authorities/other person**

### **8.1 N/A**

## **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 9 - 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.

#### 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

<b>Appendix 1</b>	A copy of the existing licence
<b>Appendix 2</b>	A copy of the variation application
<b>Appendix 3</b>	Map of surrounding area
<b>Appendix 4</b>	Photographs showing vicinity of the venue
<b>Appendix 5</b>	Details of nearest licensed venues
<b>Appendix 6</b>	Home Office concerning relevant, vexatious and frivolous representations
<b>Appendix 7</b>	Representation from The Metropolitan Police (Licensing)
<b>Appendix 8</b>	Representation from the Licensing Authority
<b>Appendix 9</b>	Licensing Officer comments on noise while the premise is in use
<b>Appendix 10</b>	Licensing Officer comments on access/egress Problems
<b>Appendix 11</b>	Licensing Officer comments on crime and disorder on the premises
<b>Appendix 12</b>	Licensing Officer comments on crime and disorder from patrons leaving the premises
<b>Appendix 13</b>	Planning
<b>Appendix 14</b>	Licensing Policy relating to hours of trading