

Committee: <b>Licensing Sub Committee</b>	Date	Classification <b>Unrestricted</b>	Report No.	Agenda Item No.
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Report of: <b>David Tolley Head of Environmental Health &amp; Trading Standards</b>	Title: <b>Licensing Act 2003 Application for a new Premise Licence for Café Brera, 31 Westferry Circus, London, E14 8RR</b>
Originating Officer: <b>Corinne Holland Licensing Officer</b>	Ward affected: <b>Canary Wharf</b>

## 1.0 **Summary**

Applicant: **Republiks Ltd (Alexandru Dina)**

Name and Address of Premises: **Café Brera  
31 Westferry Circus  
London  
E14 8RR**

Licence sought: **Licensing Act 2003  
Sale by retail of Alcohol (on & off sales)  
Provision of regulated entertainment (recorded  
music)**

Objectors: **Residents**

## 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

Corinne Holland  
020 7364 3986

### 3.0 Background

- 3.1 This is an application for a new Premise Licence for Café Brera, 31 Westferry Circus, London, E14 8RR.
- 3.2 The applicant has described the premises as: *Dining area for 40 people with outside seating close to the river.*
- 3.3 This premise was licensed under a different company which went into liquidation on 23/01/23 and therefore the Premise Licence lapsed.
- 3.4 For information purposes only the previous licence had the following licensable activities and hours:

*The sale by retail of alcohol (on and off sales)*

- *Monday to Saturday, from 10:00 hours to 00:00 hours (midnight)*
- *Sunday, from 12:00 hours to 23:00 hours*

*The provision of late-night refreshment (Indoors and outdoors)*

- *Monday to Saturday, from 23:00 hours to 00:00 hours (midnight)*
- *Sunday, from 23:00 hours to 23:30 hours*

*The provision of regulated entertainment (Recorded Music only)*

- *Monday to Sunday, from 00:00 hours to 00:00 hours (24 hours)*

*Non-standard timings*

- *New Year's Eve – from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day*

- 3.5 A copy of the application is shown in **Appendix 1**.
- 3.6 The hours applied for are as follows:

**Sale of Alcohol (on & off sales)**

Monday – Sunday 11:00 hours – 23:00 hours (reduction to 22:30 hours in agreement with the police)

**Recorded Music (indoor & outdoor)** (Outdoor withdrawn in agreement with EH)

Monday – Sunday 07:00 hours – 23:00 hours

**Opening Hours**

Monday – Sunday 07:00 hours – 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 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 July 2023.
- 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 50**

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:

Kevin Bell	Appendix 6
Ralph Hebgren	Appendix 7
Debra Wood	Appendix 8
Mr & Mrs Abraham	Appendix 9
Ms A Jezard & Dr A Steel	Appendix 10
John Dillon	Appendix 11
Paul Garratt	Appendix 12
Javier Caldeiro & Carmen Montanel	Appendix 13
Satvinder Sohanpal	Appendix 14
Jonathan Alvin	Appendix 15
Alia Alkhudairi	Appendix 16
Mr Naseer Al-Khudairi	Appendix 17
Rosemary Bischoff	Appendix 18
Jeffery Drew & Ann Davies	Appendix 19
Paul Hillman & C. Ahrens-Hillman	Appendix 20
Alastair Newton	Appendix 21
Gavin Opperman	Appendix 22
Cheng Sen Lim	Appendix 23
Natasha Gardiner	Appendix 24
Matthew Goucher & Susan Robinson	Appendix 25
Wendy Carpenter	Appendix 26
Karen Moss	Appendix 27
Arvind Vashisht	Appendix 28
Mrs B Liddiard	Appendix 29
Andreas Immel	Appendix 30
Richard Moss	Appendix 31
John Wilkes	Appendix 32
Geoff Denton	Appendix 33
Kamal & Roger Gardiner	Appendix 34
Coleman Yau	Appendix 35
Chai Hui	Appendix 36
Dr Geoff Andrews	Appendix 37
Xavier Bastin	Appendix 38
Henrica Vlot	Appendix 39
Dr Johan Bastin	Appendix 40
Charles Michel	Appendix 41
Giles Beale & Kirsty Garrett	Appendix 42
Chew Ting Teck & Koh Helen	Appendix 43
Myrna Metheringham	Appendix 44
Julie Davey	Appendix 45
Josephine Swaby	Appendix 46

6.9 The applicants communicated with the residents in an attempt to mediate with them. Their letter/email can be seen in **Appendix 47**.

6.10 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)

6.11 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 The objections relate to:

- Public nuisance
- Crime and Disorder/ASB
- Public Safety
- Protection of children from harm

6.13 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.

6.14 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.

6.15 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** (these have been superseded by agreed conditions with responsible authorities)

1. To have CCTV system in place
2. To keep a refusal/incident book
3. Challenge 25
4. To have fully trained staff who would sell alcohol.

**8.0 Conditions Agreed/Requested by Responsible Authority**

**Conditions agreed with the police – Appendix 48**

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. 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.
4. 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:
  - all crimes reported to the venue;
  - all ejections of patrons;
  - any complaints received concerning crime and disorder
  - any incidents of disorder;
  - all seizures of drugs or offensive weapons;
  - any faults in the CCTV system, searching equipment or scanning equipment;
  - any refusal of the sale of alcohol;
  - any visit by a relevant authority or emergency service.

5. In the event that a serious assault is committed on the premises (or appears to have been committed) the management will immediately ensure that:
  - the police (and, where appropriate, the London Ambulance Service) are called without delay;
  - all measures that are reasonably practicable are taken to apprehend any suspects pending the arrival of the police;
  - the crime scene is preserved so as to enable a full forensic investigation to be carried out by the police; and
  - such other measures are taken (as appropriate) to fully protect the safety of all persons present on the premises.
6. All sales of alcohol for consumption off the premises shall be in sealed containers only, and shall not be consumed on the premises.
7. Alcohol consumed outside the premises building shall only be consumed by patrons seated at tables.
8. All outside tables and chairs shall be rendered unusable by 21:00 hours each day.
9. 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.
10. 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.
11. The premises licence holder shall ensure that any patrons drinking and/or smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance or obstruction of the public highway.
12. 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.
13. 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.

14. All staff whose responsibilities include the retail sale of alcohol shall receive training about the prevention of underage sales on induction and then every 12 months thereafter/01 times a year. This training shall be recorded and the records to be available on request to the Police or any authorised officer. The training to include:

- the operation of the challenge 25 scheme;
- types of acceptable ID;
- the method of recording challenges;
- the likely consequences of making an underage sale;
- refusing sales to persons who appear to be drunk;
- proxy sales.

15. The outdoor area shall not be used by patrons after 21:00 hours

### **Conditions agreed with Environmental Health – Appendix 49**

1. Loudspeakers shall not be located in the entrance lobby, or outside the premise building nor on internal walls or ceilings and without the use of anti-vibration mounts used for speakers attached to the walls.
2. All windows and external doors shall be kept closed when regulated entertainment takes place, except for the immediate access & egress of persons.
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.
4. No noise shall emanate from the premises nor vibration be transmitted through the structure of the premises, which gives rise to a public nuisance.
5. 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 8 persons at any one time.

## **9.0 Licensing Officer Comments**

9.1 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.

9.2 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.

9.3 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)

9.4 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.

9.5 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”

9.6 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.

9.7 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)

9.8 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.

9.9 In **Appendices 50 - 60** 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 of the application
<b>Appendix 2</b>	Site Plan
<b>Appendix 3</b>	Maps of the surrounding area
<b>Appendix 4</b>	Photographs of the premises
<b>Appendix 5</b>	Other licensed venues in the area
<b>Appendix 6 - 46</b>	Representations from residents
<b>Appendix 47</b>	Mediation letter to residents from applicant
<b>Appendix 48</b>	Conditions agreed with Police
<b>Appendix 49</b>	Conditions agreed with EH
<b>Appendix 50</b>	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
<b>Appendix 51</b>	Licensing Officer comments on public nuisance
<b>Appendix 52</b>	S182 advice on public nuisance
<b>Appendix 53</b>	Licensing Officer comments on crime & disorder
<b>Appendix 54</b>	S182 advice on crime & disorder
<b>Appendix 55</b>	Licensing Officers comments on Public Safety
<b>Appendix 56</b>	S182 advice on public safety
<b>Appendix 57</b>	Licensing Officer comments on protection of children from harm
<b>Appendix 58</b>	S182 advice on protection of children from harm
<b>Appendix 59</b>	Licensing Policy relating to hours of trading
<b>Appendix 60</b>	Planning