

Committee: Licensing Sub-Committee	Date 25 June 2024	Classification Unclassified	Report No.	Agenda Item No.
--	----------------------	---------------------------------------	------------	-----------------

Report of: Tom Lewis Service Manager of Regulatory Services (Commercial) Originating Officer: Lavine Miller-Johnson Licensing Officer	Title: Licensing Act 2003 Application for a variation of a premises licence for Slurp Noodles Spitalfields Ground Floor and Basement 60-62 Commercial Street London E1 6LT Ward affected: Spitalfields and Banglatown
---	---

1.0 Summary

Licence holder: **Slurp Noodles Spitalfields Ltd)**

 Name and Address of Premises: **Slurp Ground and Basement Floor 60-62 Commercial Street London E1 6LT**

 Licence sought: **Licensing Act 2003 - variation**

- **Change Layout**
- **Extend hours for licensable activities**
- **Amend conditions**

 Representations: **Responsible Authorities**

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 		Lavine Miller-Johnson 020 7364 2665

3.0 Background

- 3.1 This is an application for a variation of a premises licence for (Slurp Noodles Spitalfields) Ground Floor and Basement 60-62 Commercial Street London E1 6LT
- 3.2 A copy of the existing licence is enclosed as **Appendix 1**. The licensable activities and timings are as follows:

Ground Floor and Basement Floor

The sale by retail of alcohol

- Monday to Thursday, from 10:00 hours to 23:30 hours
- Friday and Saturday, from 10:00 hours to midnight
- Sunday, from 12:00 hours to 23:30 hours

The provision of late night refreshment (Indoors)

- Sunday to Thursday, from 23:00 hours to 23:30 hours
- Friday and Saturday, from 23:00 hours to midnight

Non-standard timings

- Bank Holidays until midnight

Extension of hours for Basement only

The sale by retail of alcohol

- Monday to Wednesday from 10:00 hours to 23:30 hours
- Thursday to Saturday: 10:00 hours to 01:00 hours
- Sunday: from 12:00 hours to 23:30 hours

The provision of late night refreshment

- Sunday to Wednesday from 23:00 hours to 23:30 hours
- Thursday to Saturday from 23:00 hours to 01:00 hours

- 3.3 A copy of the variation application is enclosed as **Appendix 2**. The applicant has described the variation as:

To convert the premises from a ground floor bar with a basement function room to a ground floor restaurant with a late-night basement cocktail bar for its third site in London. The service of alcohol will be waiter/waitress only throughout the premises with no vertical drinking permitted.

- 3.4 The applicant is also applying to remove the following condition:

*To remove from the Premises Licence from **annex 2 Condition 4** which reads:*

The extended licence is to be exercised in respect of pre-booked parties for the basement floor only. Such parties to be recorded in a book which shall be made available for inspection by any responsible authority.

- 3.5 The licensable activities and timings that have been applied for are as follows:

The Provisions of late night refreshments
(for the basement only indoors and outdoors)

- Sunday to Wednesday from 23:00 hours to 23:30 hours
- Thursday to Saturday from 23:00 hours to 02:30 hours

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

- Monday to Wednesday from 10:00 hours to 23:30 hours
- Thursday to Saturday from 10:00 hours to 02:00 hours
- Sunday, from 12:00 hours to 23:30 hours

Nonstandard timings

Bank Holidays until midnight

The opening hours of the premises (for the basement only)

- Monday to Wednesday from 08:00 hours to 00:00 hours
- Thursday to Saturday from 08:00 hours to 02:30 hours
- Sunday from 12:00 hours to 00:00 hours

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 2023.

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 December 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 8**.
- 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:
 - Mohshin Ali (Licensing) - **(Appendix 6)**
 - Nicola Cadzow (EHO) - **(Appendix 7)**
- 6.9 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 Protection
 - Trading Standards
 - Child Protection
 - Public Health
 - Home Secretary (Home Office Immigration Enforcement)

- 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 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.
- 6.12 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 consistent with Operating Schedule**

7.1 See current premises licence for conditions.

8.0 **Conditions proposed by the applicant**

In addition to the ones already on the premises licence save for the one to be removed.

1. A written dispersal policy shall be in place and implemented at the premises to move customers from the premises and the immediate vicinity in such a way as to cause minimum disturbance or nuisance to neighbours.
2. The capacity of the basement (excluding staff) is 50 persons.
3. The sale of alcohol for consumption on the ground floor of 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. The sale of alcohol shall be to persons seated at the premises, i.e. table service only.
5. No vertical drinking.

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 31st March 2025 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 8 - 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

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	Representation from Licensing Officer
Appendix 7	Representation from Environmental Protection Officer
Appendix 8	Home Office concerning relevant, vexatious and frivolous representations
Appendix 9	Licensing Officer comments on noise while the premise is in use
Appendix 10	Licensing Officer comments on access/egress Problems
Appendix 11	Licensing Officer comments on public nuisance
Appendix 12	S182 advice on public nuisance
Appendix 13	Planning
Appendix 14	Licensing Policy relating to hours of trading