



Licensing Committee

Report title: Bird in Hand - 35 Dartmouth Road, London, SE23 3HN

Date: 8th August 2023

Key decision: No.

Class: Part 1.

Ward(s) affected: Forest Hill

Contributors: Community Services – Safer Communities Service

Outline and recommendations

Determination of variation of a Premises Licence Application submitted on 31st May 2023 by Babel Silk Limited for the premises at 35 Dartmouth Road, London, SE23 3HN.

After having regard to all the representations heard, Members must take such steps as they consider appropriate to promote the Licensing Objectives.

Timeline of engagement and decision-making

This application was advertised in accordance with regulation 25 of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.

The last day for representation was 29th June 2023.

1. Summary

1.1. Particulars of Application

The application is for a variation to the existing premises licence, proposing the following:

- Change the layout and associated plan of the premises on the Ground floor.
- Extension of hours for the following activities:

1.2 Sale of alcohol for consumption On and Off the premises 23:00 – 01:00 Thursday

01:00 – 02:00 Friday
01:00 – 02:00 Saturday

- 1.3 Seasonal variation: (Additional 2 hours on Christmas Eve and New Year's Eve).
Note: This was initially applied for by the applicant but was later agreed by the licensing authority and the applicant to be excluded from the application because the applicant did not include it in their published newspaper advert.

1.4 Annex 2 conditions amendments

(a) Paragraph 3

"Toughened glass shall be used for draft beer and lager at all times the premises are open to the public"

Amend to:

"Toughened glass or similar, such as polycarbonate shall be used for draft beer and lager at all times the premises are open to the public"

(B) Paragraph 8

"Children under the age of 16 shall not be permitted to enter the premises after 19.00".

Amend to:

"Children under the age of 16 shall not be permitted to enter the premises after 21.00"

1.5 Currently Licensed:

Provision of Late Night Refreshment

23:00 – 01:00 Friday

23:00 – 01:00 Saturday

Sale of alcohol for consumption On and Off the premises

09:00 – 23:00 Sunday

09:00 – 23:00 Monday

09:00 – 23:00 Tuesday

09:00 – 23:00 Wednesday

09:00 – 23:00 Thursday

09:00 – 01:00 Friday

09:00 – 01:00 Saturday

Season Variation

New Year's Eve alcohol sales may continue until the start of trading hours on New Year's Day.

- 1.6 Seven representations were received from local residents on the grounds of the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm.
- 1.7 The representations received have been examined by Officers and are not considered to be vexatious or frivolous. The representations were received within the specified time.
- 1.8 Further representations were received from the police and Licensing Authority, but

Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

were later withdrawn following the agreement on a list of conditions with the applicant.

2. Recommendations

2.1 After having regard to all the representations heard, Members must take such steps as they consider appropriate to promote the licensing objectives. The steps available to the Licensing Authority:

- 1.) Grant the variation of the premises licence as applied for
- 2.) Grant the licence subject to conditions modified to such extent as the authority considers appropriate for the promotion of the licensing objectives
- 3.) Exclude from the scope of the licence any of the licensable activities to which the application relates.
- 4.) Refuse to specify a person in the licence as the designated premises supervisor
- 5.) Refuse to grant the application.

2.2 Either party has a right to appeal to the Magistrates Court against a decision which should be submitted to the court within 21 days of the date of the decision letter.

3. Policy Context

3.1. Decisions by Members of the Licensing Committee should have regard to the Licensing Act 2003 and the promotion of the four Licensing Objectives at all times, which are:

- Protection of Children from Harm
- Prevention of Crime and Disorder
- Prevention of Public Nuisance
- Public Safety

3.2. Members should also have regard to the Licensing Authority's Statement of Licensing Policy 2020-25.

3.3. Decisions made will link in with the following objectives under the Council's Corporate Strategy – Building an Inclusive Local Economy and Building Safer Communities.

4. Financial implications

4.1. Applicants have the right to appeal against any decision by the Licensing Committee. Therefore there would likely be costs for the Authority in seeking legal support should an appeal be brought by the applicant.

5. Legal implications

5.1 The Licensing Authority is a public authority under the Human Rights Act 1998. Therefore, the licensing authority is required to act compatibly with the convention rights in the exercise of their functions. Article 6 (1) of the Convention provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial hearing established by law.

5.2 A Premises Licence is a possession for the purpose of the Human Rights Act 1998. The right to hold a licence is a qualified rather than an absolute right. Therefore, the right to hold a licence may be interfered with if it affects the interests of local residents or others. Such interference may be justified if it is necessary and proportionate to promote the licensing objectives.

Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

6. Equalities implications

- 6.1 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 6.2 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 6.3 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation, or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above.
- 6.4 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 6.5 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice". The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless, regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:
- <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>
- <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>
- 6.6 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
- [The essential guide to the public sector equality duty](#)
 - [Meeting the equality duty in policy and decision-making](#)
 - [Engagement and the equality duty: A guide for public authorities](#)
 - [Objectives and the equality duty. A guide for public authorities](#)
 - [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

- 6.7 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

7. Climate change and environmental implications

- 7.1. Any decision made by Members must fall in line with the Licensing Act 2003, to that end there are no climate change or environmental considerations.

8. Crime and disorder implications

- 8.1. Under the Licensing Act 2003, one of the 4 licensing objectives is the Prevention of Crime and Disorder.
- 8.2. It is a requirement of the Licensing Act 2003 that any decision made by the Licensing Committee must not negatively impact on the Licensing objectives.

9. Background papers

- 9.1. Application received 31st May 2023.
- 9.2. Existing premises licence.
- 9.3. Representations from local residents.
- 9.4. Photos of evidence from a resident objector
- 9.5. List of agreed conditions.

10. Glossary

Term	Definition
Appeal	asking a court to overturn a lower court's decision. If the decision of a court is disputed it may be possible to ask a higher court to consider the case again by lodging an appeal.
Licence	an authority to do something.
Licensee	the holder of a licence to do something.
Licensing Authority	The Council (London Borough of Lewisham) Under section 3 of the 2003 Act, the licensing authority's area is the area for which the authority acts.

Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

Licence Objectives	<p>Under section 4 of the 2003 Act the Licensing Authority must promote the following 4 objectives</p> <ul style="list-style-type: none"> • Prevention of crime and disorder • Public safety • Prevention of public nuisance • Protection of children from harm
Interested Person	<p>A person who lives in the vicinity of the premises A body who represents the persons who live in that vicinity A person involved in a business in that vicinity A body representing businesses in that vicinity An elected member of the council</p>
Relevant Representation	<p>A representation that is specific to the premises in question, related to the four licensing objectives and/or the local licensing policy.</p>
Responsible Authorities	<p>Public bodies that must be notified of all applications and who are entitled to make representations in relation to Premises Licences, as follows:</p> <ul style="list-style-type: none"> • Licensing Authority • Chief Officer of Police • London Fire Brigade • Trading Standards • Planning Authority • Public Health • Environmental Enforcement (with respect to Noise) • Children's Services • Home Office Immigration

11. Report author and contact

- 11.1. Kennedy Obazee, Safer Communities Service Officer for Licensing
kennedy.obazee@lewisham.gov.uk.

Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>