



## Licensing Committee

**Report title: Badger Badger 139-135 Deptford High Street SE8 3NU**

**Date:** 16 December 2021

**Key decision:** No.

**Class:** Part 1.

**Ward(s) affected:** Evelyn

**Contributors:** Community Services – Licensing Authority, Head of Law.

### Outline and recommendations

Determination of New Premises Licence Application submitted by Mr James Ross. 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

The Application was advertised in accordance with regulation 25 of the Licensing Act 2003. The last day for representations was 22 November 2021.

This matter must be heard within 20 working days from the day after the last day of representations.

## This is an application for a new premises licence

### 1. Current Licence Status

The premises are currently licensed for the following activities:

#### Sale of Alcohol for consumption on the premises

Monday	09:00 – 23:30
Tuesday	09:00 – 23:30
Wednesday	09:00 – 23:30
Thursday	09:00 – 00:30

Friday 09:00 – 00:30  
Saturday 09:00 – 00:30  
Sunday 09:00 – 23:30

Live Music

Monday 23:00 – 00:00  
Tuesday 23:00 – 00:00  
Wednesday 23:00 – 00:00  
Thursday 23:00 – 01:00  
Friday 23:00 – 01:00  
Saturday 23:00 – 01:00  
Sunday 23:00 – 00:00

Recorded Music

Monday 23:00 – 00:00  
Tuesday 23:00 – 00:00  
Wednesday 23:00 – 00:00  
Thursday 23:00 – 01:00  
Friday 23:00 – 01:00  
Saturday 23:00 – 01:00  
Sunday 23:00 – 00:00

Late Night Refreshment

Monday 23:00 – 00:00  
Tuesday 23:00 – 00:00  
Wednesday 23:00 – 00:00  
Thursday 23:00 – 01:00  
Friday 23:00 – 01:00  
Saturday 23:00 – 01:00  
Sunday 23:00 – 00:00

Seasonal Variation

Licensable activity from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

**2. Application**

2.1 The application for a **new** premises licence was sent to all the Responsible Authorities.

The application is separate to and independent of the existing licence.

The application is for the following activities and times:

**Live Music**

23:00 – 00:00 Monday  
23:00 – 00:00 Tuesday  
23:00 – 00:00 Wednesday  
23:00 – 01:00 Thursday  
23:00 – 02:00 Friday  
23:00 – 02:00 Saturday  
23:00 – 00:00 Sunday

### **Recorded Music**

23:00 – 00:00	Monday
23:00 – 00:00	Tuesday
23:00 – 00:00	Wednesday
23:00 – 01:00	Thursday
23:00 – 02:00	Friday
23:00 – 02:00	Saturday
23:00 – 00:00	Sunday

### **Late Night Refreshment**

23:00 – 00:00	Monday
23:00 – 00:00	Tuesday
23:00 – 00:00	Wednesday
23:00 – 01:00	Thursday
23:00 – 02:00	Friday
23:00 – 02:00	Saturday
23:00 – 00:00	Sunday

### **Sale of Alcohol for consumption on the premises**

09:00 – 23:30	Monday
09:00 – 23:30	Tuesday
09:00 – 23:30	Wednesday
09:00 – 00:30	Thursday
09:00 – 02:00	Friday
09:00 – 02:00	Saturday
09:00 – 23:30	Sunday

### **Seasonal Variation**

Licensable activity from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

- 2.2 Representations were received from one resident within close proximity to the premises primarily on the grounds of prevention of public nuisance. In addition to this, one representation was received from the Deptford Society on the grounds of prevention of public nuisance.
- 2.3 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.
- 2.4 The application for the new premises licence has been advertised in accordance with regulation 25, an advert in a local newspaper and a notice prominently displayed at the premises for a period of 28 consecutive days. The last date for receiving representations was the 22<sup>nd</sup> November 2021.

### **3. Outline of objections received**

- 3.1 The residents have objected primarily on the grounds of prevention of public nuisance. They are mainly concerned that there will be increased noise later into the early hours of the morning.

- 3.2 Current Licensing Policy (2020-2025) designates Deptford as a Local Hub/Centre with preferred closing hours of midnight. The applicant's requested hours for 01:00 on Thursdays (particularly sensitive given that this is a weekday evening with market setup on Friday morning at 06:00) and 02:00 on Fridays and Saturdays far exceeds this.
- 3.3 The proposal for hours to go beyond current licensing policy, as requested, would be intrusive to the sleep of residents and therefore an unacceptable impact on their living conditions. Deptford High Street has a high level of residential occupation with densely populated housing developments within close proximity of the premises.
- 3.4 Preventing regular noise nuisance from occurring for residents in the vicinity of the premises has so far proved problematic, the most common causes being from patrons arriving and leaving the premises, from patrons socialising on the pavement whilst smoking, and from the dispersal of patrons when the business shuts. There is also a concern that traffic along the street will increase during these early hours with patrons waiting for taxis.
- 3.5 Any disturbance which does occur is exacerbated by a lack of ambient noise as well as the acoustics of the unusually narrow high street. Disturbances have been noted just from conversations between door personnel as well as patrons making phone calls.

#### **4. Legal & Human Rights Implications**

- 4.1 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.
- 4.2 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.

#### **5. Equalities Implications**

- 5.1 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.
- 5.2 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.

5.3 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.

5.4 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 Committee, bearing in mind the issues of relevance and proportionality. The Committee 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.

5.5 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>

5.6 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](#)

5.7 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>

**6. Application for the New Premises Licence**

6.1 After having regard to all representations, Members must take such steps as they consider necessary for the promotion of the licensing objectives. The licensing committee may:

- 1.) Grant the new 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.

6.2 An appeal may be made against the decision to the Magistrates Court within 21 days.

Background Papers

Short Title of Document

Date

Application

25 October 2021

Evidence / documents

As dated

Should you require any further information on this report please contact Lisa Spall at Licensing Services on 020 8314 8390.