



Licensing Committee

Report title: Le 5 Terre – 2 Loampit Hill, London, SE13 7SW

Date: 12 April 2022

Key decision: No.

Class: Part 1.

Ward(s) affected: Ladywell

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

Outline and recommendations

Determination of an application for a variation to a Premises Licence submitted by Arpa Food Ltd.

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 17 March 2022.

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

This is an application to vary an existing premises licence

1. Current Licence Status

The premises are currently licensed for the following activities:

Sale by retail of alcohol for consumption on and off the premises

11:00 – 23:00 Monday

11:00 – 23:00 Tuesday

11:00 – 23:00 Wednesday

11:00 – 23:00 Thursday

11:00 – 23:00 Friday
11:00 – 23:00 Saturday
11:00 – 23:00 Sunday

2. Application

2.1 The application to vary the existing premises licence was sent to all the Responsible Authorities.

The application is for the following variations:

2.2 Extend the hours for the sale by retail of alcohol (currently 1100 – 2300hrs daily) to 0500 daily.

2.3 To add late night refreshment (both ON and OFF the premises) 2300 – 0500 daily.

2.4 Two representations were received. Firstly, from the Metropolitan Police on the grounds of prevention of crime and disorder as well as the prevention of public nuisance and secondly the Crime, Enforcement and Regulation team (CER) from Lewisham Council on the grounds of prevention of public nuisance.

2.5 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.

2.6 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 17th March 2022.

3. Outline of objections received

3.1 The Metropolitan Police have objected on the grounds of prevention of crime and disorder as well as the prevention of public nuisance.

3.2 The premises is outside of the established areas for night time economy and is surrounded by residential properties, specifically in Elswick Road. It is suggested that customers and deliveries coming and going until 5am could therefore have a detrimental impact upon the amenity of residents.

3.3 There have been multiple reports of issues made to the Police over the last few years including noise nuisance, anti-social behaviour as well as other suspicious activities. On those occasions where Police have investigated alleged licensing breaches, they have suggested that they have been obstructed by those in control of the premises.

3.4 With this in mind, the Metropolitan Police are unwilling to support the variation of this licence to allow the sale of alcohol and late night refreshment until 5am every day of the week.

3.5 The Council's CER team have also objected on the grounds of prevention of public nuisance.

- 3.6 The premises is situated within an area classed as a District Hub; as such it is the CER teams view that cessation of licensable activities within bars, pubs and restaurants in such a location should be midnight Sunday – Thursday and 01:00 Friday and Saturday, in line with the Statement of Licensing Policy.
- 3.7 It is the concern of the CER team that should the application be granted in the current form, the premises would impact negatively on the local community and generate noise and anti-social behaviour reports, particularly from the dispersal of patrons at closing time.
- 3.8 In addition to this, the CER service have received objections from members of the public who live in close proximity to the premises who have had ongoing noise issues for the last 15 months from the premises. Due to fear of reprisals however, they have not been included within the objection pack for this committee.

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 variation of a 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:

- (a) to modify the conditions of the licence;
- (b) to reject the whole or part of the application.

and for this purpose the conditions of the licence are modified if any of them is altered

or omitted or any new condition is added.

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 for Variation to
Premises Licence

17 February 2022

Evidence / documents

As dated

Should you require any further information on this report please contact Richard Lockett at Licensing Services on 020 8314 3389.