



## Licensing Committee

### **Report title: Aladdin's Cave, 72 Loampit Hill, SE13 7SX**

**Date:** 11 May 2021

**Key decision:** No.

**Class:** Part 1.

**Ward(s) affected:** Brockley

**Contributors:** Community Services – Crime, Enforcement & Regulation Service, Head of Law.

### **Outline and recommendations**

Determination of New Premises Licence Application submitted by Ian Gough and Jonathan Allen.

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 16 April 2021.

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

## **1. Summary**

1.1. The following activities were applied for by the applicant:

### **Alcohol for consumption ON and OFF the premises**

10.00 – 00.00 Monday - Sunday

## **Late night refreshment**

23.00 – 00.00 Monday - Sunday

## **Seasonal Variation**

New Year's Eve 10.00 hours to New Year's Day - terminal hours as proposed

- 1.2. Representations were received from forty-two interested persons on the grounds of public nuisance and public safety. Representations were also received from PC Simon Butler of Metropolitan Police (objection 44) and Frank Olaniran of Lewisham Council's Crime, Enforcement & Regulation Service (objection 12). The representations received from interested parties have been examined by Officers and are considered not to be vexatious or frivolous. These representations were all received within the specified time.
- 1.3. Members may note that some representations refer to photos being supplied alongside the representation made; the Licensing Authority is in receipt of photographic evidence to support these representations but has not published them due to GDPR reasons.

A submission was also received from Siobhan Mangan, Food and Safety Team Manager regarding health and safety concerns identified on a visit to the premises on 19 April 2021 to assess the implications of the application in respect of the Public Safety licensing objective. Advice was given to the applicant on a number of concerns identified, all of which would need to be addressed as a requirement of health and safety legislation. Details of these concerns are outlined in the Appendix. A key concern identified was the condition of the fence separating the licensable area and the railway line. In light of this, the following condition was proposed to the applicant by PC Simon Butler, but has not been agreed by the applicant:

*All fencing to the side of the Premises nearest to the Railway lines must be substantial to ensure Premises cannot access any land owned by the Railway system. Premises staff must ensure this perimeter is secure and any faults to this fencing must be reported to Management immediately and entry made in incident book of any fencing faults, to ensure boundary is re-secured.*

- 1.4. Further conditions were proposed by PC Simon Butler to promote licensing objectives, however these were not agreed by the applicant. Proposed conditions can be found in the appendix.
- 1.5. Frank Olaniran, Crime, Enforcement & Regulation Officer raised an additional concern (representation 12) that the hours applied for may have negative impact on public nuisance. The applicant is applying for use of an outside space until midnight, 7 days a week. Under 12.4 of Lewisham's current Licensing Policy it states:

*It is this licensing authority's view that there be a terminal hour of 22:00 for all outside spaces to close, and in some cases depending on the circumstances and proximity to residents this terminal hour will be 21:00.*

## **2. Recommendations**

- 2.1 After having regard to all the representations heard, Members must take such steps as they consider appropriate to promote the prevention of crime and disorder and public nuisance. The steps available to the Licensing Authority:
  - 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

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- 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 of 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 includes the following:
- 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 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 of 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.

### **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.

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- 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](#)
- 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.

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## 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 the 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 19 March 2021
- 9.2. Four Four Representations as served.
- 9.3. Submission from Siobhan Mangan, Food and Safety Manager
- 9.4. Proposed Conditions by Police Licensing Officer – not agreed by applicant.

## 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.
Licence Objectives	Under section 4 of the 2003 Act the Licensing Authority must promote the following 4 objectives <ul style="list-style-type: none"><li>• Prevention of crime and disorder</li><li>• Public safety</li><li>• Prevention of public nuisance</li><li>• Protection of children from harm</li></ul>
Interested Person	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

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Relevant Representation	A representation that is specific to the premises in question, related to the four licensing objectives and/or the local licensing policy.
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"> <li>• Licensing Authority</li> <li>• Chief Officer of Police</li> <li>• London Fire Brigade</li> <li>• Trading Standards</li> <li>• Planning Authority</li> <li>• Public Health</li> <li>• Environmental Enforcement (with respect to Noise)</li> <li>• Children’s Services</li> <li>• Home Office Immigration</li> </ul>

## 11. Report author and contact

- 11.1. Lisa Hooper, Crime, Enforcement & Regulation Manager,  
[lisa.hooper@lewisham.gov.uk](mailto:lisa.hooper@lewisham.gov.uk), 020 8314 6324.

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