

Committee(s): Licensing Sub-Committee	Hearing Date(s): 14/04/2023	Item no.
Subject	Licensing Act 2003 - Public Hearing in Respect of an Application for the Grant of a Premises Licence	
Name of Premises	Aura	
Address of Premises	Ground Floor, Lower Ground & Basement Floor of the Corn Exchange, 55 Mark Lane, EC3R 7NE	
Report of: Juliemma McLoughlin – Executive Director Environment	Public / Non-Public	
Ward (if appropriate): Tower		

1. Introduction and Purpose

- 1.1. The purpose of this sub-committee is to consider and determine, by public hearing, an application for the grant of a premises licence under the provisions of the Licensing Act 2003, taking into consideration the representations of responsible authorities and other persons, as detailed in paragraph 4, together with policy considerations detailed in paragraph 8 of this report.
- 1.2. The decision of the sub-committee must be made with a view to promoting one or more of the four licensing objectives, namely:
- the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance
 - the protection of children from harm

2. Summary of Application

- 2.1. An application made by:

**NYT Aura Limited
Flat 1, 38 Dudley Road
Tunbridge Wells, Kent
TN1 1LF**

was received by the City of London licensing authority on 03 February 2023 for the grant of a premises licence in respect of the premises:

Aura, Ground Floor, Lower Ground & Basement Floor of the Corn Exchange, 55 Mark Lane, EC3R 7NE

- 2.2. Full details of the application can be seen as Appendix 1.
- 2.3. The 28-day representation period was re-started on February 17th due to late display of the public notice.
- 2.4. The proposed application is to facilitate a premises licence to allow the sale of alcohol, regulated entertainment and late-night refreshment, with the proposed use described as ‘a restaurant use by day, a drinking establishment by evening, and Wednesday to Saturday also as a nightclub’.
- 2.5. The application seeks permission for:
 - a) the sale of alcohol for consumption on and off the premises
 - b) regulated entertainment in the form of live music, recorded music, films, performances of dance, anything of a similar description to live music, recorded music or performances of dance
 - c) the provision of late-night refreshment
- 2.6. The hours applied for each activity in the original application are shown in column 3 of the table below. On 16 March 2023, the applicant informed the Licensing team of an agreed amendment to the application (agreed with the City of London Police) and that the terminal hour for all licensable activities was to be reduced to 02:00. This amendment can be seen as Appendix 1 (a) and is reflected in column 2 of the table overleaf.

<u>Activity</u>	<u>Proposed licence after amendment</u>	<u>Proposed licence in original application</u>
Supply of alcohol for consumption on the premises	Mon–Sun 10:00-02:00	Sun–Tues 10:00-02:00 Weds–Sat 10:00-03:00
Provision of Live Music	Mon–Sun 10:00-02:00	Sun–Tues 10:00-02:00 Weds–Sat 10:00-03:00
Provision of Recorded Music	Mon–Sun 10:00-02:00	Sun–Tues 10:00-02:00 Weds–Sat 10:00-03:00
Provision of Films	Mon–Sun 10:00-02:00	Sun–Tues 10:00-02:00 Weds–Sat 10:00-03:00
Performances of Dance	Mon–Sun 10:00-02:00	Sun–Tues 10:00-02:00 Weds–Sat 10:00-03:00
Anything of a similar description to Live Music, Recorded Music or Performances of Dance	Mon–Sun 10:00-02:00	Sun–Tues 10:00-02:00 Weds–Sat 10:00-03:00
Late Night Refreshment	Mon–Sun 23:00-02:00	Sun–Tues 23:00-02:00 Weds–Sat 23:00-03:00
Opening Hours	Mon–Sun 10:00-02:00	Sun–Tues 10:00-02:00 Weds–Sat 10:00-03:00

3. Deregulation considerations

3.1. The applicant has applied for Live Music and Recorded Music with some part of the hours applied for before 23:00 hours.

3.2. The following sections/paragraphs of the statutory guidance issued under S182 of the Licensing Act 2003 are particularly relevant to this part of the application (revised December 2022):

- a) Paragraph 16.6 - As a result of deregulatory changes that have amended the 2003 Act, no licence permission is required for the following activities:

Live music: when a performance of unamplified live music takes place between 08.00 and 23.00 on any day, on any premises. When a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500, and alcohol is available for sale for consumption on those premises in accordance with the existing premises licence.

Recorded music: any playing of recorded music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500, and alcohol is available for sale for consumption on those premises in accordance with the existing premises licence.

- b) Paragraph 16.36 – Any conditions added on a determination of an application for a premises licence, which relate to live music or recorded music, are suspended between the hours of 08.00 and 23.00 on the same day where the following conditions are met:

at the time of the music entertainment, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises; if the music is amplified, it takes place before an audience of no more than 500 people; and the music takes place between 08.00 and 23.00 on the same day.

3.3. In respect of this application, it can be noted that the proposed sale or supply of alcohol for consumption on the premises is from 10:00 hours until 02:00 hours daily. Whilst not expressed in the application, the venue can potentially accommodate over 500 people, the number to be determined by a fire safety risk assessment. In line with 3.2 above, permission for regulated

entertainment is not required for live unamplified music until 23:00 hours. Permission is not required for live amplified music or recorded music until 23:00 hours subject to an audience of less than 500 persons. Where the audience capacity is more than 500 persons, live amplified music and recorded music is always regulated. Any conditions added on the determination of this application for a premises licence which relate to live or recorded music will remain in place but are suspended before 23:00 hours when the criteria in paragraph 3.2 are met.

4. Representations

Representations from Responsible Authorities

4.1 There are 2 representations from responsible authorities, namely the Police and Environmental Health Pollution team. The representations highlight amendments made and certain conditions they would want to see added (were the licence to be granted) in order to uphold the aims of the licensing objectives - namely prevention of crime & disorder (in respect of the Police representation), and prevention of public nuisance (in respect of the Environmental Health representation).

4.2 The representations can be seen in full as Appendix 2 (a) and 2 (b).

4.3 The attempts at resolution from all sides has resulted in some conditions being agreed, as detailed in paragraph 5 and Appendix 3.

Representations from Other Persons

4.4 There are 15 representations from other persons, all against the granting of the licence on the basis that any licence granted in that location will undermine the licensing objectives of prevention of public nuisance and prevention of crime and disorder.

4.5 The representations can be seen in full as Appendix 2 (c) – 2 (q).

5 Conditions

Conditions drawn from the Operating Schedule

5.1 The operating schedule submitted with the applications suggests steps intended to be taken to promote one or more of the four licensing objectives. Conditions that are consistent with the steps described in the operating schedule and appropriate for the promotion of the licensing objectives can be included on the premises licence. A summary of such conditions is attached as Appendix 3. Where the condition has a similar effect as one from the Corporation's pool of model conditions, this has been indicated in the summary.

Conditions agreed with Responsible Authorities

5.2 During the period for representations conditions were also agreed between the applicant and the City of London Police, and, separately, between the applicant and the City of London Environmental Health Pollution team. These conditions are detailed in Appendix 3.

5.3 Relevant to these agreed conditions is the Door Entry Policy, the Door Control and Dispersal Policy, and the Noise Management Policy. These policies can be seen in full as Appendix 3 (a) – 3 (c).

6 Licensing/Planning History of Premises

6.1 The premises were initially occupied by City Brasserie, a wine bar falling with Class A3. This was followed by Auberge, ostensibly operating as a bar/restaurant, also under Class A3. Auberge vacated the premises circa 2011. The unit remained vacant until 2016 when Evans Cycles (a bicycle store) took possession.

6.2 To be in accordance with the permitted use of the premises, the primary use must be as a retail unit for the display or retail sale of goods, other than hot food, principally to visiting members of the public. So a material change of use requiring planning permission would likely need to be sought before the tenant could use the premises as described in the application.

7 Map and Plans

- 7.1 A map showing the location of the premises, and a document detailing terminal hour for alcohol sales and late-night refreshment, are attached as Appendix 4 (a) and 4 (b).
- 7.2 The plan of the premises can be seen as Appendix 5.

8 Policy Considerations

- 8.1 In carrying out its licensing functions, the Licensing Authority must have regard to its statement of licensing policy and any statutory guidance issued under s 182 of the Licensing Act 2003.

City of London Corporation's Statement of Licensing Policy (2022)

- 8.2 The following pages/sections/paragraphs of the City of London Corporation's Statement of Licensing Policy are particularly applicable to this application.
 - 5.1.1 Pages 15-17 address the licensing objective 'The prevention of crime and disorder' and pages 22-25 address the licensing objective 'The prevention of public nuisance'.
 - 5.1.2 Paragraph 92 states the need to strike a fair balance between the benefits to a community of a licensed venue, and the risk of disturbance to local residents and workers.
 - 5.1.3 Paragraph 92 also states an overriding policy principle namely, that each application will be determined on its individual merits.
 - 5.1.4 Certain aspects of paragraphs 97 – 99 are relevant as they address the need of care when controlling noise from those persons leaving a premises – which can apply equally to staff at the premises.
 - 5.1.5 Paragraph 104 considers various factors that should be taken into account when considering whether any licensable activity should be permitted.
 - 5.1.6 Paragraphs 138-144 (Section 13) state the City of London Corporation's policy on setting conditions which may be applicable dependant on the step(s) taken by members as stated in paragraph nine of this report.

Statutory Guidance

- 8.3 The following sections/paragraphs of the statutory guidance issued under S182 of the Licensing Act 2003 are particularly applicable to this

application (revised December 2022):

- 5.1.7 Chapter 2 of the guidance covers the four licensing objectives. In particular, paragraph 2.15 states that it is, ‘...*important that in considering the promotion of [the public nuisance licensing objective, licensing authorities] focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable.*’ Also, paragraph 2.16 indicates that the prevention of public nuisance could, in appropriate circumstances include, ‘*the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises.*’
- 5.1.8 Chapter 10 refers to conditions attached to premises licences with paragraph 10.10 stating that, ‘*Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided.*’ To which is added; ‘*Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.*’

9 Summary

- 9.1 The Licensing Authority has a duty under the Licensing Act 2003 to promote the licensing objectives. Each objective has equal importance. In carrying out its licensing functions, the licensing authority must also have regard to its Statement of Licensing Policy, any statutory guidance under the Licensing Act 2003 and is bound by the Human Rights Act 1998. The City of London Corporation must also fulfil its obligations under section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in the City of London.

10 Options

- 10.1 The Sub-committee must, having regard to the representations, take such of the following steps as it considers appropriate for the promotion of the licensing objectives:
- (a) grant the licence subject to any conditions consistent with the operating schedule modified to such extent as the Sub-committee considers appropriate for the promotion of the licensing objectives and

include the mandatory conditions contained in Ss. 19-21 of the Licensing Act 2003;

(b) exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the designated premises supervisor;

(d) reject the application

For the purposes of paragraph 10.1(a) conditions consistent with the operating schedule are modified if any of them are altered or omitted or any new condition is added

10.2 Where a licensing authority takes one or more of the steps stated in paragraph 10.1 above the applicant, or the holder of the licence and/or a person who made relevant representations in relation to the application, may appeal the decision to the Magistrates' Court. Any appeal must be commenced within 21 days following notification of the decision to the appellant by the licensing authority.

11 Recommendation

11.1 It is therefore RECOMMENDED that your Sub-Committee determine this application for a new premises licence in accordance with paragraph 10 of this report.

Prepared by Robert Breese, Licensing Officer
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Background Papers

<u>BACKGROUND PAPER</u>	<u>DEPT</u>	<u>FILE</u>
Corporation of London Statement of Licensing Policy (revised Jan 2022)	MCP	3rd Floor Guild Hall
Statutory Guidance – 'Revised Guidance Issued Under Section 182 Of The Licensing Act 2003'. (December 2022)		Statutory Guidance