

Item No. 5	Classification: Open	Date: December 1 2008	MEETING NAME Licensing Sub-Committee
Report title:		Licensing Act 2003 – Seone, 41-45 St Thomas Street, SE1 3QX	
Ward(s) or groups affected:		GRANGE	
From:		Director of Environment and Housing	

RECOMMENDATION

1. That the Sub-Committee considers an application by the Commissioner of the Metropolitan Police for a review of the Premises Licence granted under the Licensing Act 2003 to Packspring Ltd in respect of the premises known as: Seone, 41 - 45 St Thomas Street, London SE1 3QX.
2. *Notes*
 - a) *A copy of the Council's approved procedure for hearings of the Sub-Committee in relation to an application made under the Licensing Act 2003, along with a copy of the Hearing Regulations, has been circulated to all parties prior to the meeting.*

BACKGROUND INFORMATION

3. The Licensing Act 2003 (the Act) came into effect on 25 November 2005 the Act's introduction provided a new licensing regime for the retail sale of alcohol; the provision of regulated entertainment; and the provision of late night refreshment.
4. Under the Act a premises user wishing to provide any of the licensable activities listed in paragraph 3 of this report must secure a premises licence from the local licensing authority for the area in which the business concerned is located. Where the retail sale of alcohol is involved a designated premises supervisor holding a Personal Licence issued by the local authority for the area in which that individual lives must be named upon the premises licence.
5. The Premises Licence once issued remains valid for the life of the business unless surrendered or revoked. However, under section 51(1) of the Act it remains open to any responsible authority or interested party to apply to the local licensing authority for a review of the premises licence where there are concerns regarding one or more of the four stated licensing objectives.

MATTERS FOR CONSIDERATION

The Premises Licence

6. On the 2nd August 2005, during the transitional period of the implementation of the Act, an application was made under Schedule 8 by Packspring Ltd for the conversion of an existing Justices On Licence and Public Entertainments Licence (PEL) into a Premises Licence in respect of the premises known as Seone, 41/43 St Thomas Street, SE1 3QX.

7. Under the Licensing Act 2003, the conversion application must in the absence of any police objection, be granted. No police objection was lodged to the conversion application in this case and the licence was duly granted. The converted licence included certain embedded rights to be carried over from the Justices On Licence. These included the provision of private music and dancing entertainment that is promoted for private gain. These also provided for the provision of recorded sound.
8. An application was also made at the same time, to vary the premises licence so as to extend the permitted times for the sale of alcohol, extend opening hours, provision of regulated entertainment and late night refreshment.
9. No representations were lodged to the variation application and it was duly granted. The premises were therefore licensed for -
 - a) The sale of alcohol on each of the days Monday to Wednesday from 10.00hrs to 02.00hrs, on Thursday from 10.00hrs to 03.00hrs, on Friday and Saturday from 10.00 hrs to 06.00hrs and on Sunday from 12.00 hrs to 02.00hrs.
 - b) The provision of regulated entertainment by way of plays, films, music and dancing on each of the days Monday to Wednesday from 09.00 hrs to 03.00hrs, on Thursday from 09.00hrs to 04.00hrs, on Friday and Saturday from 09.00hrs to 08.00hrs and on Sundays from 09.00 hrs to 03.00rs.
 - c) The provision of late night refreshment on each of the days Monday to Wednesday from 23.00hrs to 03.00hrs; on Thursday from 23.00hrs to 04.00hrs; on Friday and Saturday from 23.00hrs to 05.00hrs and on Sundays from 23.00hrs to 03.00hrs.
10. The designated premises supervisor named on the licence is Mr Christopher Hill. He has been the named designated premises supervisor since the licence was granted.

THE APPLICATION FOR A REVIEW OF THE PREMISES LICENCE

11. On the 9th October 2008 an application requesting a review of the Premises Licence issued in respect of the premises was received from The Metropolitan Police Service.

Other Representations Submitted following Advertisement of the Review Application

12. In accordance with the provisions of the Act the application for a review of the Premises Licence was advertised on a post immediately outside of the premises, on the Council's web site and at the Southwark Town Hall. Checks were made to ensure that posters displayed in the street and the premises remained in position. Further representations could be made up until 5pm on the 7th November 2008.
13. The Council's Licensing Unit contacted the Responsible Authorities inviting the Responsible Authorities to submit representations in respect of the review application.

Responsible Authorities

14. The Council's Health and Safety Team submitted a representation in support of the review application.

Interested Parties

15. There has been one representation made by an interested party. It concerns the effect on Crime and Disorder, Public Safety and Public Nuisance that the premises is having on the local vicinity.

THE LOCAL VICINITY

16. A map of the local vicinity is attached as Appendix F. The premises is shown at the centre of the map and has a diamond and its name indicating its position. The circle shown on the map has a radius of 200 metres due to the size of the premises.

- Shunt / London Bridge Vaults – 10-20 Stainer Street, SE1 9RL
Licensed for regulated entertainment TBC

- Kings College London, The Green wood Theatre, Weston Street, SE1 3QL
Licensed for regulated entertainment Sunday – Thursday from 09.00 to 23.00 and Friday and Saturday from 09.00 to 00.00.

- Southwark Playhouse Theatre Company, Arches 947-948, 68-74 Tooley Street, London, SE1 2TF
Licensed for various regulated entertainment, sale of alcohol on the premises Sunday to Thursday from 13.00 to 00.00 and Friday and Saturday from 13.00-01.00.

- Costcutter, 134 Tooley Street, SE1 2TU
Licensed for the sale of alcohol off the premises 24 hours a day every day of the week.

- The Hide, 39-45 International House, Bermondsey Street, London, SE1 3XF
Licensed for the sale of alcohol and recorded music Monday and Tuesday from 08.00m – 00.00, Wednesday and Thursday from 08.00 to 01.00, Friday and Saturday from 08.00 to 02.00 and Sunday from 08.00 to 23.00. Closing times is 30mins beyond the last permitted licensed activity.

- Suchard Freehouse, 2 Crucifix Lane, London, SE1 3JW
Licensed for sale of alcohol on and off the premises from 10.00 to 01.00 on each day of the week. Opening hours are 30 minutes beyond alcohol hours.

- The Rose, 123 Snowsfield, SE1 3ST
Licensed for regulated entertainment and the sale of alcohol on and off the premises Sunday to Thursday from 11.00 to 00.30 and Friday and Saturday from 11.00 to 02.00. Opening hours are 30 mins beyond alcohol hours.

- Mega Pizza and Chicken, 128 Tooley Street, SE1 2TU
Licensed for late night refreshment Sunday to Thursday from 23.00 to 00.00, Friday and Saturday from 23.00 to 02.00.

- The Horseshoe Inn, 26 Melior Street, SE1 3QP
Licensed for regulated entertainment and the sale of alcohol on and off the premises Monday to Saturday from 10.00 to 00.00 and Sundays from 12.00 to 23.00. Opening hours are 30 mins beyond alcohol hours.

- The Greet Wall restaurant, 90 Tooley Street, London, SE1 2TH
Licensed for the sale of alcohol on the premises Monday to Saturday from 11.00 to 00.00 and Sunday from 12.00 to 23.00. Late night refreshment is permitted 30 mins beyond the sate of alcohol.

- Champor-Champor, 62-64 Weston Street, London, SE1 3QJ
Licensed for the sale of alcohol on the premises Monday to Saturday from 11.00 to 00.00 and Sunday from 12.00 to 23.00. Late night refreshment is permitted 30 mins beyond the sale of alcohol.
- International Wine and Spirit Centre, 39-45 Bermondsey Street, London, SE1 3XF
Licensed for the sale of alcohol from 08.00 to 21.00 on each day of the week.
- Jax Club, Arch 4 & 5, Crucifix Lane, London, SE1 3JW
Licensed for regulated entertainment and supply of alcohol on and off the premises from 09.00 to 02.00 the following morning on Mondays, Tuesdays and Wednesdays and Thursdays. 09.00 to 06.00 (5.30 for alcohol) the following morning on Fridays and Saturdays and 09.00 to 22.30. Opening times are permitted for 30mins beyond last licensed activity

17. Other licensed premises in the local vicinity are also shown and named on the map.

SOUTHWARK STATEMENT OF LICENSING POLICY

18. Council Assembly approved the revised Southwark Statement of Licensing Policy on 2 April 2008. Sections of the Statement that are considered to be of particular relevance to this application are

- a) Section 3 which sets out the purpose and scope of the policy and reinforces the four licensing objectives;
- b) Section 4 which sets out the arrangements for the administration, exercise and delegation of functions;
- c) Section 5 which sets out the Council's approach with regard to the imposition of conditions including mandatory conditions to be attached to the licence;
- d) Section 6 details other relevant Council and Government policies, strategies, responsibilities and guidance, including the relevant Articles under the Human Rights Act 1998;
- e) Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours;
- f) Section 8 provides general guidance on ensuring public safety including safe capacities;
- g) Section 9 provides general guidance on the prevention of nuisance; and
- h) Section 10 provides general guidance on the protection of children from harm.

19. The purpose of Southwark's Statement of Licensing Policy is to make clear to applicants what considerations will be taken into account when determining applications and should act as a guide to the Sub-Committee when considering the applications. However, the Sub-Committee must always consider each application on its own merits and allow exceptions to the normal policy where these are justified by the circumstances of the application.

RESOURCE IMPLICATIONS

20. No fee is payable in respect of an application for a licence review.

CONSULTATIONS

21. Consultation undertaken upon this application has been carried out in accordance with the provisions of the Licensing Act 2003. Responses are detailed elsewhere in this report.

EQUAL OPPORTUNITIES IMPLICATIONS

22. Each application is required by law to be considered upon its own merits with all relevant matters taken into account.

SUPPLEMENTAL ADVICE FROM THE DIRECTOR OF LEGAL & DEMOCRATIC SERVICES

23. The Sub-Committee is asked to determine, under Section 52 of the Licensing Act 2003, an application, made under Section 51 of the same act, for a review of premises licence. At any stage, following the grant of a premises licence, a responsible authority or an interested party may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.

PRINCIPLES FOR MAKING THE DETERMINATION

24. The principles, which Sub-Committee members must apply, are set out below.

The licensing authority must hold a hearing to consider an application for review of a premises licence where -

- (a) the application is properly made in accordance with Section 51 of the Act.
- (b) the applicant has given notice in accordance with Section 51(3) of the Act.
- (c) the advertising requirements provided for under Section 51(3) of the Act are satisfied.
- (d) the licensing authority has considered the ground(s) of review not to be frivolous, vexatious or repetitious.
- (e) the licensing authority has considered the ground(s) of review to be relevant to one or more of the licensing objectives.

The four licensing objectives are -

- The prevention of crime and disorder.
- The protection of public safety.
- The prevention of nuisance.
- The protection of children from harm.

Each objective must be considered to be of equal importance

The authority must, having regard to the application and any relevant representations, take such of the following steps as it considers necessary for the promotion of the licensing objectives. The steps are to-

- modify the conditions of the licence by altering, omitting or adding any condition.
- exclude a licensable activity from the scope of the licence.
- remove the designated premises supervisor.
- suspend the licence for a period not exceeding three months.
- revoke the licence.

For the purpose of determining a relevant representation under section 52 of the Act a "relevant representation" means representations which -

- (a) are relevant to one or more of the licensing objectives.
- (b) are made by the holder of the premises licence, a responsible authority or an interested party within the prescribed period
- (c) have not been withdrawn

- (d) if made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority frivolous or vexatious.

Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.

The authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives.

In deciding what remedial action if any it should take, the authority must direct its mind to the causes or concerns that the representations identify. The remedial action should generally be directed at these causes and should always be no more than a necessary and proportionate response.

It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

Reasons

25. Where the authority determines an application for review it must notify the determination and reasons for making it to –
- (a) the holder of the licence.
 - (b) the applicant
 - (c) any person who made relevant representations
 - (d) the chief officer of police for the area (or each police area) in which the premises are situated

HEARING PROCEDURE

26. Subject to the Licensing Hearing regulations, the Licensing Committee may determine its own procedures. Key elements of the regulations are that
- The hearing shall take the form of a discussion led by the authority. Cross-examination shall not be permitted unless the authority considered that it is required for it to consider the representations
 - Members of the authority are free to ask any question of any party or other person appearing at the hearing
 - The committee must allow the parties an equal maximum period of time in which to exercise their rights to
 - Address the authority
 - If given permission by the committee, question any other party.
 - In response to a point which the authority has given notice it will require clarification, give further information in support of their application.
 - The committee shall disregard any information given by a party which is not relevant
 - to the particular application before the committee, and
 - the licensing objectives.
 - The hearing shall be in public, although the committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in private.

- In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

27. This matter relates to the review of a Premises Licence under section 51 of the Licensing Act 2003. Regulation 26(1) (a) requires the Sub-Committee to make its determination at the conclusion of the hearing.

THE COUNCIL'S MULTIPLE ROLES AND THE ROLE OF THE LICENSING COMMITTEE

28. Sub-Committee members will note that, in relation to this application, the Council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the Council as authority responsible respectively for environmental health, trading standards, health, and safety and as the planning authority.

29. Members should note that the Licensing Sub-Committee is meeting on this occasion solely to perform the role of licensing authority. The Sub-Committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the Licensing Law, Guidance, and the Council's Statement of Licensing Policy.

30. As a quasi-judicial body the Licensing Sub-Committee is required to consider the application on its merits. The Sub-Committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant. The Licensing Sub-Committee must give fair consideration to the contentions of all persons entitled to make representations to them.

31. The Licensing Sub-Committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, and working or engaged in normal activity in the area concerned.

32. Members will be aware of the Council's Code of Conduct, which requires them to declare personal and prejudicial interests. The Code applies to Members when considering licensing applications. In addition, as a quasi-judicial body, Members are required to avoid both actual bias, and the appearance of bias.

33. The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case-to-case basis.

34. Under the Human Rights Act 1998, the Sub Committee needs to consider the balance between the rights of the applicant and those making representations to the

application when making their decision. The Sub-Committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the Borough.

35. Interested Parties, Responsible Authorities and the applicant have the right to appeal the decision of the Sub-Committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

GUIDANCE

36. Members are required to have regard to the DCMS Guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

BACKGROUND INFORMATION

Background Papers	Held At	Contact
Licensing Act 2003 DCMS Guidance Secondary Regulations Statement of Licensing Policy Various papers from the premises file.	The Chaplin Centre, Thurlow Street, SE17 2DG	Mrs Kirty Read at the Chaplin Centre Telephone 0207 525 5748

Lead Officer	Gill Davies, Director of Environment & Housing	
Report Author	Rosanna Keogh, Principal Licensing Officer	
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Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Legal & Democratic Services	Yes	Yes
Executive Member	No	No
Date final report sent to Constitutional Support Services	15 th August 2008	