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| <b>Item No.</b><br>6               | <b>Classification:</b><br>Open | <b>Date:</b><br>26 <sup>th</sup> January<br>2008  | <b>Meeting Name:</b><br>Licensing Sub-Committee |
| <b>Report title:</b>               |                                | Licensing Act 2003 – The Leather Exchange,<br>15 Leathermarket Street, SE1 3HN –<br>Variation of a Premises Licence |   |
| <b>Ward(s) or groups affected:</b> |                                | Grange  |   |
| <b>From:</b>                       |                                | Strategic Director of Environment & Housing   |   |

## RECOMMENDATION

1. That the licensing sub-committee considers an application made by Fullers Smith & Turner Plc under section 34 of the Licensing Act 2003 to vary the current premises licence in respect of the premises known as the Leather Exchange, 15 Leathermarket Street, SE1 3HN.
2. Notes:
  - *This application forms an application to vary a premises licence under Section 34 of the Licensing Act 2003. The application is subject of representations from a responsible authority and interested parties and is referred to the sub-committee for determination;*
  - *Paragraphs 12 and 13 of this report provide a summary of the application under consideration (A copy of the full application is provided at appendix B); and*
  - *Paragraphs 14 to 18 of this report deal with the representations received to the application (Copies of the representations are provided at appendices C and E).*

## BACKGROUND INFORMATION

### The Licensing Act 2003

3. The Licensing Act 2003 came into effect on 24 November 2005. The Act established a new licensing regime for the following licensable activities:
  - The sale and supply of alcohol
  - The provision of regulated entertainment; and
  - The provision of late night refreshment.
4. Within Southwark, this council administers the licensing responsibility as licensing authority for the area. The Act requires each licensing authority to carry out its licensing functions (including the determination of licence applications made under the Act) with a view to promoting the four stated licensing objectives. These are:
  - The prevention of crime and disorder;
  - The promotion of public safety;
  - The prevention of nuisance; and
  - The protection of children from harm.
5. While carrying out its licensing functions, a licensing authority must also have regard to:

- The Act itself;
  - The guidance to the Act issued under Section 182;
  - Secondary regulations made under the Act;
  - The Southwark statement of licensing policy;
  - The application, including the operating schedule
  - Relevant representations
6. The Act established a transitional period between 7 February 2005 and 6 August 2005 under which holders of existing justices licences, public entertainment licences and night café licences were able to apply to the local licensing authority for “grandfather rights” conversion of those existing licences into the relevant licences under the new system. Where such application was made licences were converted on existing terms, conditions and restrictions. Following the passing of the last date for conversion applications, new operators wishing to provide one or more of the licensable activities set out above must apply for new licences from the relevant licensing authority.
  7. Applications for new licences are required to be copied to a number of specified “responsible authorities” and to be advertised in the local press and at the premises itself. Responsible authorities and defined “interested parties” are able to lodge representations concerning the applications relevant to the four licensing objectives.
  8. The Act also provides capacity for premises licence holders and club premises certificate holders to apply for a variation of their licence. A similar applications process is followed as that for new licence applications.

### **The premises**

9. The Leathermarket Exchange at 15 Leathermarket Street, SE1, is stated to currently operate as “a traditional public house serving the local community” featuring “a ground floor bar and upstairs function room”.

### **The current licence**

10. Currently Fullers, Smith & Turner Plc hold a premises licence granted under the Licensing Act 2003 in respect of the premises, which provides for the following licensable activities:
  - The sale by retail of alcohol (to be consumed on and off the premises) from 10.00 to 01.00 each day;
  - The provision of regulated entertainment (live and recorded music) from 10.00 to 01.00 each day; and
  - The provision of late night refreshment from 23.00 to 01.00 each day.
11. A copy of the full licence is provided at appendix A. The licence is subject to a range of mandatory and other conditions.

## **KEY ISSUES FOR CONSIDERATION**

### **The application**

12. On 18 November 2008, Fullers, Smith & Turner Plc, applied to vary the said premises licence by removing the following conditions from the licence:
  - Condition 7000 – Air conditioning system to be installed upon the premises and shall

- be maintained in good working order;
- Condition 8000 – That all musicians and DJs must play electrically amplified music / audio / PA through a sound cut out device. The cut out device shall be maintained at levels set to the satisfaction of the council’s noise team (now environmental protection team); and
- Condition 9503 – Sound proofing the two windows on the first floor facing east.

13. A copy of the full application is provided at appendix B.

### **Representations received from responsible authorities**

14. A representation was lodged to the application by the environmental protection team on 15 December 2008 under the prevention of nuisance licensing objective. Following a site visit to the premises and an exchange of correspondence between the team and the applicant, the representation was withdrawn on 18 December 2008 on the basis that the application is revised as follows:

- That condition 7000 remains upon the licence in a revised form “Air conditioning system to be installed within the first floor function room”;
- That condition 8000 is to be removed from the licence
- That condition 9503 remains upon the licence
- That a new condition is added to the licence stating “That no live amplified music be played in the premises”;
- That a second new condition is added to the licence stating “That all doors and windows in the licensed premises (other than for egress and ingress) remain closed during the performance of regulated entertainment”;
- That a third new condition is added to the licence stating “That the cupboard containing the amplification installation remain locked and under control of the licensee during the performance of regulated entertainment”

15. Copies of the relevant correspondence are provided as appendix C.

16. No other representations have been received from responsible authorities, for other responsible authority responses see appendix D.

### **Representations received from interested parties**

17. Representations have been received from a total of 8 interested parties (all local residents living within the vicinity of the premises). A copy of each of the representations is provided at appendix E. Each of the representations deal primarily with the prevention of nuisance licensing objective

18. A conciliation meeting has been arranged to be held on Tuesday 20<sup>th</sup> January. Interested parties will be informed of the agreement reached by the applicant with the environmental protection team. If any conciliation can be reached between the applicant and interested parties this will be presented as a late item at the sub-committee hearing.

### **Previous licensing history**

19. At the time of the introduction of the Licensing Act 2003, Fullers, Smith and Turner Plc held a justices on and off licence in respect of these premises. The company sought a “grandfather rights” conversion of that licence and a variation of the converted premises licence to extend operating hours and add regulated entertainment (live music) and late night refreshment.
20. Representations were received to the application. The application was amended through conciliation and eventually determined by the licensing sub-committee at a hearing held on 28 September 2005. The sub-committee decided to grant the varied licence in the terms set out set out in appendix A.
21. In September 2007, an anonymous complaint was received concerning allegations of unlicensed poker games being held at the premises. This matter was investigated by the licensing service and discussed with the gambling commission. No breaches of gambling legislation were identified.
22. The first full inspection of the premises under the Act was carried out by licensing officers on 15 August 2008. The following matters of concern were identified:
  - That no copy of the premises licence was available on the premises;
  - That no air conditioning system had been installed upon the premises as required by condition 7000 of the licence;
  - That no records of any staff having received training on safety issues were available as required by condition 9501;
  - That the two windows on the first floor facing east had not been soundproofed as required by condition 9503; and
  - That customers were found to be dancing on the first floor whereas the premises licence does not include provision of dancing.
23. A number of fire safety references were also noted as follows
  - That fire extinguishers were showing the last test date as July 2005;
  - That the exit from the first floor was partially obstructed;
  - That there was no fire risk assessment; and
  - That there was no record of fire safety training.
24. All matters were brought to the attention of the licensee and a written warning given regarding compliance with conditions by letter dated 18 August 2008. The fire safety references were also notified to the London fire and civil defence authority.
25. On 20 August 2008, a representative from the licensee company confirmed that
  - The exit from the first floor had been cleared of all obstructions
  - New fire extinguishers and smoke alarms had been placed on order
  - A new accident and fire safety log book had been ordered

- Advice was being taken on installing a sound limiting device.
26. A further inspection of the premises was carried out by licensing officers on 7 November 2008. The following concerns were noted:
- That no copy of the premises licence or the licence summary was available upon the premises;
  - That no air conditioning system had been installed upon the premises as required by condition 7000 of the licence; and
  - That the two windows on the first floor facing east had not been soundproofed as required by condition 9503;
27. A letter of alleged offence was sent to the licensee company dated 11 November 2008.
28. The application to vary the premises licence under consideration, including the removal of the conditions 7000 and 9503 was received on 18 November 2008. No enforcement actions have been pursued regarding the breaches of 7 November 2008 pending the determination of this application.
29. A copy of a completed fire risk assessment was forwarded on 20 November 2008.
30. Over the Christmas and new year period two temporary event notices were given to the relevant authorities advising of intention to extend the operation by way of sale of alcohol and regulated entertainment on the nights of 19, 20 and 31 December 2008 until 01.00 and 03.00 respectively.

#### **Other licensed premises in the vicinity**

31. A map of the local vicinity is attached at appendix F. A radius of 100 metres from the premises is indicated on the map. There are no licensed premises within 100m of The Leather Exchange.

#### **Consultation**

32. The application for variation of the licence has been advertised in accordance with the regulations to the Act. A public notice was placed in the South London Press and a second notice was exhibited at the premises in a position where it could be easily read by passers by. This notice was inspected on 27<sup>th</sup> November 2008.

#### **Community impact statement**

33. Each application is required by law to be considered upon its own individual merits with all relevant matters taken into account. The application will be determined with a view to promoting the licensing objectives in the overall interests of the local community, with appropriate weight given to
- The steps that are necessary to promote the licensing objectives
  - The representations (including supporting information) presented by all parties;
  - The guidance to the Act produced by the department of culture media and sport; and

- The council's statement of licensing policy.

### **Southwark statement of licensing policy**

34. The Southwark statement of licensing policy was first approved by council assembly on 8 December 2005. It has since been subject of a number of revisions. The most recent of which being that of 5 November 2008.
35. In considering this application the sub-committee will have regard to the following sections of the policy:
  - Section 3 which sets out the purpose and scope of the policy and re-inforces the four licensing objectives;
  - 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;
  - Section 6 which details other relevant council and government policies, strategies, responsibilities and guidance, including the relevant Articles under the Human Rights Act 1998;
  - Section 7 which provides general guidance on dealing with crime and disorder;
  - Section 8 which provides general guidance on ensuring public safety;
  - Section 9 which provides general guidance on the prevention of nuisance; and
  - Section 10 which provides general guidance on the protection of children from harm.

### **Resource implications**

36. A fee of £190 has been paid by the applicant company in respect of this application being the statutory fee payable for premises without a non-domestic rateable at band B.

### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

#### **Strategic Director for Legal and Democratic Services**

37. The sub-committee is asked to determine the application for a variation of a premises licence under section 34 of the Licensing Act 2003.
38. The principles which sub-committee members must apply are set out below.

#### **Principles for making the determination**

39. The general principle is that applications must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations on advertising and submitting the application.
40. Relevant representations are those which
  - Are about the likely effect of the granting of the application on the promotion of the licensing objectives;

- Are made by an interested party or responsible authority;
  - Have not been withdrawn; and
  - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious
41. If relevant representations are received then the sub-committee must have regard to them, in determining whether it is necessary for the promotion of the licensing objectives to
- Modify the conditions of the licence; or
  - Reject the whole or part of the application.

### **Conditions**

42. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the application, if it is necessary to do so. Conditions must be necessary and proportionate for the promotion of one of the four licensing objectives, and not for any other reason. Conditions must also be within the control of the licensee, and should be worded in a way which is clear, certain, consistent and enforceable.
43. The four licensing objectives are
- The prevention of crime and disorder;
  - Public safety;
  - The prevention of nuisance; and
  - The protection of children from harm.
44. Members should note that each objective is of equal importance. There are no other licensing objectives, and the four objectives are paramount considerations at all times.
45. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to night café and take away aspect of the license must relate to the night time operation of the premises and must not be used to impose conditions which could not be imposed on day time operators.
46. Members are also referred to the DCMS guidance on conditions, specifically section 10 and annex D of the guidance.

### **Reasons**

47. If the sub-committee determines that it is necessary to modify the conditions, or to refuse the application, it must give reasons for its decision.

### **Hearing procedures**

48. 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 considers 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.
49. This matter relates to the determination of an application for a premises licence under section 34 of the Licensing Act 2003. Regulation 26(1)(a) requires the sub-committee to make its determination at the conclusion of the hearing.

### **Council's multiple roles and the role of the licensing sub-committee**

50. 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.
51. 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.
52. 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.
53. 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, working or engaged in normal activity in the area concerned.

54. 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.
55. 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.
56. 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 of the Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the Borough.
57. 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

58. 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 DOCUMENTS

| Background Papers  | Held At  | Contact   |
|--|--|---|
| Licensing Act 2003<br>Secondary regulations to the Act<br>DCMS guidance to the Act<br>Southwark statement of licensing policy<br>Various papers from the case file | Health safety & licensing unit, c/o The Chaplin Centre, Thurlow Street, London, SE17 2DG | Name: Kirty Read<br>Phone number: 020 7525 5748 |

## APPENDICES

| No.        | Title   |
|------------|---|
| Appendix A | Premises Licence  |
| Appendix B | Variation Application   |
| Appendix C | Environmental Protection Team representation and conciliation |
| Appendix D | Responsible authority responses                               |
| Appendix E | Interested party representations                              |
| Appendix F | Map of local vicinity   |

## AUDIT TRAIL

|   |  |                          |
|---|--|--------------------------|
| <b>Lead Officer</b>   | Gill Davies, Strategic Director of Environment & Housing |                          |
| <b>Report Author</b>  | Kay Riley, Licensing Officer                             |                          |
| <b>Version</b>  | Draft  |                          |
| <b>Dated</b>  | 29 December 2008   |                          |
| <b>Key Decision?</b>  | No   |                          |
| <b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES</b>                          |  |                          |
| <b>Officer Title</b>  | <b>Comments Sought</b>                                   | <b>Comments included</b> |
| Strategic Director for Legal and Democratic Services                            | Yes  | Yes                      |
| Finance Director  | No   | No                       |
| <b>Executive Member</b>   | No   | No                       |
| <b>Date final report sent to Constitutional/Community Council/Scrutiny Team</b> | January 15 2009  |                          |