

Item No. 5.	Classification: Open	Date: 30 August 2012	Meeting Name Licensing Sub-Committee
Report title:		Licensing Act 2003 – Great Exhibition P.H, 193 Crystal Palace Road, London SE22 9JL	
Ward(s) or groups affected:		East Dulwich	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATIONS

1. That the licensing sub-committee considers an application made by Zelgrain Ltd to vary the premises licence granted under the Licensing Act 2003 in respect of the premises known as Great Exhibition P.H, 193 Crystal Palace Road, London SE22 9JL.
2. *Notes:*
 - a) *This application seeks to vary existing licensable activities held under current legislation in respect of the premises known as Great Exhibition P.H under Section 34 of the Licensing Act 2003. Existing permitted licensable activities are not the subject of representations and are not under consideration at this meeting. The variation application is subject to representations from responsible authorities and other persons and is therefore referred to the sub-committee for determination*
 - b) *Paragraphs 10 to 12 of this report provide a summary of the application under consideration by the sub-committee. A copy of the full application is attached as Appendix B.*
 - c) *Paragraphs 13 & 20 of this report deal with the representations received to the variation of premises licence application. Copies of the relevant representations are attached as Appendices C, C1, C2, D, E.*

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act provides a new licensing regime for:
 - a) The sale of and supply of alcohol
 - b) The provision of regulated entertainment
 - c) The provision of late night refreshment

Within Southwark, this Council wholly administers the licensing responsibility.

4. The Act requires the licensing authority to carry out its functions under the Act with a view to promoting the four stated licensing objectives. These are:
 - a) The prevention of crime and disorder
 - b) The promotion of public safety
 - c) The prevention of nuisance

- d) The protection of children from harm
5. In carrying out its licensing functions, a licensing authority must also have regard to
- a) The Act itself
 - b) The Guidance to the act issued under Section 182 of the Act
 - c) Secondary regulations issued under the Act
 - d) The licensing authority's own Statement of Licensing Policy
 - e) The application, including the operating schedule submitted as part of the application
 - f) Relevant representations
6. The premises licence application process involves the provision of all relevant information required under the Act to the licensing authority with copies provided by the applicant to the relevant responsible bodies under the Act. The application must also be advertised at the premises and in the local press. The responsible authorities and other persons within the local community may make representations on any part of the application where relevant to the four licensing objectives.

KEY ISSUES FOR CONSIDERATION

The current premises licence

7. The current licence in respect of the premises known as Great Exhibition, 193 Crystal Palace Road, London SE22 was issued on 11 January 2012. It allows the following licensable activities:
- Live Music;
 - Monday & Tuesday from 11.00 to 23.00; Wednesday – Saturday from 11.00 to 00.00 and Sunday from 12.00 to 22.30
 - Recorded Music;
 - Monday & Tuesday from 11.00 to 23.00; Wednesday – Saturday from 11.00 to 00.00 and Sunday from 12.00 to 22.30
 - Provision similar to music and dancing;
 - Monday & Tuesday from 11.00 to 23.00; Wednesday – Saturday from 11.00 to 00.00 and Sunday from 12.00 to 22.30
 - Late night refreshment;
 - Monday – Saturday from 23.00 to 23.30
 - Sale of alcohol on and off the premises;
 - Monday & Tuesday from 11.00 to 23.00; Wednesday – Saturday from 11.00 to 00.00 and Sunday from 12.00 to 22.30
 - Operating hours of premises;
 - Monday & Tuesday from 11.00 to 23.30; Wednesday – Saturday from 11.00 to 00.30 and Sunday from 12.00 to 00.30
8. A copy of the existing premises licence is attached as Appendix A.

The variation application

9. On 5 June 2012, Zelgrain Ltd applied to this Council to vary the premises licence issued in respect of the premises known as Great Exhibition P.H, 193 Crystal Palace Road, London SE22.

10. The application is summarized as follows:

To add the following licensable activity:

- Provision of facilities for dancing;
 - Monday – Wednesday from 11.00 to 00.00; Thursday – Saturday from 11.00 to 02.00 and Sunday from 12.00 to 00.00

To extend the hours for the following activities:

- Recorded Music;
 - Sunday – Wednesday to 00.00; Thursday – Saturday to 02.00
- Provision similar to music and dancing;
 - Sunday – Wednesday to 00.00; Thursday – Saturday to 02.00
- Late night refreshment
 - Monday – Wednesday to 00.00; Thursday - Saturday to 02.00
- Sale of alcohol on and off the premises;
 - Sunday – Wednesday to 00.00; Thursday – Saturday to 02.00
- To change the operating hours of premises;
 - Sunday – Wednesday to 00.30; Thursday – Saturday to 02.30

Non standard timings where the premises wishes to operate different times to those listed for are as follows for the following licensable activities:

- Recorded music; dancing, provision similar to music and dancing, facilities for dancing, late night refreshment, sale of alcohol on and off the premises
 - From the start of permitted hours on New Years Eve to the end of permitted hours on New Years Day
 - On the Sunday of any bank holiday weekend an extension to 02.00 the following day for licensable activities listed.
- The following conditions to be removed from Annexe 2 of the premises licence:
 - Conditions 109, 110, 127, 163, 167, 168, 177 & 178 entirely.

11. The variation to the premises licence application form provides the applicant operating schedule. Parts E; F, J, K, L, M, N, O and P set out the proposed operating hours and operating controls in full, with reference to the four licensing objectives as stated in the Licensing Act 2003. Should a premises licence be issued in respect of the application the information provided in part P of the operating schedule will form the basis of conditions that will be attached to the licence. A copy of the application is attached to this report as Appendix B.

Designated premises supervisor

12. The designated premises supervisor under the existing premises licence is Daniel James Hills who holds a personal licence issued by Brighton & Hove City Council.

Representations from Other Persons

13. There are 50 representations lodged by other persons. Comprising of letters from 2 local councillors and 48 from local residents . There is also a petition signed by 52 persons 20 of whom had already submitted a representation (this will be made available at the hearing). The representations are primarily concerned with the prevention of public and noise nuisance and public safety. The representations are attached as Appendix C to the report.
14. A representation was submitted by Rt Hon Tessa Jowell MP supporting her constituents, this is attached as Appendix C1.

Supporting representations

15. Representations in support of the application were received from 12 persons, 11 of whom had presented the same letter. The supporting representations are attached as Appendix C2.

Representations from Responsible Authorities

16. Representations have been submitted by the Metropolitan Police and the council's environmental protection team.
17. The representation from the Metropolitan Police suggest that the wording of the control measures offered in the application is essential to negate any ambiguity and have therefore offered their own conditions to be considered by the applicant.
18. The representation from the environmental protection team concerns the noise issues complaints received with regards to the operation of the premises, the public house being in an exclusively residential area and the issues of sound containment. Copies of the both representations are attached as Appendix D.

Comments from responsible authorities

19. The London Fire and Emergency Planning Authority have no representation to make. Their letters to confirm this are attached as Appendix E.

Disability Discrimination Act

20. The Southwark Disablement Association has no comments regarding this application.

Conciliation

21. The applicant has expressed a desire to address the concerns within the representations submitted and a conciliation meeting shall take place on Wednesday 15 August 2012. At the time of writing this report the meeting has not yet taken place and the licensing sub-committee shall be updated at the hearing on 30 August 2012.

Operating history

22. The Justices Licence for the premises known at the time as the Crystal Palace Tavern was converted by Punch Taverns Plc during the transitional period under “grandfather rights” and simultaneously varied to add Live and recorded music, add an additional hour on Wednesday to Friday, add an additional hour on Bank holiday weekends, Christmas Eve, Boxing Day and to keep existing New Year’s Eve hours already granted. There were no objection to this application and the licence was duly granted on 19 March 2007.
23. An application was received to transfer the premises licence to EPT Taverns Ltd on 27 April 2011. This was duly granted.
24. On 20 May 2011 a minor application was made by EPT Taverns Ltd to remove some ambiguous conditions and also to add all challenge 25 policy conditions. There were no representations to this application and it was duly granted on 15 June 2011.
25. On 12 August 2011 following complaints received due to the operation of the premises a warning letter was issued to EPT Taverns. Copy is attached as Appendix F.
26. On 21 December 2011 applications were received to transfer the licence to Zelgrain Ltd, and also to vary the licence to include a new designated premises supervisor in the name of Daniel James Hills.
27. This was followed subsequently by a minor variation of change of plans to reflect the current layout of the bar and installation of fixed furniture and a new door due to a recent refurbishment. A representation was made by the environmental protection team who had an issue with the number of doors in the new layout which were available for public use.
28. A condition was offered and agreed stating “All un-lobbied doors and windows to remain closed during regulated entertainment, except in an emergency. Un-lobbied doors to be fitted with an alarm device, audible from behind the bar when the doors are opened. No speakers to be located externally”. (conditions 340 and 342 of the current premises licence). A revised plan was again submitted to reflect said changes.
29. On 2 March 2012 the licensing unit was notified of a change of name from Crystal Palace Tavern to the current Great Exhibition
30. On 24 April 2012 a complaint was complaint received by the licensing unit with regards to noise emanating from the back area which is now known as the Gin Yard. The complainant wanted to know if this area which had not been used in the past had a licence to use it now.
31. On 18 May 2012 a visit was conducted at 22.45 the premises at by a licensing officers working with the night time economy who noticed that the gin yard was being used and it was noisy people noise and music emanating from the bar because the doors were wide open. A verbal warning was given on site and further advice was given to apply for a full variation to include the yard on a revised plan so that an opportunity for a full consultation to take place.

Temporary Event Notices

32. Temporary events notices have not been submitted this year.

The local area

33. A map of the area is attached to this report as Appendix G. The premises is identified by a purple diamond at the centre of the map. For purposes of scale-only the circle on the map has a 100 metre radius. There are no licensed premises within the radius shown on the map:

Southwark Council Statement of Licensing Policy

34. Council assembly approved Southwark's Statement of Licensing Policy 2011-14 on 12 October 2011. Sections of the statement that are considered to be of particular relevance to this application are:
- Section 3 which sets out the purpose and scope of the policy and reinforces 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 details other relevant council and government policies, strategies, responsibilities and guidance, including the relevant articles under the Human Rights Act 1998;
 - Section 7 provides general guidance on dealing with crime and disorder and deals with licensing hours;
 - Section 8 provides general guidance on ensuring public safety including safe capacities;
 - Section 9 provides general guidance on the prevention of nuisance; and
 - Section 10 provides general guidance on the protection of children from harm.
35. 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

36. A fee of £190 has been paid by the applicant in respect of this application being the statutory fee payable for premises within non-domestic rateable value band B.

Consultation

37. Consultation has been carried out on this application in accordance with the provisions of the Licensing Act 2003. A public notice was published in a local newspaper and a similar notices exhibited outside of the premises for a period of 28 consecutive days.

Community impact statement

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

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

39. The sub-committee is asked to determine the application to vary the premises licence under Section 34 of the Licensing Act 2003.

40. The principles which sub-committee members must apply are set out below.

Principles for making the determination

41. Section 35 of the Licensing Act 2003 sets out the licensing authority's powers and duties in considering the determination of an application for variation.

42. The general principle is that applications for variation must be granted unless relevant representations are received. This is subject to the proviso that the applicant has complied with regulations in advertising and submitting the application.

43. 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 other party or responsible authority
- Have not been withdrawn (in this case, the initial objections from the Fire Service have been withdrawn).
- Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

44. 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

- Add to, omit, and/or alter the conditions of the licence or,
- Reject the whole or part of the application for variation

Conditions

45. The sub-committee's discretion is thus limited. It can only modify the conditions put forward by the applicant, or refuse the variation, 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.

46. The four licensing objectives are

- a. The prevention of crime and disorder;
- b. Public safety;
- c. The prevention of nuisance; and
- d. The protection of children from harm.

47. 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.

48. Conditions will not be necessary if they duplicate a statutory position. Conditions relating to late night refreshment and take away aspect of the licence 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.

49. The Licensing Act requires mandatory conditions in respect of supply of alcohol, the exhibition of films and in respect of door supervisors. The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2003 introduced 3 new conditions in respect of irresponsible

promotions, the oral dispensing of alcohol and free tap water. In October 2010 an additional 2 conditions will come into force – age verification policy and smaller measures for alcoholic drinks.

50. Members are also referred to the DCMS guidance on conditions, specifically section 7, and Annexes D, E, F and G.

Reasons

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

Hearing procedures

52. 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
53. This matter relates to the determination of an application to vary 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

54. 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.
55. 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.

- 56. 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.
- 57. 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.
- 58. 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.
- 59. 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.
- 60. Other persons, 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

- 61. 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	Cont
Licensing Act 2003 DCMS Guidance to the Act Secondary Regulations Southwark Statement of Licensing Policy Case file	C/O Southwark Licensing, Community Safety & Enforcement, 3rd Floor Hub C, 160 Tooley Street PO Box 64529 SE1 5LX	Mrs Kirty Read Tel:02075255748

APPENDICES

Name	Title
Appendix A	Copy of the existing premises licence
Appendix B	Copy of application
Appendix C	Copy of representations from other parties
Appendix C1	Copy of letter Tessa Jowell MP
Appendix C2	Copies supporting letters
Appendix D	Copy of representations from responsible authorities
Appendix E	Copies of comments from responsible authorities
Appendix F	Copy of warning letter
Appendix G	Map of the local area
Appendix H	Confidential list (closed agenda)

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Dorcas Mills, Principal Licensing Officer	
Version	Final	
Dated	17 August 2012	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team		17 August 2012