

Item No. 6.	Classification: Open	Date: 25 April 2014	Meeting Name: Licensing Sub-Committee
Report title:		Licensing Act 2003: Kaspas 321 - 323 Walworth Road, London SE17 2TG	
Ward(s) or groups affected:		Faraday	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATION

1. That the licensing sub-committee considers an application made by Village Venues Ltd for a premises licence to be granted under the Licensing Act 2003 in respect of the premises known as Kaspas 321- 323 Walworth Road, London SE17 2TG.
2. **Notes:**
 - a) This application forms a new application for a premises licence, submitted under Section 17 of the Licensing Act 2003. The application is subject to representations from a responsible authority and 11 other persons and is therefore referred to the sub-committee for determination.
 - b) Paragraphs 8 to 10 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 A.
 - c) Paragraphs 11 to 17 of this report deals with the representations received to the premises licence application. Copies of the relevant representations are attached as Appendices B and C.
 - d) 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 to the meeting.

BACKGROUND INFORMATION

The Licensing Act 2003

3. The Licensing Act 2003 received royal assent on 10 July 2003. The Act provides a licensing regime for:
 - The sale of and supply of alcohol
 - The provision of regulated entertainment
 - The provision of late night refreshment.
4. Within Southwark, the licensing responsibility is wholly administered by this council.

5. 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:
 - The prevention of crime and disorder
 - The promotion of public safety
 - The prevention of nuisance
 - The protection of children from harm.
6. In 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 of the Act
 - Secondary regulations issued under the Act
 - The licensing authority's own statement of licensing policy
 - The application, including the operating schedule submitted as part of the application
 - Relevant representations.
7. 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 interested parties 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 premises licence application

8. On 28 February 2014 Village Venues Ltd applied to this council for the grant of a new premises licence in respect of the premises known as Kaspas 321-323 Walworth Road, London SE17 2TG.

The application is summarised as follows:

- Late night refreshment (on and off the premises)
Monday to Sunday from 23.00 to 04.00
 - Opening hours
Monday to Sunday from 07.00 to 04.00.
9. The premises licence application form provides the applicant operating schedule. Parts I, K, L, and M 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 M of the operating schedule will form the basis of conditions that will be attached to the licence.
 10. A copy of the application is attached to this report as Appendix A.

Representations from responsible authorities

11. A representation has been received from the Metropolitan Police Service.

12. The representation received from the Metropolitan Police Service is concerned with crime and disorder and asked for two conditions to be added with regards to CCTV being installed at the premises.
13. The applicant agreed to add the two conditions to the operating schedule and as result the police have withdrawn their representation.
14. A copy of the police representation and withdrawal statement is attached as Appendix B.

Representations from other persons

15. 11 representations have been received from other persons which includes a local councillor.
16. The representations from other persons are concerned that the late operation of the premises till 04.00 will have an adverse impact on crime and disorder, public nuisance, and public safety, and ask for the premises to close earlier.
17. Copies of the representations from other persons are attached as Appendix C

Conciliation

18. At the time of writing this report conciliation talks are taking place. The applicant has agreed to amend the application and remove late night refreshment from Sunday through to Wednesday. The application now requires late night refreshment for Thursday, Friday and Saturday from 23.00 until 00.00. The other persons that submitted the representations shall be informed of this and invited to withdraw their representations and the licensing sub-committee shall be updated with any further changes at the hearing on 25 April 2014.

The local area

19. A map of the area is attached to this report as Appendix D. The premises is identified by a triangle at the centre of the map. For purposes of scale-only the circle on the map has a 100-metre radius. The following licensed premises terminal hours are also shown on the map.

Off licence

- Morrisons, 264 Walworth Road London SE17 2TE (Monday to Sunday until 23.00)
- Iceland, 332-344 Walworth Road, London SE17 2NA (Monday to Saturday until 23.00, Sunday until 22.30)
- Marks & Spencer Ltd, 311 Walworth Road, London SE17 2TG (Monday to Saturday until 23.00, Sunday until 22.30)
- Tesco Stores Limited, 364-368 Walworth Road, London SE17 2NF (Monday to Sunday until 23.00)
- Capalina News / Walworth Convenience Store, 365 Walworth Road, London SE17 2AL (Monday to Saturday until 23.00, Sunday until 22.30)

- Oli Centre, 332-334 Walworth Road, London SE17 2NA (Monday to Sunday 24 hours)
- N J News (Santrams), 282 Walworth Road, London SE17 2TE (Monday to Saturday until 23.00, Sunday until 22.30)
- Samra Convenience Store, 316 Walworth Road, SE17 2NA (licence surrendered)

Late night refreshment only

- Bagel King, 280 Walworth Road, London SE17 2TE (Monday to Sunday until 05.00)
- Chicken Cottage, 278 Walworth Road, London SE17 2TE (Monday to Sunday until 04.00)
- Walworth Kebab & Burger Bar, 360 Walworth Road, London SE17 2NF (Sunday to Thursday until 02.00, Friday to Saturday until 04:00)

Restaurants

- The Best Kebab, 294 Walworth Road, London SE17 2TE (Monday to Sunday until 05.00)
- Amore restaurant (entrees), 310 Walworth Road, London SE17 2NA (licence suspended)
- Moyo Ma, 347 Walworth Road, London SE17 2AL (Monday to Wednesday until 23.30, Thursday until 00.30, Friday to Saturday until 02.00, Sunday until 00.30)
- Inspire Catering And Bar, St Peters Crypt Club Liverpool Grove, London SE17 2HH (Monday to Thursday until 23.30, Friday to Saturday until 00.30, Sunday until 21:30)

Public House

- The Beaten Path, 267 Walworth Road, London SE17 1RL (licence surrendered)
- The Good Intent P H, 24 East Street, London SE17 2DN (Monday to Sunday until 00.30).

Southwark council statement of licensing policy

20. 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
 - Section 10 provides general guidance on the protection of children from harm.
21. 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

22. A fee of £315 has been paid by the applicant company in respect of this application being the statutory fee payable for premises within non-domestic rateable value band C.

Consultations

23. 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

24. 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

25. The sub-committee is asked to determine the application for a premises licence under section 17 of the Licensing Act 2003.
26. The principles which sub-committee members must apply are set out below.

Principles for making the determination

27. The general principle is that applications for premises licence applications 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.
28. 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
 - Are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
29. 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 grant the licence subject to:
 - The conditions mentioned in section 18 (2)(a) modified to such extent as the licensing authority considers necessary for the promotion of the licensing objectives
 - Any condition which must under section 19, 20 or 21 be included in the licence
 - to exclude from the scope of the licence any of the licensable activities to which the application relates
 - to refuse to specify a person in the licence as the premises supervisor
 - to reject the application.

Conditions

30. 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.
31. The four licensing objectives are:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of nuisance
 - The protection of children from harm.
32. 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.
33. 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.

34. Members are also referred to the DCMS guidance on conditions, specifically section 10, and Annex D.

Reasons

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

Hearing procedures

36. 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.
37. This matter relates to the determination of an application for a premises licence under section 17 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

38. 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.

39. 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.
40. 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.
41. 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.
42. 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.
43. The sub-committee can only consider matters within the application that have been raised through representations from other persons and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.
44. 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.
45. 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

46. 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 DCMS Guidance to the Act Secondary Regulations Southwark statement of licensing policy Case file	Southwark Licensing, C/O Community Safety & Enforcement, 160 Tooley Street, London, SE1 2QH	Mrs Kirty Read Tel: 020 7525 5748

APPENDICES

Name	Title
Appendix A	Application for a new premises licence
Appendix B	Representations and withdrawal statement from the police
Appendix C	Representations from other persons
Appendix D	Map

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment and Leisure	
Report Author	Jayne Tear, Principal Licensing Officer	
Version	Final	
Dated	10 April 2014	
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		10 April 2014